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Contents

Federal Register

Vol. 89, No. 35

Wednesday, February 21, 2024

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.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

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
1145.....12949
Proposed Rules:
210.....13150
215.....13150
220.....13150
225.....13150
226.....13150
1217.....12987

14 CFR
39.....12951
71 (2 documents) 12953, 12954
Proposed Rules:
39.....12993

17 CFR
Proposed Rules:
270.....12995

23 CFR
Proposed Rules:
924.....13000

25 CFR
293.....13232

31 CFR
208.....12955

32 CFR
Proposed Rules:
170.....13013

33 CFR
Proposed Rules:
117.....13013
165.....13015

37 CFR
Proposed Rules:
42.....13017

40 CFR
700.....12961
Proposed Rules:
52.....13022

50 CFR
224.....12980

Rules and Regulations

Federal Register
Vol. 89, No. 35
Wednesday, February 21, 2024

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1145

RIN 0581–AE27

[Doc. No. AMS–DA–23–0085]

Reauthorization of Dairy Forward Pricing Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reauthorizes the Dairy Forward Pricing Program (DFPP) in accordance with the Further Continuing Appropriations and Other Extensions Act, 2024 (Extension Act), and makes two administrative changes to the provisions to include the California Federal milk marketing order in the list of eligible orders where use of a forward contract is applicable. Establishing new contracts under the DFPP was prohibited between the expiration of the program on September 30, 2023, and passage of the Extension Act on November 16, 2023. The Extension Act reauthorizes the DFPP program to allow handlers to enter into new contracts until September 30, 2024. Any forward contract entered prior to the September 30, 2024, deadline must expire by September 30, 2027.

DATES: This final rule is effective February 22, 2024.

FOR FURTHER INFORMATION CONTACT: Erin Taylor, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231—Room 2530, 1400 Independence Avenue SW, Washington, DC 20250–0231, Telephone: (202) 720–7183, Email: *Erin.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION: The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) [1] initially established the DFPP.[2] The DFPP allows milk handlers, under the Agricultural Marketing Agreement Act of 1937, (AMAA) [3] to pay producers or cooperative associations of producers a negotiated price for producer milk, rather than the Federal order minimum blend price for non-fluid classes of milk (Classes II, III, and IV under the FMMO system). The DFPP does not allow for forward contracting of fluid or Class I milk.

Following the initial expiration of the DFPP which prevented the establishment of new contracts after September 30, 2012, the ''American Taxpayer Relief Act of 2012,'' (ATRA) [4] revised the program to allow handlers to enter into new contracts until September 30, 2013. The ''Agricultural Act of 2014'' (2014 Farm Bill) [5] then extended the program to allow new contracts until September 30, 2018. The Agriculture Improvement Act of 2018 (2018 Farm Bill) [6] reauthorized the program to allow handlers to enter into new contracts until September 30, 2023. The Extension Act [7] extends the program to allow handlers to enter into new contracts until September 30, 2024, subject to a September 30, 2027, expiration date. This final rule applies retroactively to November 16, 2023, in accordance with reauthorization of the DFPP in the Extension Act.

Participation in the DFPP is voluntary for dairy farmers, dairy farmer cooperatives, and handlers. Handlers may not require producer participation in a forward pricing program as a condition for accepting milk. USDA, including Market Administrator personnel, does not determine the terms of forward contracts or enforce negotiated prices. This regulation also does not affect contractual arrangements between a cooperative association and its members.

Under the DFPP, regulated handlers must still account to the FMMO pool for the classified use value of their milk. Regulated handlers claiming exemption from the Federal order minimum pricing provisions must submit to the Market Administrator a copy of each forward contract. The contract must contain a disclosure statement—either as part of the contract itself or as a supplement—to ensure producers understand the nature of the program as well as the basis on which they will be paid for their milk. Contracts that do not contain a disclosure statement are deemed invalid and returned to the handler. Signed contracts must be received by the Market Administrator before the first of a month, in order to be effective for the month. For example, contracts must be received by the Market Administrator by December 31, 2023, in order to be effective for the month of January 2024.

Handlers with forward contracts remain subject to all other milk marketing order provisions. Payments specified under a forward contract must be made on or before the same date as the federal order payments they replace. Required payment dates are specified in 7 CFR 1145.2(e).

This final rule reauthorizes producers and cooperative associations of producers to enter into forward price contracts under the DFPP through September 30, 2024. All terms of the new forward contracts must expire prior to September 30, 2027. All other provisions and requirements of the program as provided for in the final rule [8] published October 31, 2008, are still in effect. The California Federal milk marketing order was established ten years later, on November 1, 2018,[9] which also followed two separate extensions of the DFPP. Thus, the California Federal milk marketing order has not been specifically included in the regulatory text of the DFPP as is every other Federal milk marketing order, and that is corrected here.

Executive Orders 12866, 13563 and 14094

USDA is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and

[1] Public Law 110–234.
[2] 73 FR 64868.
[3] 7 U.S.C. 601–614.
[4] Public Law 112–240.
[5] Public Law 113–79.
[6] Public Law 115–334.
[7] Public Law 118–22.
[8] 73 FR 64868.
[9] 83 FR 26547.

promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule has limited retroactive effect to November 16, 2023, in accordance with reauthorization of the DFPP in the Extension Act. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

Executive Order 13175

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. A small dairy farm as defined by the Small Business Administration (SBA) (13 CFR 121.201) is one that has an annual gross revenue of $3.75 million or less. The SBA's definition of small agricultural service firms, which includes dairy processors, varies based on the type of dairy product manufactured. Small dairy processors are defined as having between 750 and 1,250 or fewer employees depending on the products made.

According to the 2017 USDA National Agricultural Statistics Service (NASS) Census Report, the most recent report, there were 39,303 farms with milk sales. AMS estimates 36,158 farms, or 92 percent, are considered small businesses. In 2018, 301 handler plants were regulated by or reported their milk receipts to be pooled and priced on a Federal milk marketing order. Of the total, approximately 163 handler plants, or 54 percent, were considered small businesses.

Producers and handlers use the DFPP as a risk management tool. Under the DFPP, producers and handlers can ''lock-in'' prices, thereby minimizing risks associated with price volatility that are particularly difficult for small businesses to mitigate.

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

Section 1601(c)(2)(B) of the 2014 Farm Bill provides that the administration of the DFPP shall be made without regard to the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. Section 1701 of the 2018 Farm Bill extended that Congressional direction through September 30, 2023, and that direction is further extended to September 30, 2024, by the current reauthorization of the DFPP, through the Extension Act. Thus, any information collection conducted for the DFPP is not subject to the PRA.

Final Action

In accordance with the Extension Act, this final rule extends the DFPP to all Federal milk marketing orders. New contracts under the Program may be entered into until September 30, 2024. Any forward contract entered into up to and until the September 30, 2024, deadline is subject to a September 30, 2027, expiration date.

Section 1601(c)(2)(A) of the 2014 Farm Bill provides that the promulgation of the regulations to implement the reauthorization of the DFPP shall be made without regard to the notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Section 1701 of the 2018 Farm Bill extended the Congressional direction, and Section 102 of the Extension Act extends that direction to the current reauthorization of the DFPP. AMS, therefore, is issuing this final rule without prior notice or public comment.

The provisions of this final rule are retroactively effective to November 16, 2023, when the Extension Act became law. As explained above, the DFPP is a voluntary program and AMS will not take action until forward contracts are received from handlers who choose to participate in this program. By making this rule effective retroactive to November 16, 2023, handlers will have the maximum amount of time to begin the contracting process with producers. Thus, it is unnecessary and contrary to the public interest to delay the effective date of the final rule.

Additionally, this rule makes two administrative changes to the provisions (7 CFR 1145.1(c) and 7 CFR 1145.2 (a)) to include the California Federal milk marketing order in the list of eligible orders where use of a forward contract is applicable. The California Federal milk marketing order was established on November 1, 2018, and this is the first rulemaking directly relevant to the DFPP since that time.

List of Subjects in 7 CFR Part 1145

Government contracts, Milk marketing orders, Price support programs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 1145 as follows:

PART 1145—DAIRY FORWARD PRICING PROGRAM

■ 1. The authority citation for 7 CFR part 1145 continues to read as follows:

Authority: 7 U.S.C. 8772.

■ 2. Amend § 1145.1 by revising paragraph (c) to read as follows:

§ 1145.1 Definitions.

* * * * *

(c) *Forward contract* means an agreement covering the terms and conditions for the sale of Class II, III or IV milk from a producer defined in 7 CFR 1001.12, 1005.12, 1006.12, 1007.12, 1030.12, 1032.12, 1033.12, 1051.12, 1124.12, 1126.12, 1131.12 or a cooperative association of producers defined in 7 CFR 1000.18, and a handler defined in 7 CFR 1000.9.

* * * * *

■ 3. Amend § 1145.2 by revising paragraphs (a) and (b) to read as follows:

§ 1145.2 Program.

(a) Any handler defined in 7 CFR 1000.9 may enter into forward contracts with producers or cooperatives

associations of producers for the handler's eligible volume of milk. Milk under forward contract in compliance with the provisions of this part will be exempt from the minimum payment provisions that would apply to such milk pursuant to 7 CFR 1001.73, 1005.73, 1006.73, 1007.73, 1030.73, 1032.73, 1033.73, 1051.73, 1124.73, 1126.73 and 1131.73 for the period of time covered by the contract.

(b) No forward price contract may be entered into under the program after September 30, 2024, and no forward contract entered into under the program may extend beyond September 30, 2027.

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–03407 Filed 2–20–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2147; Project Identifier MCAI–2023–00663–E; Amendment 39–22670; AD 2024–03–01]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Pratt & Whitney Canada Corp. (P&WC) Model PW307A and PW307D engines. This AD is prompted by a root cause analysis of an event involving an uncontained failure of a high-pressure turbine (HPT) 1st-stage disk that resulted in high-energy debris penetrating the engine cowling and an aborted takeoff. This AD requires removing from service and replacing certain HPT disks and also prohibits installing certain HPT disks on any engine, as specified in a Transport Canada AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 27, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 27, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2147; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario, K1A 0N5, Canada; phone: (888) 663–3639; email: *TC.AirworthinessDirectives-Consignesdenavigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2023–2147.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all P&WC Model PW307A and PW307D engines. The NPRM published in the **Federal Register** on November 9, 2023 (88 FR 77236). The NPRM was prompted by AD CF–2023–30, dated May 8, 2023 (Transport Canada AD CF–2023–30) (also referred to as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that on March 18, 2020, an Airbus Model A321–231 airplane, powered by International Aero Engines AG (IAE) Model V2533–A5 engines, experienced an uncontained HPT 1st-stage disk failure that resulted in an aborted takeoff and high-energy debris penetrating the engine cowling.

In response to the March 2020 uncontained HPT 1st-stage disk failure, the FAA issued a series of ADs, including Emergency AD 2020–07–51, Amendment 39–21110 (85 FR 20402, April 13, 2020) (AD 2020–07–51). Since the FAA issued AD 2020–07–51, IAE determined that the failure of the V2533–A5 engine was due to an undetected subsurface material defect in the HPT 1st-stage disk that may affect the life of the part. In coordination with IAE, P&WC performed a records review and analysis of PW307A and PW307D engine parts made of similar material and identified additional affected HPT 1st and 2nd-stage disks, installed on PW307A and PW307D engines. These additional HPT disks may have a material defect that could reduce the life of the part and must be removed from service.

In the NPRM, the FAA proposed to require replacing certain HPT disks and prohibiting the installation of certain HPT disks on any engine, as specified in the MCAI. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2147.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, this AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Transport Canada AD CF–2023–30, which identifies the affected HPT disks and specifies procedures for replacement. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 63 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove affected HPT 1st or 2nd stage disk	8 work-hours × $85 per hour = $680	$136,400	$137,080	$8,636,040

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–03–01 Pratt & Whitney Canada Corp.: Amendment 39–22670; Docket No. FAA–2023–2147; Project Identifier MCAI–2023–00663–E.

(a) Effective Date

This airworthiness directive (AD) is effective March 27, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Canada Corp. Model PW307A and PW307D engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a root cause analysis of an event involving an International Aero Engines AG Model V2533–A5 engine, which experienced an uncontained failure of a high-pressure turbine (HPT) 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. The FAA is issuing this AD to prevent failure of the HPT 1st and 2nd-stage disks. The unsafe condition, if not addressed, could result in uncontained HPT disk failure, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, Transport Canada AD CF–2023–30, dated May 8, 2023 (Transport Canada AD CF–2023–30).

(h) Exceptions To Transport Canada AD CF–2023–30

(1) Where Transport Canada AD CF–2023–30 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph A. of Transport Canada AD CF–2023–30 specifies ''Before 31 January 2027,'' replace that text with ''Within 36 months after the effective date of this AD.''

(3) Where paragraph B. of Transport Canada AD CF–2023–30 specifies ''At the next opportunity, when the affected engine is disassembled and access is available to the HPT disk, remove any affected HPT disk listed in Table 2 or Table 4 below and replace the affected HPT disk with a serviceable part,'' replace that text with ''For any engine with an installed HPT disk listed in Table 2 or Table 4 [of Transport Canada AD CF–2023–30], at the next piece-part exposure, remove the affected HPT disk from service and replace with a serviceable part.''

(i) No Reporting Requirement

Although the service information referenced in Transport Canada AD CF–2023–30 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Definitions

(1) For the purpose of this AD, ''piece-part exposure'' is when the affected part is removed from the engine and completely disassembled.

(2) For the purpose of this AD, a ''serviceable part'' is any HPT disk that is not identified in Tables 1 through 4 of Transport Canada AD CF–2023–30.

(k) Alternative Methods of Compliance (AMOCs)

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

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

(l) Additional Information

For more information about this AD, contact Barbara Caufield, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite

410, Westbury, NY 11590; phone: (781) 238–7146; email: *barbara.caufield@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2023–30, dated May 8, 2023.

(ii) [Reserved]

(3) For Transport Canada AD CF–2023–30, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; phone: (888) 663–3639; email: *TC.AirworthinessDirectives-Consignesde navigabilite.TC@tc.gc.ca;* website: *tc.canada.ca/en/aviation.*

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

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

Issued on January 31, 2024.

Victor Wicklund,

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

[FR Doc. 2024–03442 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1147; Airspace Docket No. 22–AAL–55]

RIN 2120–AA66

Amendment of Alaskan Very High Frequency Omnidirectional Range (VOR) Federal Airway V–333 in the Vicinity of Shishmaref, AK, and Revocation of Alaskan VOR Federal Airway V–401 in the Vicinity of Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Alaskan Very High Frequency Omnidirectional Range (VOR) Federal Airway V–333 and revokes Alaskan VOR Federal Airway V–401. The FAA is taking this action due to the pending decommissioning of the Shishmaref, AK, and Ambler, AK, Nondirectional Radio Beacons (NDB). The identifier V–333 is also used as an identifier for Domestic VOR Federal Airway V–333 in the vicinity of Rome, GA. The identifier V–401 is also used as an identifier for Domestic VOR Federal Airway V–401 in the vicinity of Worland, WY. This airspace action only pertains to the Alaskan V–333 and V–401. The V–333 near Rome, GA and V–401 near Worland, WY, are not affected by this airspace action.

DATES: Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a NPRM for Docket No. FAA 2023–1147 in the **Federal Register** (88 FR 54251; August 10, 2023), proposing to amend V–333 and to revoke V–401 in Alaska. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Alaskan VOR Federal airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by amending Alaskan VOR Federal Airway V–333 and revoking Alaskan VOR Federal Airway V–401, in its entirety, in the state of Alaska.

V–333: Prior to this final rule, Alaskan VOR Federal Airway V–333 extended between the Hooper Bay, AK, VOR/Distance Measuring Equipment (DME), the Nome, AK, VOR/DME, and the Shishmaref, AK, Nondirectional Radio Beacon (NBD). The airway segment between the Nome VOR/DME and the Shishmaref NBD is removed. As amended, the airway is now changed to extend between the Hooper Bay VOR/DME and the Nome VOR/DME.

V–401: Prior to this final rule, Alaskan VOR Federal Airway V–401 extended between the Ambler, AK, NDB, the Kotzebue, AK, VOR/DME, and the Shishmaref, AK, NDB. The airway is removed in its entirety.

The identifier V–333 is also used as an identifier for Domestic VOR Federal Airway V–333 in the vicinity of Rome, GA. The identifier V–401 is also used as an identifier for Domestic VOR Federal Airway V–401 in the vicinity of Worland, WY. This airspace action only pertains to the Alaskan V–333 and V–401. The V–333 near Rome, GA and V–401 near Worland, WY, are not affected by this airspace action.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending Alaskan VOR Federal Airway V–333 and revoking Alaskan VOR Federal Airway V–401 in Alaska qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5i, establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas, and increases in minimum altitudes and landing minima. For modifications to air traffic procedures at or above 3,000 feet AGL, the Noise Screening Tool (NST) or other FAA-approved environmental screening methodology should be applied. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6010(b) Alaskan VOR Federal Airways.

* * * * *

V–333 [Amended]

From Hooper Bay, AK; to Nome, AK.

* * * * *

V–401 [Removed]

* * * * *

Issued in Washington, DC, on February 14, 2024.

Brian Eric Konie,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2024–03483 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1464; Airspace Docket No. 22–AAL–28]

RIN 2120–AA66

Revocation of Colored Federal Airway Green 4 (G–4) in the Vicinity of Dillingham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Colored Federal Airway Green 4 (G–4) in the vicinity of Dillingham, AK due to the pending decommissioning of the Wood River, AK (BTS), Nondirectional Radio Beacon (NDB).

DATES: Effective date 0901 UTC, May 16, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: A copy of the Notice of Proposed Rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at *www.regulations.gov* using the FAA Docket number. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year.

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a NPRM for Docket No. FAA 2023–1464 in the **Federal Register** (88 FR 43258; July 7, 2023), proposing to revoke G–4 in the vicinity of Dillingham, AK. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received. No response was provided as the comment was outside of the scope of the proposal.

Incorporation by Reference

Colored Federal airways are published in paragraph 6009 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends 14 CFR part 71 by revoking Colored Federal Airway G–4 in its entirety, in the vicinity of Dillingham, AK.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of revoking Colored Federal Airway G–4 in the vicinity of Dillingham, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5–6.5k, which categorically excludes from further environmental review the publication of existing air traffic control procedures that do not essentially change existing tracks, create new tracks, change altitude, or change concentration of aircraft on these tracks. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023, is amended as follows:

Paragraph 6009(a) Green Federal Airways.

* * * * *

G–4 [Removed]

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Issued in Washington, DC, on February 14, 2024.

Brian Eric Konie,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2024–03480 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 208

[FISCAL–2022–0003]

RIN 1530–AA27

Management of Federal Agency Disbursements

AGENCY: Bureau of the Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: On January 10, 2023, the Department of the Treasury's (Treasury) Bureau of the Fiscal Service (Fiscal Service) issued a notice of proposed rulemaking (NPRM) to amend Fiscal Service's Management of Federal Agency Disbursements rule, which implements a statutory mandate requiring the Federal Government to deliver non-tax payments by electronic funds transfer (EFT) unless Treasury determines that a waiver of the requirement is appropriate. Fiscal Service is now issuing this final rule (Final Rule) to adopt the amendments as proposed, with one minor change. Among other things, the Final Rule strengthens the EFT requirement by narrowing the scope of existing waivers from the EFT mandate or requiring agencies to obtain Fiscal Service's approval to invoke certain existing part 208 waivers. The use of electronic payments has expanded significantly since the waivers from the EFT mandate were first published in 1998, and the Final Rule appropriately updates part 208's waiver provisions, given the broad availability of safe and secure electronic payment options currently available. In doing so, the Final Rule leverages

Treasury's growing profile of electronic payment options, which are faster, less expensive, and safer than paper checks. The strengthening of the EFT requirement with these changes is also consistent with Treasury's commitment to reducing check payments.

DATES: This rule is effective March 22, 2024.

FOR FURTHER INFORMATION CONTACT: Matthew Helfrich, Management and Program Analyst, at (215) 806–9616 or *Matthew.Helfrich@fiscal.treasury.gov,* or Rebecca Saltiel, Senior Counsel, at (202) 874–6648 or *Rebecca.Saltiel@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, Fiscal Service issued a final rule, codified at 31 CFR part 208 (part 208), to implement the requirements of 31 U.S.C. 3332, as amended by section 31001(x)(1) of the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321–376. Section 3332 generally mandates that all Federal payments that the government makes, other than tax payments, be delivered by EFT unless waived by the Secretary of the Treasury. Specifically, subsection (f)(2)(A) of section 3332 provides that ''[t]he Secretary of the Treasury may waive application of [the EFT mandate] to payments—(i) for individuals or classes of individuals for whom compliance poses a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary.'' Subsection (f)(2)(B) states that ''[t]he Secretary of the Treasury shall make determinations under subparagraph (A) based on standards developed by the Secretary.'' Section 3332 also authorizes the Secretary of the Treasury to ''prescribe regulations that the Secretary considers necessary to carry out this section.'' 31 U.S.C. 3332(i)(1). The waivers authorized by section 3332 are located exclusively in part 208. Pursuant to statutory authority in 31 U.S.C. 3335, part 208 also provides that Treasury may assess a charge to an agency that fails to make a payment by EFT as prescribed by part 208.

The part 208 waivers have remained largely unchanged since the late 1990s, even as Treasury's percentage of payments made electronically has significantly increased. In 2007, 78% of the government's payments that Treasury disbursed were made electronically. By fiscal year 2023, that figure had risen to 96%. Of the over 1 billion payments that Treasury disburses each year on behalf of Federal agencies, all but a small fraction are paid electronically.

The part 208 waivers have also remained largely unchanged despite Treasury expanding its electronic payment offerings. The additional offerings include same-day Automated Clearing House (ACH) payments, Treasury-sponsored prepaid debit cards, and the Treasury-sponsored Digital Pay program. Treasury also operates electronic payment support and education programs and platforms such as GoDirect.gov and the Direct Express Financial Education Center. None of these offerings existed when Treasury published its initial final rule on part 208 in 1998.

The use of Treasury-sponsored debit cards illustrates how much has changed since the waivers were first published. Over 3.8 million Federal benefit payees receive their payments on Direct Express debit cards, which are linked to accounts sponsored by Treasury. Similarly, over 16.5 million Economic Impact Payment (EIP) payees received payments in 2020 and 2021 on EIP Cards, which are debit cards linked to Treasury-sponsored accounts. The Direct Express program helps ensure that recipients of Federal benefits receive payments electronically even if they do not otherwise have bank accounts. The use of EIP Cards helped Treasury meet its responsibility to issue EIPs as quickly as possible. But for the issuance of debit cards, most of these payments would have been by paper check.

It is Treasury's goal to create a modern, seamless, and cost-effective Federal payment experience for the public. Expanding the use of electronic payments and reducing the number of paper checks are essential to this goal. Electronic payments are much faster, more timely, and significantly less expensive than paper checks. Electronic payments are safer than paper checks as well, with direct deposits being 16 times less likely to have post-payment issues (such as claims of missing or misdelivered payments) than paper checks. Electronic payments avoid the disproportionate burden checks can place on some payment recipients—who may have to resort to expensive check-cashing services—as well as the negative impact that check production and delivery may have on the environment.

There remains room for improvement in increasing the percentage of payments made electronically and reducing the number of paper checks produced and mailed every year. Treasury works closely with Federal agencies that make payments and has encountered numerous examples of payments that are made by paper check that could be made electronically. These often include Federal intragovernmental payments and vendor payments, many of which take place on a recurring basis. Increasing the electronic payment rate for Treasury-disbursed payments is part of an Agency Priority Goal for Treasury, and Fiscal Service has set a federal financial management goal to deliver 99% of eligible Treasury-disbursed payments electronically by 2030.

Treasury believes that it is time to narrow the existing waivers. A narrowing of the waivers is expected to increase the percentage of payments made electronically and reduce the number of paper checks sent out each year. This narrowing is possible and appropriate because of the changes over the last 25 years.

II. Public Comments and Fiscal Service Responses

Fiscal Service received three substantive comment letters in response to the NPRM. Two comments were from Federal agencies and one was from Nacha, the ACH network's governing body. The comments sought clarification regarding the application of certain waivers and the new agency waiver request process, addressed the charges that Fiscal Service may assess under § 208.9, discussed the rule's potential effects on agency-led research activities that involve payments to research participants, and expressed general support for the NPRM.

Comments Regarding the Application of Certain Waivers and the New Agency Waiver Request Process

One agency commenter requested clarification regarding a portion of the preamble to the NPRM that addressed the amendment to § 208.4(a)(1)(ii), which provides a waiver from the EFT requirement for individuals who receive a type of payment for which Treasury does not offer delivery to a Treasury-sponsored account. The Final Rule specifies that if Treasury provides an agency with an option to begin delivering a type of payment to a Treasury-sponsored account, the agency must file a waiver request with Treasury to make payments of that type by any means other than by EFT. In response to the commenter's request for clarification, we note that if Treasury provides an agency an option to begin delivering certain payments to a Treasury-sponsored account and the agency submits a waiver request to continue to make payments other than by EFT, the agency may continue to issue check payments during the

pendency of the waiver request. The commenter also asked whether individuals who are homeless would be eligible for a class waiver, noting the potential difficulty of enrolling such individuals in direct deposit or in Direct Express. Fiscal Service would consider an agency's waiver request under § 208.4(a)(1)(ii) for a group of individuals, including individuals who are homeless.

With regard to the waiver under newly redesignated § 208.4(a)(7), which may be available when an agency does not expect to make multiple payments to the same individual or small business concern within a one-year period on a regular, recurring basis, an agency commenter asked if waivers could be applied to a class of individuals, such as in cases where an agency holds the personal funds of patients during hospital stays and then returns the funds upon patient discharge. The commenter asked if the § 208.4(a)(7) waiver could apply in such cases given that the agency would not know if a patient may be readmitted during the same year. Fiscal Service believes the waiver under § 208.4(a)(7) could be relied upon to return the personal funds of patients by means other than EFT and that the agency could apply the waiver to a class of discharged patients rather than on a case-by-case basis. Fiscal Service, however, would discourage the agency's use of the waiver for all discharged patients before first considering whether EFT, including via the U.S. Debit Card, would be an appropriate and convenient method of returning discharged patients' funds in certain circumstances. For example, the waiver could be limited to payments to patients who have been offered return of their funds by direct deposit or U.S. Debit Card and who have declined that option.

One agency commenter also commented on the new agency waiver request requirement. As the commenter noted, the NPRM stated that Fiscal Service would provide detailed information about how to file a waiver request in the Treasury Financial Manual. The commenter stated that it would be helpful to have more information regarding the agency waiver request process. As of the date of this Final Rule, Fiscal Service has updated the relevant Treasury Financial Manual chapter, which is available at *https://tfm.fiscal.treasury.gov/v1/p4/ac200/.* Subsection 2040.30c of the chapter, which may be amended from time to time, outlines the agency waiver request process and will be effective March 22, 2024.

Comment Relating to Fiscal Service's Assessment of Charges Under § 208.9

One agency commenter requested more detail regarding how charges would be assessed under § 208.9, how frequently agencies will be billed, and whether agencies would have any appeal rights. The provision of the Final Rule stating that Treasury may assess a charge to an agency pursuant to 31 U.S.C. 3335 if the agency fails to make final payment by EFT as prescribed under part 208 has been in effect since 1999. The proposed rule only clarified that if an agency fails to make payment by EFT as prescribed under part 208, Treasury will consider that payment to be not timely pursuant to 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than paper checks.

The commenter is correct that the proposed rule did not address how Treasury would assess charges to agencies that fail to make payment by EFT pursuant to § 208.9. Fiscal Service is evaluating the appropriate method to assess charges to agencies in accordance with the Secretary's authority under 31 U.S.C. 3335, which permits the Secretary to charge an agency the cost to the General Fund of the Treasury caused by the agency's non-compliance with the requirement to provide for the timely disbursement of Federal funds. Until such time as the method of assessing non-compliance charges is established and published in the Treasury Financial Manual, Volume I, Part 4A, Chapter 2000, Fiscal Service will not charge agencies under § 208.9. Moreover, Fiscal Service anticipates that once the method of assessing non-compliance charges is established and published in the Treasury Financial Manual, § 208.9 would be relied upon to charge an agency only in unresolved cases after Fiscal Service and the agency have exhausted reasonable options to resolve the non-compliance issue.

Comments Relating to Agency Research Activities

One agency commenter expressed concerns regarding the EFT requirement's impact on agency research activities because research teams would need to submit an Institutional Review Board modification to already-approved studies to collect bank account information from participants. The commenter also observed that any requirement to collect bank account information from research participants would be detrimental to the agency's recruitment of research subjects, as it would limit the agency's recruitment to individuals who are willing to provide bank account information. The commenter further suggested that the agency could not utilize the waiver under § 208.4(a)(7) for non-regular, non-recurring payments given that the agency might not know whether any given research participant would be paid more than once a year.

The EFT requirement is a longstanding requirement, not a new requirement under the Final Rule. Additionally, the agency would be able to comply with the EFT requirement without collecting bank information from research participants by issuing pre-paid debit cards through Fiscal Service's U.S. Debit Card program or virtual payments through Fiscal Service's Digital Pay program.

With respect to the commenter's concern that the payment waiver under § 208.4(a)(7) for non-regular and non-recurring payments would not be available to the agency to make non-EFT payments to the research participants, we note that to use the waiver, the rule requires that the agency not ''expect'' to make payments to the same recipient on a ''regular, recurring basis'' within a one-year period—not that the agency does not ultimately make more than one payment to the same recipient within a one-year period. (We note that although the preamble to the NPRM referred to the waiver under § 208.4(a)(7) as the ''one-time, non-recurring payment waiver,'' it could be more precisely referred to as the ''non-regular, non-recurring payment waiver.'') Accordingly, an agency may use the waiver under § 208.4(a)(7) to pay research participants by means other than EFT when the agency does not expect to make payments to the research participants on a regular, recurring basis, notwithstanding the possibility that those research participants may be paid for participating in other agency research projects in the same year. While an agency in this type of circumstance could use the waiver under § 208.4(a)(7), we would also encourage such an agency to consider using the U.S. Debit Card program to issue pre-paid debit cards or the Digital Pay program to issue virtual payments, which, as noted above, would not require the agency to collect personal bank account information.

Comments Expressing General Support for the Proposed Rule

Nacha's comment letter expressed support for the NPRM, noting that electronic payments will continue to reduce costs and improve efficiency across the federal government. Nacha further encouraged Fiscal Service to: (1) provide for the sharing of payment

enrollment information across agencies to the extent possible, and to seek Congressional authorization to do so if necessary; (2) utilize customer-facing enrollment portals, similar to the IRS's portal for providing banking information for EIPs; and (3) use industry-available account validation tools and services to promote greater accuracy of payment information. We appreciate Nacha's support of the NPRM. We note that currently federal benefit recipients may enroll in direct deposit on *GoDirect.gov* and that Fiscal Service continues to explore options for improving the EFT enrollment process. Fiscal Service also currently leverages commercially available data sources to confirm the existence, status, and ownership of bank accounts. Use of these data sources has increased the government's payment accuracy while reducing instances of reported fraud and erroneous payments. Fiscal Service is continually evaluating ways to increase electronic payments while reducing improper and misdirected EFT.

III. Summary of Final Rule

The Final Rule amends part 208 to require agencies seeking to use certain waivers to file a request with Treasury. Under the Final Rule, agencies must submit a request to Fiscal Service to use an EFT waiver in the following circumstances:

- If Treasury provides a federal entity with an option to begin delivering a Federal payment to a Treasury-sponsored account and the federal entity still seeks to make the payment by check (see § 208.4(a)(1)(ii));
- To extend any waiver for payment to a recipient within an area designated by the President or an authorized federal entity administrator as a disaster area past the 120-day period following when the disaster is declared (see § 208.4(a)(4);
- Where a federal entity's need for goods and services is of such an unusual and compelling urgency that the government would be seriously injured unless payment is made by a method other than EFT (see § 208.4(a)(8)); or
- Where there is only one source of goods or services and the government would be seriously injured unless payment is made by a method other than EFT (see § 208.4(a)(8)).

The Final Rule also narrows the scope of an existing waiver under newly re-designated § 208.4(a)(7) that permits an agency to make payment by check if the agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, by limiting the waiver to payments to individuals and small businesses. Fiscal Service is also amending § 208.4(a) by adding one new waiver for payments in a foreign currency if Treasury does not support electronic payment in that foreign currency.

The Final Rule also adds a new paragraph (c) to § 208.4 that gives Treasury the ability to nullify an agency waiver if Treasury makes the determination that the application of the waiver would lead to an agency initiating an unusually large number or proportion of payments by means other than EFT.

Fiscal Service is also revising § 208.7 to require agencies to provide, upon Treasury's, request certain employee identification number data associated with agency payments to enable Treasury to identify Federal intragovernmental check payments that should be converted to EFT.

In addition, the Final Rule amends § 208.9(b) to clarify that when an agency fails to make a payment by EFT as prescribed by part 208, Treasury will consider that payment to not be a timely payment under 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than paper checks. The Final Rule retains the existing language in § 208.9(b) authorizing Treasury to assess a charge to an agency that fails to make a payment by EFT as prescribed under this part. As noted above, Fiscal Service is still evaluating the appropriate method to assess charges to agencies in accordance with the Secretary's authority under 31 U.S.C. 3335. Until such time as the method of assessing non-compliance charges is established and published in the Treasury Financial Manual, Volume I, Part 4A, Chapter 2000, Fiscal Service will not charge agencies under § 208.9.

IV. Section-by-Section Analysis

Sections 208.1 Through 208.3

We are not amending these sections.

Section 208.4

We are amending § 208.4 in several ways.

We are amending the waiver under paragraph (a)(1)(ii) that is available where an individual receives a type of payment for which Treasury does not offer delivery to a Treasury-sponsored account to specify that if Treasury provides an agency with an option to begin delivering a type of payment to a Treasury-sponsored account, the agency must file a waiver request with Treasury to make payments of that type other than by EFT. Filing the waiver request is sufficient to utilize the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request, the waiver will not be available for payments made after the decision date.

We are adding a new waiver to § 208.4 at a new paragraph (a)(3). This waiver provides that payment by EFT is not required when the payment is to be made in a foreign currency and Treasury does not support electronic payment in that foreign currency. Treasury currently supports electronic payments in 145 foreign currencies to over 200 countries and territories, but we acknowledge that Treasury payment systems do not support electronic payment in every foreign currency. The new waiver would apply in these limited circumstances.

We are amending the existing waiver under paragraph (a)(3) (renumbered under the Final Rule as paragraph (a)(4)), which waives the EFT requirement for payments to recipients in a designated disaster area within 120 days after the disaster is declared. The amendment allows an agency to extend this waiver beyond 120 days after the disaster is declared, provided that the agency files a waiver request with Treasury. Filing is sufficient to extend the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request the waiver will not be available for payments made after the decision date. We are making this change in response to feedback from an agency regarding its disaster relief payments and the potential need to extend the waiver beyond the initial 120-day timeframe. However, agencies contemplating using this waiver should be mindful that the U.S. Debit Card is an electronic payment option that Treasury can make available to recipients in designated disaster areas, negating the need for an EFT waiver and paper checks in many instances.

We are amending the existing waiver at paragraph (a)(6) (renumbered as paragraph (a)(7) under the Final Rule), which applies when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, and remittance data explaining the purpose of the payment is not readily available from the recipient's financial institution receiving the payment by EFT. We have eliminated the language concerning the remittance data explaining the purpose of the payment. This language is archaic and no longer necessary or pertinent. Treasury disburses Federal payments to recipients' financial institution accounts with information that the financial institutions make available to recipients, allowing recipients to determine the purpose of the payments. This

information often exceeds the information available on a Treasury check.

We are also amending the existing waiver under paragraph (a)(6) (renumbered as paragraph (a)(7) under the Final Rule) to narrow its scope so that it applies only when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis and that recipient is an individual or a small business concern. For the purpose of this waiver, the NPRM proposed to adopt the meaning given to the term ''small business concern'' in section 3 of the Small Business Act at (15 U.S.C. 632). A broad waiver that would apply when an agency does not expect to make payments to the same recipient within a one-year period on a regular, recurring basis, regardless of the identity of the recipient, is no longer necessary, given the variety of electronic payment options available to agencies and payment recipients, including vendors. Nevertheless, we are retaining this waiver for agency payments to small business concerns to aid Federal agencies in their efforts to reach the broadest and most inclusive and diverse audience for Federal agency contracting opportunities. We also are retaining this waiver for agency payments to individuals because there are limited situations in which it might still make sense for an agency to make a non-regular, non-recurring payment to an individual by paper check. In addition, we are amending the final rule to specify that for the purposes of the waiver under paragraph (a)(7), ''small business concern'' has the meaning given the term in section 3 of the Small Business Act and its implementing regulations.

During Treasury's ongoing interactions with agencies regarding our efforts to increase electronic payments, we have become aware that some agencies are relying on the non-regular, non-recurring payment waiver (currently at § 208.4(a)(6)) to make the first in a series of recurring benefit payments to a recipient by paper check. Part 208 does not, as currently written, provide agencies with a waiver for the initial payment in a series of recurring payments. We understand, however, that certain benefit-paying agencies have encountered process and systems-related impediments that make it difficult for them to make the initial payment in a series of recurring benefit payments by EFT.

We are not adding a permanent waiver for this category of initial, recurring payments, but pursuant to § 208.10, Treasury reserves the right to waive any provision of part 208 in any case or class of cases. In response to the informal feedback we have received from benefit-paying agencies regarding systems impediments to making the initial payment in a series of recurring payments by EFT, and using the discretion provided in § 208.10, we are waiving the EFT mandate for agencies making initial payments in a series of recurring payments for two years from the date of publication of this Final Rule. This will permit affected agencies to make initial payments by paper check while giving agencies the time they need to make any required system or process changes that will allow them to fully comply with the part 208 EFT mandate.

We are amending the existing waiver under paragraph (a)(7) (renumbered as paragraph (a)(8) under the Final Rule), which applies to payments where: (1) an agency's need for goods and services is urgent or where there is only one source for goods or services and (2) the government would be significantly impacted unless payment is made by means other than EFT. We are retaining this waiver but now will require an agency to file a waiver request with Treasury to invoke it. The subject matter of this waiver is extremely fact specific, so we believe that it is appropriate for Treasury to consider waiver requests under revised paragraph (a)(8) on a case-by-case basis. Filing the waiver request is sufficient to utilize the waiver pending Treasury's decision on the request, but if Treasury ultimately rejects the request, the waiver will not be available for payments made after the decision date.

We are amending paragraph (b), which describes the waiver request process, so that it applies to requests for waivers from agencies as well as individuals. Agencies do not submit waiver requests today, but under the Final Rule would do so in some cases, as described above. Agencies seeking waivers can find more detailed information about how to file a waiver request in the Treasury Financial Manual, Volume I, Part 4A, Chapter 2000, Section 2040.30c, which is available at *https://tfm.fiscal.treasury.gov/v1/p4/ac200/*. Agencies will be entitled to make payment by paper check during the pendency of the waiver request process so that no payments are delayed by the new waiver request requirement. Individuals seeking waivers can find more detailed information about how to file a waiver request with Treasury at *GoDirect.gov.* Treasury reserves the right to reject any waiver request it receives.

We are adding a new paragraph (c) that provides Treasury the ability to nullify an agency's waiver if Treasury determines that the application of the waiver would lead to the agency initiating an unusually large number or proportion of payments by means other than EFT. If Treasury nullifies a waiver for a class of cases in accordance with this new paragraph (c), Treasury will require the agency in question to work with Treasury to identify and implement ways to make the payments by EFT. Among other things, this may include requiring an agency to work with Treasury to identify information to make payments by EFT by using data that Treasury maintains on previous payments to the same payment recipient.

The remaining provisions in § 208.4 are unchanged.

Sections 208.5 and 208.6

We are not amending these provisions.

Section 208.7

We are amending § 208.7 to add a requirement that an agency provide to Treasury, upon request from Treasury, the employer identification numbers (EINs) assigned to the agency that the agency has used when making or receiving Federal intragovernmental payments during the 12 months preceding the request as well as the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment during the preceding 12 months. This agency EIN data will enable Treasury to identify Federal intragovernmental check payments that should be converted to EFT. We are adding this requirement as subparagraph (b) and designating the existing language in 208.7 as subparagraph (a).

Section 208.8

We are not amending § 208.8.

Section 208.9

We are amending § 208.9(b) to clarify that when an agency fails to make a payment by EFT as prescribed by this part 208 and no waiver under § 208.4 is applicable, Treasury will consider the payment to be untimely under 31 U.S.C. 3335, as EFT payments are processed, disbursed, and settled more quickly than checks. When an agency makes a paper check payment that falls into one of the waiver categories in § 208.4, Treasury will consider that payment to be a timely payment under 31 U.S.C. 3335 as an exceptional circumstance. The Final Rule retains the existing language in § 208.9(b) specifying that,

pursuant to 31 U.S.C. 3335, Treasury may assess a charge to an agency that fails to make a payment by EFT as prescribed by part 208. Treasury reserves the right to assess a charge to any agency that fails to make a payment by EFT after Treasury has rejected the agency's waiver request for that payment.

Sections 208.10 and 208.11.

We are not amending these provisions.

V. Procedural Analysis

Regulatory Planning and Review

The Final Rule does not meet the criteria for a ''significant regulatory action'' as defined in Executive Order 12866, as amended. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the Final Rule will not have a significant economic impact on a substantial number of small entities. The rule provisions being amended primarily apply to Federal agencies and individuals who receive Federal payments, and do not have any direct impact on small entities.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the Final Rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

List of Subjects in 31 CFR Part 208

Banks, banking, Debit cards, Disbursements, Electronic funds transfers, Federal payments, Treasury-sponsored accounts.

For the reasons set out in the preamble, we are amending 31 CFR part 208 as follows:

PART 208—MANAGEMENT OF FEDERAL AGENCY DISBURSEMENTS

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 90, 265, 266, 1767, 1789a; 31 U.S.C. 321, 3122, 3301, 3302, 3303, 3321, 3325, 3327, 3328, 3332, 3335, 3336, 6503.

■ 2. Amend § 208.4 by:
■ a. Revising paragraph (a)(1)(ii);
■ b. Redesignating paragraphs (a)(3) through (a)(7) as paragraphs (a)(4) through (a)(8) and adding a new paragraph (a)(3);
■ c. Deleting the semicolon at the end of the second sentence of newly redesignated paragraph (a)(4) and replacing it with a period;
■ d. Revising paragraphs (a)(4), (a)(7), and (a)(8);
■ e. Revising paragraph (b); and
■ f. Adding a new paragraph (c).

The revisions and additions read as follows:

§ 208.4 Waivers.

(a) * * *

(ii) Receives a type of payment for which Treasury does not offer delivery to a Treasury-sponsored account. In such cases, those payments are not required to be made by electronic funds transfer, unless and until such payments become eligible for deposit to a Treasury-sponsored account. However, if Treasury provides an agency with an option to begin delivering a type of Federal benefit payment to a Treasury-sponsored account, the agency must file a waiver request with Treasury to make Federal benefit payments of that type by any means other than by electronic funds transfer;

* * * * *

(3) Where the payment is in a foreign currency and Treasury does not support electronic payment in that currency.

(4) Where the payment is to a recipient within an area designated by the President or an authorized agency administrator as a disaster area. This waiver is limited to payments made within 120 days after the disaster is declared. An agency must file a waiver request with Treasury (which must be approved by Treasury) to extend this waiver beyond 120 days after the disaster is declared;

* * * * *

(7) Where the agency does not expect to make multiple payments to the same recipient within a one-year period on a regular, recurring basis but only if the payments are made to an individual or a small business concern where ''small business concern'' has the meaning given the term in section 3 of the Small Business Act at 15 U.S.C. 632 and its implementing regulations; and

(8) * * * An agency must file a waiver request with Treasury (which must be approved by Treasury) to utilize this waiver.

(b) An individual who requests a waiver under paragraphs (a)(1)(iv) and (v) or an agency who requests a waiver under paragraphs (a)(1)(ii), (a)(4), or (a)(8) of this section shall provide, in writing, to Treasury a certification supporting that request, in such form that Treasury may prescribe. The individual shall attest to the certification before a notary public, or otherwise file the certification in such form that Treasury may prescribe. Treasury reserves the right to reject any waiver request it receives.

(c) If application of an agency's waiver, together with any waiver request previously granted under paragraphs (a)(1)(ii), (a)(4), or (a)(8), would, in Treasury's determination, lead to the agency initiating an unusually large number or proportion of payments by means other than electronic funds transfer, Treasury reserves the right to nullify the waiver in this class of cases and require the agency to work with Treasury to identify and implement ways to make the payments by electronic funds transfer.

■ 3. Revise § 208.7 to read as follows:

§ 208.7 Agency responsibilities.

(a) An agency shall put into place procedures that allow recipients to provide the information necessary for the delivery of payments to the recipient by electronic funds transfer to an account at the recipient's financial institution or a Treasury-sponsored account.

(b) Upon request from Treasury, an agency shall provide Treasury with a list of the employer identification numbers (EINs) assigned to the agency that the agency has used to make or receive a Federal intragovernmental payment during the 12- month period preceding the request from Treasury as well as a list of the EINs for all Federal agencies to whom the agency has made a Federal intragovernmental payment during the same 12-month period.

■ 4. Amend § 208.9 by revising paragraph (b) to read as follows:

§ 208.9 Compliance.

* * * * *

(b) If an agency fails to make payment by electronic funds transfer as prescribed under this part, Treasury will consider that payment to be not timely pursuant to 31 U.S.C. 3335, as electronic funds transfer payments are processed,

disbursed, and settled more quickly than checks and, accordingly, Treasury may assess a charge to the agency pursuant to 31 U.S.C. 3335.

David Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2024–03204 Filed 2–20–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 700

[EPA–HQ–OPPT–2020–0493; FRL–7911–05–OCSPP]

RIN 2070–AK64

Fees for the Administration of the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing amendments to the 2018 final rule that established fees for the administration of the Toxic Substances Control Act (TSCA). Specifically, EPA is finalizing changes to the fee amounts and EPA's total costs for administering TSCA; exemptions for entities subject to the EPA-initiated risk evaluation fees; exemptions for test rule fee activities; modifications to the self-identification and reporting requirements of EPA-initiated risk evaluation and test rule fees; modifications to EPA's proposed methodology for the production-volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario in which a consortium is not formed; expanded fee requirements to companies required to submit information for test orders; modifications to the fee payment obligations of processors subject to test orders and enforceable consent agreements (ECA); and extended timeframes for certain fee payments and notices.

DATES: This rule is effective on April 22, 2024.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0493, is available online at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Marc Edmonds, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0758; email address: *edmonds.marc@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you manufacture (including import), process, or distribute in commerce a chemical substance (or any combination of such activities) and are required to submit information to EPA under TSCA sections 4 or 5, or if you manufacture a chemical substance that is the subject of a risk evaluation under TSCA section 6(b). The following list of North American Industry 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 companies found in major NAICS groups:

- Chemical Manufacturers (NAICS code 325).
- Petroleum and Coal Products (NAICS code 324).
- Chemical, Petroleum and Merchant Wholesalers (NAICS code 424).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

TSCA, 15 U.S.C. 2601 *et seq.,* as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act of 2016 (Pub. L. 114–182) (Ref. 1), provides EPA with authority to establish fees to defray, or provide payment for, a portion of the costs associated with administering TSCA sections 4, 5, and 6, as amended, as well as the costs of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances under TSCA. EPA is required in TSCA section 26(b)(4)(F) to review and, if necessary, adjust the fees every three years after consultation with parties potentially subject to fees, to ensure that funds are sufficient to defray part of the cost of administering TSCA. EPA is issuing this final rule under TSCA section 26(b), 15 U.S.C. 2625(b).

C. What action is the Agency taking?

After establishing fees under TSCA section 26(b), TSCA requires EPA to review and, if necessary, adjust the fees every three years, after consultation with parties potentially subject to fees. This document describes the final changes to 40 CFR part 700, subpart C as promulgated in the final rule entitled ''Fees for the Administration of the Toxic Substances Control Act (TSCA)'' (2018 Fee Rule) (83 FR 52694) (Ref. 2) and explains the methodology by which these changes to TSCA fees were determined.

D. Why is the Agency taking this action?

The fees collected under TSCA are intended to achieve the goals articulated by Congress by providing a sustainable source of funds for EPA to fulfill its legal obligations under TSCA sections 4, 5, and 6 and with respect to information management under TSCA section 14. Information management includes ''collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under [section 14] information on chemical substances under [TSCA]'' (15 U.S.C. 2625(b)(1)). In 2021, EPA proposed changes to the TSCA fee requirements established in the 2018 Fee Rule (2021 Proposal) (Ref. 3) based upon TSCA implementation experience. In the 2021 Proposal, EPA proposed to adjust the fee amounts based on changes to program costs and inflation and to address certain issues related to implementation of the fee requirements (Ref. 3). EPA consulted and met with stakeholders that were potentially subject to fees, including several meetings with individual stakeholders and public webinars in February 2021 and December 2022. Additional information on the stakeholder engagement can be found in the 2021 Proposal, Unit III.A.1. (Ref. 3) and in Unit II.B. of this final rule.

This final rule takes into consideration comments received in response to the 2021 Proposal and a 2022 Supplemental Notice of Proposed Rulemaking (2022 Supplemental Notice) (87 FR 68647) (Ref. 4). A summary of those comments and the responses can be found in the Response to Comments (RtC) document for this rulemaking (Ref. 5). Based on the comments received, EPA experience implementing TSCA, adjustments to EPA's cost estimates, and experience implementing the 2018 Fee Rule, EPA is issuing this final rule to amend the 2018 Fee Rule.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential incremental economic impacts of the 2021 Proposal, as modified by the 2022 Supplemental Notice for FY 2023 through FY 2025, and the economic analysis for this final rule, entitled ''Economic Analysis of the Final Rule; Fees for the Administration of the Toxic Substances Control Act (TSCA)'' (Economic Analysis) (Ref. 6) is available in the docket and is briefly summarized here.

1. *Benefits.* The principal benefit of the 2021 Proposal, as modified by the 2022 Supplemental Notice, is to provide EPA with a sustainable source of funding necessary to administer certain provisions of TSCA.

2. *Cost.* The annualized fees collected from industry under the proposed cost estimate described in this final rule are approximately $36.69 million (after refunds) at both 3 percent and 7 percent discount rates (the annualized fee collection is independent of the discount rate), excluding fees collected for manufacturer-requested risk evaluations. Total annualized fee collection was calculated by multiplying the estimated number of fee-triggering events anticipated each year by the corresponding fees (Refs. 6 and 7). Total annual fee collection for manufacturer-requested risk evaluations (MRREs) is estimated to be $2.84 million for chemicals included in the 2014 TSCA Work Plan (TSCA Work Plan) (Ref. 7) (based on the assumed potential for two requests over the three-year period) and approximately $2.83 million for chemicals not included in the TSCA Work Plan (based on the assumed potential for one request over the three-year period) (Ref. 7). EPA analyzed a three-year period because the statute requires EPA to reevaluate and adjust the fees, as necessary, every three years.

3. *Small entity impact.* EPA estimates that 31.7 percent of TSCA section 5 submissions will be from small businesses in the 33 industries anticipated to be affected by this rulemaking (from the petroleum manufacturing, chemical manufacturing, and merchant wholesalers, and nondurable goods sectors with three-digit NAICS codes 324, 325, and 424) that are eligible to pay the TSCA section 5 small business fee because they meet the definition of ''small business concern'' as defined in 40 CFR 700.43. Total annualized fee collection from small businesses submitting notices under TSCA section 5 is estimated to be $583,104 (Ref. 6). For TSCA sections 4 and 6, reduced fees paid by eligible small businesses and fees paid by non-small businesses may differ because the fee paid by each entity would be dependent on the number of entities required to share the total fee per fee-triggering event and production volume of that chemical substance. EPA estimates that average annual fee collection from small businesses for fee-triggering events under TSCA sections 4 and 6 would be approximately $20,427 and $1,827,483, respectively (Ref. 6). For each of the three years covered by this final rule, EPA estimates that total fee revenue collected from small businesses will account for about 6 percent of the approximately $36.69 million total fee collection, for an annual average total of approximately $2.4 million.

4. *Environmental justice.* Although not directly impacting environmental justice-related concerns, the fees will enable the Agency to better protect human health and the environment. EPA identifies and addresses environmental justice concerns by providing for fair treatment and meaningful involvement in the implementation of the TSCA program and addressing unreasonable risks from chemical substances.

5. *Effects on State, local, or Tribal governments.* The final rule will not have any significant or unique effects on small governments, or federalism or tribal implications.

II. Background

A. Rule History

TSCA authorizes EPA to establish, by rule, fees for certain fee-triggering activities under TSCA sections 4, 5, and 6. In so doing, the Agency must set lower fees for small business concerns and establish the fees at a level such that they will offset approximately but not more than 25 percent of the Agency's costs to carry out a broader set of activities under TSCA sections 4, 5, and 6, and relevant information management activities under TSCA section 14. In addition, in the case of MRREs, the Agency is directed to establish fees sufficient to defray 50 percent of the costs associated with conducting the MRRE on a chemical substance included in the TSCA Work Plan and 100 percent of the costs of conducting the MRRE for all other chemicals. EPA is also required in TSCA section 26(b)(4)(F) to review and adjust, as necessary, the fees every three years.

1. *2021 Proposal.* On January 11, 2021 (Ref. 3), EPA proposed updates and adjustments to the 2018 Fee Rule (Ref. 2). This included proposed modifications to the TSCA fees and fee categories for fiscal years (FY) 2023, 2024, and 2025 and explained the methodology by which these TSCA fees were determined. EPA proposed to add three new fee categories: a Bona Fide Intent to Manufacture or Import Notice (Bona Fide Notice), a Notice of Commencement of Manufacture or Import (NOC), and an additional fee associated with test orders. In addition, EPA proposed exemptions for entities subject to certain fee triggering activities, including: (1) An exemption for research and development activities; (2) An exemption for entities manufacturing less than 2,500 pounds (lbs) of a chemical subject to an EPA-initiated risk evaluation; (3) An exemption for manufacturers of chemical substances produced as non-isolated intermediates; and (4) Exemptions for manufacturers of a chemical substance subject to an EPA-initiated risk evaluation if the chemical substance is imported in an article, produced as a byproduct, or produced or imported as an impurity. EPA proposed to update its cost estimates for administering TSCA and individual fee calculation methodologies. EPA proposed a production volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario in which a consortium is not formed and proposed to require export-only manufacturers to pay fees for EPA-initiated risk evaluations. EPA also proposed various changes to the timing of certain activities required throughout the fee payment process.

EPA requested public comments on its proposal through February 25, 2021, and later extended the comment period through March 27, 2021 (86 FR 10918, February 23, 2021 (FRL–10020–69)). EPA received a total of 43 comments. Of the 43 submissions, two written comment submissions and five oral comments were associated with a public webinar hosted on February 18, 2021 (Ref. 5), and three were requests for a comment period extension.

2. *2022 Supplemental Notice.* Based on comments received on the proposed rule, stakeholder engagement, experience implementing TSCA, and EPA's continued experience in implementing the 2018 Fee Rule (*e.g.,* through collection of fees associated with EPA-initiated risk evaluations for the 20 High Priority Substances (*https://www.epa.gov/tsca-fees/tsca-fees-epa-initiated-risk-evaluations*)), EPA supplemented its January 2021 Proposal in November 2022 with the publication of a Supplemental Notice (Ref. 4).

EPA published the 2022 Supplemental Notice to ensure that the fees charged accurately reflect the level of effort and resources needed to implement TSCA in the manner envisioned by Congress when it amended the law, as well as subsequent appropriations bills and associated explanatory statements. Additionally, the purposes of the Supplemental Notice were: To propose changes to the fee amounts and EPA's total costs for administering TSCA; to narrow certain proposed exemptions for entities subject to the EPA-initiated risk evaluation fees and propose exemptions for the test rule fee activities; to propose modifications to the self-identification and reporting requirements for EPA-initiated risk evaluation and test rule fees; to propose a partial refund of fees for premanufacture notices withdrawn at any time after the first 10 business days during the assessment period of the chemical; to propose modifications to EPA's proposed methodology for the production volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario in which a consortium is not formed; to propose expanding the fee requirements to companies required to submit information for test orders; to propose modifying the fee payment obligations to require payment by processors subject to test orders and enforceable consent agreements (ECA); and to propose extending the timeframe for test order and test rule payments.

EPA requested public comments on its 2022 Supplemental Notice through January 17, 2023. EPA received a total of 32 comments. Among the 32 comments, two were written comments and five were oral comments associated with a public webinar hosted on December 6. 2022 (Ref. 5). Three were requests for a comment period extension. The comments and EPA responses, as well as a more thorough summary of the comments received, are presented in the Response to Public Comments document (Ref. 5) available in the docket for this rulemaking. After considering the public comments, EPA made changes to the EA and rulemaking as discussed in Unit III.

B. Stakeholder Engagement

Under TSCA section 26(b)(4)(E), EPA is required to consult and meet with parties potentially subject to the fees or their representatives prior to establishment or amendment of TSCA fees. Similarly, under TSCA section 26(b)(4)(F), EPA is required to adjust the fees as necessary every three years after consulting with parties potentially subject to the fees and their representatives. Since the 2018 Fee Rule, EPA has held several outreach meetings with industry stakeholders on implementation issues. These outreach meetings are summarized at: *https://www.epa.gov/tsca-fees/outreach-materials-tsca-administration-fees-rule.*

In fall and winter of 2019, EPA held a series of webinars with industry to explain changes to EPA's Central Data Exchange (CDX) and how to pay fees through the system. In December 2019, EPA hosted a conference call to give a brief overview of the fees associated with an EPA-initiated risk evaluation, the creation of the preliminary list that identifies manufacturers and importers subject to fees, and how fees would be divided among the identified businesses. On February 24, 2020, EPA hosted a conference call to review certain provisions of the 2018 Fee Rule. On April 16, 2020, EPA hosted a call to discuss a decision to reduce burden for certain stakeholders subject to TSCA Fee Rule requirements for EPA-initiated risk evaluations via a No Action Assurance for enforcement of certain provisions of the 2018 Fee Rule. On February 18, 2021, EPA hosted a webinar to provide an overview of the 2021 Proposed Fee Rule to stakeholders. On December 6, 2022, EPA hosted a public webinar to provide an overview to stakeholders about the 2022 Supplemental Notice. These webinars gave the public an opportunity to provide comment to EPA on the proposed changes.

EPA is committed to stakeholder outreach and will continue to meet with federal partners, companies, trade associations and consortia that represent affected manufacturers and processors, as appropriate. EPA will consult with the Small Business Administration as needed regarding engagement with small businesses.

III. Provisions of This Final Rule

A. Program Cost Estimates and Activity Assumptions

As discussed in the 2022 Supplemental Notice, the 2018 Fee Rule has resulted in collection of roughly half of the (artificially low) baseline costs EPA has the authority to collect, resulting in additional TSCA implementation challenges due to insufficient resources. In addition, the baseline cost estimates in the 2018 Fee Rule were based on what EPA spent on implementing TSCA before it was amended in 2016, rather than what it would cost the Agency to implement the revised law in the manner envisioned and directed by Congress. In the first four years following the 2016 law's enactment, EPA did not conduct a comprehensive budget analysis designed to estimate the costs of implementing the amended law. EPA did not conduct such an analysis until spring 2021. EPA's 2022 Supplemental Notice included a program cost estimate based on the 2021 analysis that more adequately accounted for the anticipated costs of meeting its statutory mandates.

In reviewing comments on the proposals for this rulemaking, EPA has revisited its budget analysis and the program cost estimates and is finalizing estimates that differ from the 2022 Supplemental Notice. Specifically, the total program cost estimate has been reduced by over 19 percent and is now approximately $146.8 million (compared to approximately $181.9 million in the 2022 Supplemental Notice). EPA has also included a more granular breakdown of the costs, as requested by stakeholders, in a separate technical support document (TSD) for this final rule (Ref. 7). EPA recognizes that the costs associated with implementing TSCA may be re-evaluated and can change over time (*e.g.,* due changes in administrative priorities or insights and changes in practice gained through experience implementing the law). The cost estimates discussed in the technical support document and this unit are based on EPA's estimates at the time the rulemaking and support materials were developed.

1. *Program costs.* This unit summarizes the total cost estimates for TSCA sections 4, 5, 6, and 14 activities. EPA evaluated its costs from FY 2023, and then, after consideration of the assumptions and activities discussed in more detail in the TSD, evaluated the projected increase or decrease of those activities for contract dollars and full-time equivalents (FTE). Annually, from FY 2024 through FY 2026, the Agency anticipates a direct need of 383.67 FTE and $55,415,307 in contract (*i.e.,* non-pay) dollars. The total estimated program costs, including personnel compensation and benefits (PC&B) applied to each FTE directly involved in TSCA sections 4, 5, 6 (excluding MRREs) and 14 activities and the indirect cost, is $146,754,074.

TABLE 1—ESTIMATED ANNUAL COSTS TO EPA

[FY 2024 through FY 2026]

	Annual costs
TSCA Section 4	$7,678,352
TSCA Section 5	40,219,461
TSCA Section 6 (excluding MRREs)	70,486,244

TABLE 1—ESTIMATED ANNUAL COSTS TO EPA—Continued
[FY 2024 through FY 2026]

	Annual costs
TSCA Section 14	7,823,436
Agency Indirect Costs	20,546,580
Total	146,754,074

Table Note: The indirect cost rate is estimated at 16.28 percent for the purposes of this analysis.

a. *TSCA section 4 program costs.* TSCA, as amended, permits the Agency to undertake test rules, test orders and enforceable consent agreements (ECA). The Agency believes it is reasonable to assume that approximately 14 test orders per year will be initiated between FY 2024 and FY 2026. Approximately 10 of these test orders are expected to be associated with the Agency's actions on per- and polyfluoroalkyl substances (PFAS) per EPA's implementation of the National PFAS Testing Strategy. In addition, the Agency assumed one test rule and one ECA between FY 2024 and FY 2026. EPA decreased its estimate of the number of issued test orders from the 2022 Supplemental Notice. For this final rule, EPA is finalizing an estimated annual cost to EPA of administering relevant activities under TSCA section 4 of $7,678,352. Additional information about actions included in this cost estimate can be found in the TSD for this final rule (Ref. 7).

TABLE 2—TSCA SECTION 4 ANNUAL COST ESTIMATES FOR FY 2024–FY 2026

	Non-pay	Pay	FTE	Total
Test Orders—Risk Evaluation	$331,577	$1,177,705	7.00	$1,510,800
Test Orders—PFAS	124,841	1,445,882	7.50	1,571,300
Test Rules	88,870	780,684	4.00	870,000
ECA Issuance	14,755	195,171	1.00	210,000
Project Management and Operations	0	312,757	1.64	295,200
IT/IM	3,159,555	46,555	0.25	3,221,052
Total	3,719,598	3,958,754	21.39	7,678,352

b. *TSCA section 5 program costs.* Under TSCA section 5, EPA conducts risk assessments and risk management activities for approximately 482 submissions per year to ensure safety of new chemicals before they enter commerce. EPA estimates it will receive 216 premanufacture notices (PMNs), significant new use notices (SNUNs), and microbial commercial activity notices (MCANs) per year, and another 266 exemption applications, which include low exposure/low release exemptions (LoREXs), low volume exemptions (LVEs), test-marketing exemptions (TMEs), certain microorganism Tier II exemptions (Tier II), and TSCA experimental release applications (TERAs) per year. EPA's cost estimates for administering TSCA section 5 include costs associated with processing and retaining records related to a Notice of Commencement of Manufacture or Import (NOC) submission, as well as the costs of pre-notice consultations, processing and reviewing applications, retaining records, and related activities. EPA is finalizing an estimated annual cost to EPA of administering relevant activities under TSCA section 5 of $40,219,461. Additional information about actions included in this cost estimate can be found in the TSD for this final rule (Ref. 7).

TABLE 3—TSCA SECTION 5 ANNUAL COST ESTIMATES FOR FY 2024–FY 2026

	Non-pay	Pay	FTE	Total
Risk Assessment	$5,586,677	$11,662,890	63.00	$17,252,116
Risk Management	1,180,463	5,909,657	32.00	7,091,190
Project Management and Operations	0	358,282	1.89	340,200
IT/IM	5,747,093	45,564	0.25	5,797,480
Other	6,801,271	2,927,565	15.00	9,738,475
Total	19,351,668	20,903,957	112.14	40,219,461

c. *TSCA section 6 program costs.* EPA has the authority under TSCA section 26(b) to collect fees to recover a portion of the costs for TSCA section 6 activities including prioritization, risk evaluations, and risk management. TSCA requires that the EPA have at least 20 High-Priority chemical risk evaluations underway by December 2019, and that a new chemical risk evaluation be initiated each time another concludes. Based on these parameters, the Agency has assumed that EPA will be undertaking at least 20 EPA-initiated chemical risk evaluations at all times, and that each risk evaluation will take three and a half years to complete. In the case of MRREs, the Agency is directed to establish fees sufficient to defray 50 percent of the costs associated with conducting a MRRE on a chemical included in the *TSCA Work Plan for Chemical Assessments: 2014 Update* (Ref. 8), and 100 percent of the costs of conducting a MRRE for all other chemicals.

Based on an overall reduction in the total program cost estimate as a result of found efficiencies (discussed in more detail in the TSD (Ref. 7)), the estimated annual cost to EPA of administering relevant activities under TSCA section 6 is $70,486,244 per year not including the cost of MRREs. Individual risk evaluations, including MRREs, are estimated to cost $8,489,541 to complete (including indirect costs). Additional information about actions included in this cost estimate can be found in the TSD for this final rule (Ref. 7).

TABLE 4—TSCA SECTION 6 ANNUAL COST ESTIMATES FOR FY 2024–FY 2026

	Non-pay	Pay	FTE	Total
Annual Prioritization Process	$2,737,635	$2,905,161	15.25	$5,645,500
TSCA Section 6 Risk Evaluation	14,782,167	28,517,222	152.00	43,320,378
TSCA Section 6 Risk Management	4,106,513	11,367,735	61.60	15,477,675
Project Management and Operations	0	687,878	3.64	655,200
IT/IM	5,197,532	184,401	1.00	5,387,491
Total	26,823,847	43,662,397	233.49	70,486,244

d. *Costs of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14, information on chemical substances.* EPA's cost estimates include the costs of information management for TSCA sections 4, 5, 6 and 14, but do not include the costs of administering other authorities for collection such as those in TSCA sections 8 and 11. Activities considered when developing this estimate for activities under TSCA section 14 include: Prescreening/initial review; substantive review and making final determinations; documents review and sanitization; regulation development; IT systems development; and transparency/communications. Estimates also include Office of General Counsel (OGC) costs associated with coordinating, reviewing, issuing, and defending TSCA Confidential Business Information (CBI) claim final determinations, and supporting guidance, policy, and regulation development for TSCA section 14 activities. The annual cost estimate of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate information on chemical substances under TSCA section 14, including FTE and extramural costs, from FY 2024 through FY 2026 is $7,823,436. Additional information about actions included in this cost estimate can be found in the TSD for this final rule (Ref.7).

TABLE 5—TSCA SECTION 14 ANNUAL COST ESTIMATES FOR FY 2024–FY 2026

	Non-pay	Pay	FTE	Total
CBI Reviews	$714,288	$2,237,712	16.40	$2,952,000
IT/IM	4,842,070	29,366	0.25	4,871,436
Total	5,556,358	2,267,079	16.65	7,823,436

2. *Indirect costs.* The indirect costs included in the estimates for TSCA sections 4, 5 and 6, and for collecting, processing, reviewing, and providing access to and protecting CBI from disclosure as appropriate under TSCA section 14, were calculated by multiplying the appropriate indirect cost rates for FY 2024 and beyond by the estimated direct costs. Indirect cost rates are calculated each year by the Office of the Controller, using the EPA's current indirect methodology. On an annual basis, each program office is provided with an independent rate, expressed as a percentage, for use in calculating indirect costs.

For direct TSCA section 4, 5, 6 and 14 costs, an indirect cost rate of 16.28 percent was applied. Total indirect costs included in the overall TSCA sections 4, 5, 6 and 14 cost estimates total approximately $20,546,580 (Table 6).

TABLE 6—TOTAL INDIRECT COST ESTIMATES FOR TSCA SECTIONS 4, 5, 6 AND 14

	Direct costs	Indirect costs
TSCA Section 4	$7,678,352	$1,250,036
TSCA Section 5	40,219,461	6,547,728
TSCA Section 6	70,486,244	11,475,161
TSCA Section 14	7,823,436	1,273,655
Total	126,207,494	20,546,580

3. *Total collections for fee-triggering events.* EPA estimated a total program cost of implementing TSCA sections 4, 5, 6 (excluding MRREs) and 14 to be $146,754,074. Based on the assumptions previously discussed and the final fee amounts addressed in Unit III.B, the total estimated fees collected for all fee categories, excluding the MRRE is $36,687,346 plus a collection of $5,671,013 from MRREs totaling $42,358,359. EPA also accounted for refunds for certain TSCA section 5 activities as seen in Table 7.

TABLE 7—SUMMARY OF TOTAL ESTIMATED ANNUAL FEE COLLECTIONS AND REFUNDS FOR FY 2024–2026

Fee category	Estimated activity levels—non-small business	Estimated activity levels—small business	Fee—non-small business	Fee—small business	Total annual collections
Test Order	14.0	n/a	$25,000	$5,000	350,000
Test Rule	0.33	n/a	50,000	10,000	16,500
ECA	0.33	n/a	50,000	10,000	16,500
Total Estimated Annual Fees Collected for Section 4 Activities					383,000
PMN (including intermediate)/MCAN/SNUN	151.0	65.0	37,000	6,480	6,014,304
LoREX, LVE, TME, Tier II exemption, TERA, Film Articles	178.0	88.0	10,870	2,180	2,128,612
Full (100%) refund—Notices	8.0	3.0	(37,000)	(6,480)	(315,440)
Full (100% refund—Exemptions	10.0	4.0	(10,870)	(2,180)	(117,420)
75% refund—Notices	0	0	(0)	(0)	(0)
Total Estimated Fees Collected for Section 5 Activities					7,710,056
EPA-Initiated Risk Evaluation	6.67	n/a	4,287,000	857,400	28,594,290
MRRE (work plan chemical)	0.67	n/a	4,244,771	n/a	2,843,996
MRRE (non-work plan chemical)	0.333	n/a	8,489,541	n/a	2,827,017
Total Estimated Fees Collected for Section 6 Activities					34,265,303
Total Estimated Fees Collected for All Sections after Refunds (including MRREs)					42,358,359

Table Note: The ''n/a'' under small business activity levels are a reflection that total annual collections do not depend on the breakdown of small and non-small businesses because total fee is split between the two groups.

B. Fee Amounts

EPA calculated fees by estimating the total annual costs of carrying out relevant activities under TSCA sections 4, 5 and 6 (excluding the costs of MRRE), and conducting relevant information management activities under TSCA section 14; identifying the full cost amount to be defrayed by fees under TSCA section 26(b) (*i.e.,* 25 percent of those annual costs); and allocating that amount across the fee-triggering events in TSCA sections 4, 5, and 6. In addition, EPA affords small businesses an approximately 80 percent discount, in accordance with TSCA section 26(b)(4)(A).

While TSCA allows the Agency to collect approximately but not more than 25 percent of its costs for eligible TSCA activities via fees, to date, EPA has collected roughly half of that amount due to the insufficiencies of the current fees rule. These final fee amounts are designed to ensure fee amounts capture approximately but not more than 25 percent of the costs of TSCA activities, fees are distributed equitably, and fee payers are identified via a transparent process. In addition, although TSCA allows EPA to recover approximately but not more than 25 percent of its costs of implementing certain provisions of TSCA, the percentage applies to the total aggregate cost and does not preclude EPA from recovering an amount above or below 25 percent of the costs for each section of TSCA. Therefore, some fee-triggering activities account for a larger proportion of the total fee collections than others.

EPA considers several factors, including comments from stakeholders, to finalize fee amounts that would result in EPA collecting 25 percent of those estimated costs, while also setting lower fees for small businesses. These factors include activity cost and numbers associated with the individual fee-triggering events, including fee refunds, proportion of small businesses; the cost to industry to implement the activity (*e.g.,* test order fees are not as high due to reduce burden to industry which are already paying for testing); and the potential burden of the fee to industry (*e.g.,* whether a fee is shared by multiple manufacturers).

The final fee amounts as compared to the current fees are provided in Table 8.

TABLE 8—FINAL TSCA FEE AMOUNTS

Fee category	Current fees [1]	Final fees
Test Order	$11,650	$25,000.
Test Rule	35,080	50,000.
ECA	27,110	50,000.
PMN and consolidated PMN, SNUN, MCAN and consolidated MCAN	19,020	37,000.
LoREX, LVE, TME, Tier II exemption, TERA, Film Articles	5,590	10,870.
EPA-Initiated Risk Evaluation	1,605,000	Two payments resulting in $4,287,000.
MRRE on a Chemical Included in the TSCA Work Plan	50% of total actual costs with a $1,490,000 initial payment.	Two payments of $1,414,924, with final invoice to recover 50% of actual costs.
MRRE on a Chemical *Not* Included in the TSCA Work Plan	100% of total actual costs with a $2,970,000 initial payment.	Two payments of $2,829,847, with final invoice to recover 100% of actual costs.

Table Note: [1] The current fees reflect an adjustment for inflation as required by TSCA. The adjustment went into effect on January 1, 2022.

1. *Fee amounts for TSCA section 4 activities.* EPA is finalizing the fee amounts proposed in the 2022 Supplemental Notice for TSCA section 4 activities. Specifically, EPA is finalizing $25,000 for test orders, $50,000 for test rules, and $50,000 for ECAs. EPA is finalizing fees that, based on the expected activity levels of the three fee categories for TSCA section 4 activities, will result in a collection of $383,000.

2. *Fee amounts for TSCA section 5 activities.* EPA sets two fee amounts for TSCA section 5 activities—one for notices (PMNs, SNUNs, and MCANs) and one for exemptions (including LoREXs, LVEs, TMEs, Tier II, and TERAs). EPA received comments on the fee amounts for TSCA section 5 activities. In response to those comments and the overall reduction in EPA's program cost estimates, EPA is finalizing fee amounts lower than those proposed in the 2022 Supplemental Notice (*i.e.,* $45,000 for notices and $13,200 for exemptions). EPA is finalizing $37,000 for notices and $10,870 for exemptions. Entities that qualify as a small business concern receive an approximately 80 percent discount as discussed in Unit III.B.4.

Additional funding collected through TSCA section 5 fees will help EPA reduce the backlog of delayed reviews and support additional work for new cases. As previously noted in the 2022 Supplemental Notice, these delays result from a years-long absence of the additional resources required to implement the 2016 amendments, which shifted the Agency's past practice of making risk determinations on about 20 percent of the new chemical submittals it received to a requirement to make such determinations on 100 percent of submittals. These final fee amounts will result in an annual collection of approximately $7.7 million from TSCA section 5 activities.

3. *Fee amounts for TSCA section 6 activities.* EPA collects one fee amount for EPA-initiated risk evaluations that is shared by manufacturers of that chemical substance. EPA received numerous comments on the fee amount proposed in the 2022 Supplemental Notice (*i.e.,* $5,081,000). In response to those comments, as well as an overall reduction in the total program cost estimate due to found efficiencies (discussed in more detail in the TSD (Ref.7)), EPA is finalizing a lower fee amount for EPA-initiated risk evaluations. EPA is finalizing a fee of $4,287,000 paid over two installments which, based on the expected activity levels of this fee category, would result in EPA collecting approximately $29.9 million from TSCA section 6 EPA-initiated risk evaluations.

EPA takes an actual cost approach for MRREs, whereby the requesting manufacturer (or requesting consortia of manufacturers) is obligated to pay either 50 percent or 100 percent of the actual costs of the activity, depending on whether the chemical was listed on the TSCA Work Plan or not, respectively. Based on the installment plan and the estimated costs of these risk evaluations, manufacturers are required to make two payments of $1,414,924 for a TSCA Work Plan chemical, or two payments of $2,829,847 for a non-TSCA Work Plan chemical and are then invoiced for the remainder.

4. *Fee amounts for small businesses.* The final fee amounts for small businesses summarized in Table 9 represent an approximate 80 percent reduction compared to the proposed base fee for each category. For TSCA section 5 notices (*i.e.,* PMNs, MCANs, and SNUNs), the small business reduction is 82.5 percent. For all fee categories, the reduced fee is available only when the only entity or entities that owe that particular fee are small businesses, including when a consortium is paying the fee and all members of that consortium are small businesses.

Reduced fees are not available for small businesses that request MRREs, as TSCA requires those fees to be set at a specific percentage of the actual costs of the activity.

TABLE 9—FEES FOR SMALL BUSINESSES

Fee category	Final fees
Test Order	$5,000
Test Rule	10,000
ECA	10,000
PMN and consolidated PMN, SNUN, MCAN and consolidated MCAN	6,480
LoREX, LVE, TME, Tier II exemption, TERA, Film Articles	2,180
EPA-Initiated Risk Evaluation	857,400

C. Fee Categories

Under the 2018 Fee Rule, EPA has eight distinct fee categories: (1) Test orders; (2) test rules; (3) ECAs, all under TSCA section 4; (4) Notices; (5) exemptions, both under TSCA section 5; (6) EPA-initiated risk evaluations; (7) MRREs for chemicals on the TSCA Work Plan; and (8) MRREs for chemicals not on the TSCA Work Plan, all under TSCA section 6. The activities in these categories (other than the first 10 risk evaluations) are fee-triggering events that result in obligations to pay fees under the 2018 Fee Rule.

In the 2021 Proposal, EPA proposed two additional fee categories under TSCA section 5, Bona Fide Notices and NOCs, and one additional fee category for TSCA section 4, *i.e.,* for amended test orders. EPA received several comments supporting the removal of the fee categories for Bona Fide Notices, NOCs, and amended test orders. A few commenters stated that these additional fee categories should remain to help recover the costs of reviewing and responding to these submissions. After considering public comments received on the 2021 Proposal and the 2022 Supplemental Proposal, and to keep the fee structure simple by reducing the number of fee categories, EPA is not finalizing the new fee categories for Bona Fide Notices, NOCs, and amended test orders as proposed in the 2021 Proposal.

In this final rule, the cost associated with NOCs will continue to be captured with those of PMNs, MCANs, and SNUNs, as they were under the 2018 Fee Rule. EPA believes these fees are better captured under the fee increase for existing TSCA section 5 categories. In addition, while EPA envisioned the additional fee for amended test orders to create an incentive for manufacturers to submit facially complete data outlined under TSCA section 4, to simplify the TSCA section 4 fee structure, EPA is not finalizing the amended test order fee category proposed in the 2021 Proposal. Because the costs incurred by EPA to review resubmitted data are included in the Agency's total program cost estimate, these costs will be captured under other fees.

D. Refund for Withdrawal During Review

EPA received several comments expressing opposition of the refund for 20 percent of the user fee to the submitter if a premanufacture notice is withdrawn 10 or more business days after the beginning of the applicable review period, but prior to EPA initiating risk management on the chemical substance as proposed in the 2022 Supplemental Notice. Some commenters stated that EPA should not dedicate additional resources to providing this refund and that this refund would drain resources. EPA agrees with these commenters and is not finalizing the proposed refund. The steps required to initiate a refund and to provide notice that the risk assessment on the chemical substance has concluded, as outlined in the 2022 Supplemental Notice, would impose additional burden on EPA. To make an

informed decision on whether to withdraw their notice, EPA would need to send submitters details about the risk findings, complete risk assessments, and/or potential risk management being considered by EPA. Providing these details or sending final risk assessment documents require review and redaction prior to transmission and development of draft risk mitigation terms. To protect CBI, EPA must review and redact what is known as third-party CBI information from each risk assessment report. Third-party CBI information is CBI information submitted to EPA by another submitter as part of a separate notice which may then be used in the assessment of another chemical (*e.g.,* an analogue). These steps would further consume limited resources and impose an additional burden on staff and run contrary to the idea that EPA would not have spent the final 20% of the fee on risk management.

E. Methodology for Calculating Fees for EPA-Initiated Risk Evaluations

EPA received multiple industry comments supporting the use of production volume to determine fee obligations for EPA initiated risk evaluations, stating that this approach would allocate fees more equitably and minimize burdens to smaller manufacturers. One commenter recommended a tiered band approach supported by a few other industry commenters. This commenter recommended that EPA establish ''four bands of set fees'' based on the EU REACH metric tonnage bands and estimate the number of manufacturers in each band EPA would expect for future risk evaluations using historical data. EPA determined this approach would likely result in EPA not collecting 25 percent of program costs due to difficulties in estimating future numbers of manufacturers. Therefore, EPA rejected this alternative method proposed and is finalizing the approach outlined in the 2022 Supplemental Notice.

The finalized approach includes ranking the fee-payers that do not qualify as a small business concern by their reported production volume, then assigning fees based on those rankings. The non-small business manufacturers in the top 20th percentile ranking would pay 80 percent of the total fee, distributed evenly among those manufacturers. EPA believes this methodology is equitable, accounts for various fee payer scenarios, protects CBI, and ensures EPA is collecting approximately but not more than 25 percent of applicable program costs. These changes ensure that the manufacturers of the largest quantity of production volume for a chemical undergoing risk evaluation pay the majority of the obligated fee.

In any scenario in which all manufacturers of the chemical substance undergoing the EPA-initiated risk evaluation do not form a single consortium, EPA would take the following steps to allocate fees:

Step 1: Count the total number of manufacturers, including the number of manufacturers within any consortia.

Step 2: Divide the total fee amount by the total number of manufacturers to generate a base fee.

Step 3: Provide all small businesses who are either (a) not associated with a consortium, or (b) associated with an all-small business consortium, with an 80 percent discount from the base fee.

Step 4: Calculate the total remaining fee amount and the total number of remaining manufacturers that will share the fee by subtracting out the discounted fees and the number of small businesses identified.

Step 5: Place remaining manufacturers in ascending order (from lowest to highest production volume based on their average annual production volume from the three calendar years prior to the publication of the preliminary list).

Step 6: Assign each remaining manufacturer a number with 1 for lowest production volume, 2 for second lowest production volume, etc.

Step 7: Multiply the total number of remaining manufacturers by 0.8.

Step 8: Determine the manufacturer(s) in the top 20th percentile spot by comparing the number derived from Step 7 to the manufacturer(s) with the assigned number derived in Step 5. Manufacturers with an assigned number under Step 6 that is equal to or larger than the number in Step 7 are in the top 20th percentile.

Step 9: Reallocate 80 percent of the remaining fee evenly across manufacturers in the top 20th percentile determined in Step 8, counting each manufacturer in a consortium as one entity.

Step 10: Reallocate the remaining fee evenly across the remaining manufacturers, counting each manufacturer in a consortium as one entity.

As stated in the 2022 Supplemental Notice, in the event that three or fewer manufacturers are identified for a chemical substance, EPA will distribute the fee evenly among those three or fewer fee payers, regardless of production volume. In the event the number assigned to the top 20th percentile is not an integer, EPA will round to the nearest integer to determine the manufacturer(s) with the reported production volume greater than or equal to the top 20th percentile. In the event multiple manufacturers report the same production volume and are greater than or equal to the top 20th percentile, EPA will include all manufacturers with that same production volume in the fee calculation for the top 20th percentile group.

In addition, EPA is finalizing as proposed in the 2022 Supplemental Notice the requirement of reporting average production volume based on the three previous calendar years prior to the publication of the preliminary list. This change will alleviate additional concerns over potential CBI disclosure by further separating the production volume submissions under this rule from other potentially public production volume reporting (*e.g.,* CDR) that could be used in conjunction with data reported under this proposal to estimate a manufacturer's production volume.

EPA is also providing additional clarification on production volume calculations as it applies to certification, meeting exemptions, recordkeeping, etc. For example, EPA clarifies that two significant figures should be used when calculating production volume as required by the CDR rule. Companies with multiple groupings/facilities should include the total aggregated production volume when calculating the average for the purposes of 40 CFR 720.75(b)(v) and when calculating the annual production volume in qualifying for the exemptions related to production volume in 40 CFR 720.75(a)(2)(vi) or (3)(vi). Production volume calculations would not require companies to double count distribution of the same chemical substance within one company when that chemical mixture is ''manufactured'' more than once (*e.g.,* a company that manufactures a chemical, then exports for further processing, then imports the chemical mixture would not need to double count their production volume). This does not apply if multiple companies are involved (*e.g.,* a company manufactures a chemical, then exports it for additional processing, then separate company imports the mixture). EPA will assess a fee for each of those ''manufacturers'' based on the production volume that they separately manufacture or import. Regarding ''non-TSCA uses,'' chemicals may be manufactured for uses that do not fall under TSCA. EPA does not require the inclusion of non-TSCA chemicals in production volume calculations.

These changes are expected to eliminate all potential disclosure of production volume that may be claimed as CBI. In the rare event of multiple fee payers submitting under the same parent company and asserting a CBI claim for production volume and/or multiple companies reporting the exact same amount as a competitor, EPA would mask the company names on the final list for that chemical to protect disclosure.

As described in steps one through three previously in this unit, EPA is not finalizing the production volume-based methodology for manufacturers of a chemical substance undergoing an EPA-initiated risk evaluation that qualify as a small business concern. These entities would be provided an 80 percent discount from the ''base fee'' calculated as described in the 2018 Fee Rule (40 CFR 700.45(f)).

F. Export-Only Manufacturers

In EPA's 2021 Proposal, EPA proposed to require manufacturers that exclusively export chemicals subject to EPA-initiated risk evaluations to pay fees to defray the costs of the risk evaluations. EPA also acknowledged the ambiguity of TSCA section 12(a) in that rulemaking. After further review, EPA is not finalizing the proposed provision in this final rule. EPA agrees with numerous commenters that this is inconsistent with other TSCA programs. Further, some commenters viewed EPA's proposed interpretation of section 12(a) as inconsistent with prior regulatory interpretations. EPA has decided not to exercise any discretion it may have under TSCA sections 12(a) and 26 to require export-only manufacturers to make payments to defray the costs of risk evaluations and is declining to finalize it in the proposal.

G. Exemptions for Certain Fee-Triggering Activities

EPA is finalizing the six exemptions as proposed in the 2021 Proposal and further amended in the 2022 Supplemental Notice. These exemptions apply to EPA-initiated risk evaluations and/or test rules for: (1) Importers of articles containing a chemical substance; (2) producers of a chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use; (3) manufacturers of a chemical substance as an impurity as defined in 40 CFR 704.3; (4) producers of a chemical as a non-isolated intermediate as defined in 40 CFR 704.3; (5) manufacturers of small quantities of a chemical substance used solely for research and development as defined in 40 CFR 700.43; or (6) manufacturers of chemical substances with production volume less than 2,500 lbs for TSCA section 6 activities and 1,100 lbs for TSCA section 4 test rules. For clarification, ''manufacture for commercial purposes'' is defined in 40 CFR 704.3 as ''to import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things, such '''manufacture''' of any amount of a chemical substance or mixture.''

Based on consideration of public comments to the 2021 Proposal, in the 2022 Supplemental Notice EPA proposed narrowing the exemption on byproducts by limiting it to ''producers of a chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use.'' In this final rule, EPA is finalizing that exemption as proposed in the 2022 Supplemental Notice. Although numerous industry trade and advocacy organizations supported the limited exemption, some commenters expressed opposition to it, stating that creators of a byproduct should not be subject to TSCA fees (*e.g.,* for risk assessment), as the byproducts are not created with separate commercial intent, and that EPA should revise the exemption to apply as long as there is no *intent* for the byproduct to be imparted as useful property. By narrowing the byproduct exemption to include only manufacturers of byproducts that are not later used for commercial purposes or distributed for commercial use, EPA will still collect fees from producers of chemicals that are then sold or used for commercial purposes. In addition, EPA has confidence that producers of byproducts that are later sold or used for commercial purposes will not encounter the same issues and self-identification requirements described in EPA's memorandum from March 18, 2020, since those producers knowingly produce the byproduct before it is introduced into the market (86 FR 1899). The finalized byproduct exemption addresses commenter's concerns with challenges with self-identification as related to identifying and tracking byproducts that are unintentionally or coincidentally produced (40 CFR 700.45(b)(5)).

In response to commenters' concerns with the previously proposed five year look back period associated with the exemptions criteria, EPA has aligned the requirements for five of the six exemptions (*i.e.,* all except the exemptions associated with low production volume as described in 40 CFR 700.45(a)(2)(vi) and (3)(vi)) with the certification of cessation timeline. A manufacturer is not required to make or contribute to a fee payment if it meets one or more of the five exemptions on or after the applicable certification cutoff date identified in 40 CFR 700.45 (b)(6) and will not conduct manufacturing outside of those exemptions at any point in time within five years after the certification cutoff dates. EPA agrees with commenters that this change will help facilitate the self-identification and certification of cessation process.

EPA is finalizing the five-year timeline detailed in the 2021 Proposal for the production volume exemptions in this rule, stating that manufacturers of a chemical substance subject to risk evaluation are exempt from fee payment requirements if they meet the low production volume exemptions for the five-year period preceding publication of the preliminary list and will also need to meet one or more of the exemptions in the successive five years and not conduct manufacturing outside of those exemptions in the successive five years. EPA has confidence that this five-year look back period is necessary for the exemptions based on production volume (manufactured quantities below a 1,100 lbs annual production volume subject to a test rule under TSCA section 4(a) and manufactured quantities below a 2,500 lbs annual production volume that is subject to a risk evaluation under TSCA section 6(b)) to account for fluctuations in annual production volume and to better align with the reporting and recordkeeping requirements associated with this exemption. EPA's intent is to provide this exemption for manufacturers who produce small amounts of the chemical and to direct fee obligations to those companies that produce most of the chemical substance. The five-year look back period helps ensure the subject manufacturer meets that intent.

Outside of these six exemptions, several commenters proposed additional exemptions including a concentration-based exemption and a re-imported substances exemption. EPA has confidence that the final rule covers the necessary exemptions excluding byproducts, impurities, small quantities for research and development, low-production volumes, and imported articles. EPA agrees with commenters that most of the incidental chemical scenarios in the suggested additional exemptions would fall under the production volume exemptions. Regarding the suggested re-imported substances exemption, EPA has clarified

in the preamble of the final rulemaking how companies should calculate production volume in situations such as these, but EPA is not finalizing a separate exemption covering the distribution of a chemical across multiple companies and re-imports.

Overall, several advocacy organizations opposed the proposed exemptions, stating that EPA's rationales for the exemptions were unsupported and not allowed as a justification for exempting fees under TSCA. TSCA does not preclude EPA from exempting certain manufacturers from fee-paying activities, states that manufacturers ''may'' be required to pay (TSCA section 26(b)(1)) and provides EPA the authority to ''take into account the ability to pay of the person required to pay such fee and the cost of the Administrator of carrying out the activities described in this paragraph (TSCA section 26(b)).'' The six proposed exemptions do not reduce how much EPA collects for each risk evaluation. Rather, they simply reduce how many participating manufactures split the fee. Other commenters claimed that the exemptions outlined in the 2021 Proposal were too broad and lacked details on how the fee applies to chemical manufacturers. Following the 2021 Proposal, EPA narrowed the exemptions in the 2022 Supplemental Notice and in this final rule. Finally, a few industry trade organizations expressed opposition to requiring manufacturers to split the fee payment when each entity produces less than 2,500 lbs annually, claiming that splitting the payment would increase the unpredictability of TSCA fees and penalize low volume producers. This condition applies because EPA must ensure it receives compensation to carry out a risk evaluation and meet TSCA requirements.

H. Self-Identification and Certification Requirements

EPA has weighed the various approaches to establishing a final list of fee payers for the EPA-initiated risk evaluations and TSCA section 4 test rules, including eliminating steps in the self-identification process. EPA has confidence that the self-identification process (*i.e.,* publication of a preliminary list that identifies manufacturers, a public comment period, and publication of a final list defining the universe of manufacturers responsible for payment), including changes discussed in the 2021 Proposal and 2022 Supplemental Notice, best ensures that all obligated fee payers are identified, thereby reducing the burden of the shared fees on manufacturers. The process also allows for correction of errors and certification of no-manufacture or meeting an exemption to alleviate certain manufacturers of fee payment obligations. EPA is finalizing changes to 40 CFR 700.45(b) by modifying who is obligated to pay fees and self-identify through exemptions, requiring certification of meeting exemption for certain manufacturers, requiring submission of production for certain manufacturers, and allowing for changes to the final list if necessary.

Due to significant industry stakeholder feedback as discussed in more detail in the 2021 Proposal, EPA proposed exemptions for EPA-initiated risk evaluations and proposed changes to the submission of self-identification information in 40 CFR 700.45 to accompany those changes. The 2022 Supplemental Notice expanded those exemptions to apply to test rules under TSCA section 4 and provided additional context around certain exemptions by cross referencing (*i.e.,* defining impurities by referencing 40 CFR 704.3) and narrowing the byproduct exemption. EPA is finalizing these exemptions as proposed in 2021 and amended in 2022 and is not requiring manufacturers that meet the criteria of three of the exemptions (*i.e.,* importers of articles containing the chemical substance, manufacturers of the substance that is produced as a byproduct, and manufacturers of the substance that is produced or imported as an impurity) from self-identification. Manufacturers of small quantities solely for research and development, those that manufacture in quantities not to exceed 1,100 lbs or 2,500 lbs depending on whether it is a test rule or EPA-initiated risk evaluation, and manufacturers of chemical substances produced as a non-isolated intermediate (*i.e.,* those that meet the exemption in 40 CFR 700.45(a)(2)(iv-vi) and (a)(3)(iv-vi)) are required to certify that they meet those exemption criteria. In addition, if a manufacturer is identified on the preliminary list and exclusively meets one or more of the exemptions, that manufacturer must submit a certification statement attesting to these facts to not be included in the final list of manufacturers.

To accompany the production volume-based fee allocation methodology changes discussed in Unit III.E., EPA is also requiring certain manufacturers to provide the volume produced by that manufacturer for the subject chemical undergoing an EPA-initiated risk evaluation. Applicable manufacturers are required to report their average production volume using the past three calendar years' worth of production volume data. Unit III.E. and the RtC (Ref. 5) include additional discussion on how to calculate production volume for this provision as well as the exemptions for low producing manufacturers (40 CFR 700.45(a)(2)(vi) and (3)(vi)). As clarified and proposed in the 2022 Supplemental Notice, manufacturers that qualify for the 1,100 lbs or 2,500 lbs exemption are also required to report the average annual production volume from the three calendar years prior to the publication of the preliminary list. Requiring self-identification of those manufacturers that qualify for the production volume-based exemptions would allow EPA to allocate fees based on production volume and collect fees in a timely manner in situations in which all fee payers have met that exemption criteria.

EPA received comments regarding the 2021 Proposal allowing additional changes to the final list after it is published. EPA's intent is to publish the final list no later than concurrently with the final scope document for risk evaluations initiated by EPA under TSCA section 6 and with the final rule for test rules under TSCA section 4 with no further modifications. EPA is finalizing changes to 40 CFR 700.45(b)(7) to also state, ''EPA may modify the list after the publication of the final list'' because this flexibility is needed to allow for potential modifications of the list upon receipt of information indicating that a change is warranted. Examples of potential changes to the final list of fee payers include addressing potential errors (*e.g.,* self-identification as a manufacturer rather than meeting an exemption, not registering as a ''small business concern'' when a company qualifies) and when a manufacturer has not self-identified as required and is obligated to pay fees.

Lastly, EPA received numerous comments from industry trade organizations, a chemical manufacturer, advocacy organizations, and others requesting that EPA revise the requirements to address new market entrants that enter the market after fee payment for a risk evaluation has been finalized. Commenters have referred to manufacturers which fall under this category as ''new entrants'' or ''free riders.'' Commenters have requested EPA address these manufacturers to prevent a competitive disadvantage for those companies that have paid a risk evaluation fee and have spent time and resources supporting those same substances through the risk evaluations. Many of the commenters also requested that EPA allow manufacturers that had

previously certified cessation to be allowed to begin manufacturing or importing the substances within the successive five-year period, or ''re-enter'' the market and pay their portion of the fee after initial invoicing. An advocacy organization expressed strong opposition to such approaches, reasoning that they would result in an unnecessary increased burden to EPA and could create inequities between manufacturers paying the fees up front relative to those opting back in.

EPA has considered these comments and provided additional responses, including to an industry trade organization's alternative approach, in the RtC (Ref. 5). Generally, EPA concludes that allowing continued changes to those entities responsible for paying the EPA-initiated risk evaluation fees after the initial invoicing period would result in a substantial increase in burden to EPA. The additional burden to EPA would depend on the approach taken but could include the need to continue to track manufacturers for years, need to recalculate invoices and issue multiple refunds, and could have potential CBI implications. Therefore, EPA is not finalizing changes to the self-identification requirements to address late entrants or re-entrants. EPA believes the self-identification process and ability to certify cessation addresses majority of the concerns raised by commenters. EPA recognizes that these comments have been raised in past TSCA fee rulemakings and that the matter is a concern to multiple commenters. To understand the potential scope of this issue, EPA plans to track manufacturers that might fall under one of these categories to inform the need for a provision to address this in future TSCA fee rulemakings.

I. Companies Required To Submit Information Under TSCA Section 4

As discussed in the 2022 Supplemental Notice, the 2018 Fee Rule does not reflect all circumstances in which a manufacturer subject to a TSCA section 4 test order could be required to pay fees. Specifically, fees are required for manufacturers that conduct testing. TSCA section 26(b)(1) provides for the collection of fees ''from any person required to submit information'' under TSCA section 4. In some circumstances, a manufacturer subject to the information development or submission requirements under TSCA section 4 may not need to conduct testing. For instance, a manufacturer may have already conducted the testing prior to the issuance of a TSCA section 4 test order, in which case the manufacturer may submit the information they have already produced if it meets the issued requirements. Under TSCA, EPA must establish what information is required, what testing will provide such information, and what test protocols can inform the generation of such information.

Regardless of whether a manufacturer conducts testing to comply with a test order, EPA incurs costs for developing the test order and administering the test order after it has been issued, including reviewing data submitted by test order recipients. To ensure that a portion of these costs will be recovered, EPA is finalizing as proposed in the 2022 Supplemental Notice, revisions to 40 CFR 700.45(a)(2) to refer to manufacturers required to submit information rather than manufacturers ''required to test.'' This change includes all manufacturers required to submit information regardless of when data or other information was procured and creates a more equitable fee allocation.

J. Payment by Processors Subject to Test Orders and ECAs

The 2018 Fee Rule established that only manufacturers are required to pay fees for TSCA section 4 test orders and ECAs. As a result, when no manufacturers are identified as recipients, EPA would be required to absorb the entire cost of administering TSCA section 4 test orders and ECAs. EPA is finalizing its proposal in the 2022 Supplemental Notice and modifying the fee payment obligations in 40 CFR 700.45(a) to require payment by processors identified in the TSCA section 4 test orders and ECAs who submit information. When no manufacturers receive a test order or ECA, requiring fee payments by processors would allow EPA to recoup the costs of administering such test orders and ECAs.

K. Timeframe for Fee Payments and Notifications

The 2018 Fee Rule generally required up-front payment of fees (*i.e.,* payment due prior to EPA reviewing a TSCA section 5 notice, within 120 days of publication of final test rule, within 120 days of issuance of a test order, within 120 days of signing an ECA, within 30 days of granting a MRRE, and within 120 days of publishing the final scope for an EPA-initiated risk evaluation). For MRREs, payment is collected in two installments over the course of the activity. In response to stakeholder engagements, EPA is finalizing several changes to the timing of specific stages within this fees process. These are summarized in Table 10 and discussed in more detail throughout this unit.

After the effective date of this final rule, manufacturers have 90 days from the fee-triggering event (in comparison to the 60 days established in the 2018 Fee Rule) to notify EPA of their intent to form a consortium. This revision will allow manufacturers subject to test orders, test rules, ECAs and EPA-initiated risk evaluations additional time to associate with a consortium and establish fee payments within that consortium. EPA believes this additional time will be useful for businesses to plan for the fee expense.

As previously mentioned, under the 2018 Fee Rule, full payment for EPA-initiated risk evaluations was due within 120 days of EPA publishing the final scope of a chemical risk evaluation. EPA is extending that first payment timeline to 180 days and requiring payments to be made in two installments instead of one, with the first payment of 50 percent due 180 days after the EPA publishes the final scope of a risk evaluation and the second payment for the remainder of the fee due 18 months (*i.e.,* 545 days) after EPA publishes the final scope of a risk evaluation. For MRREs, EPA is extending the initial payment timeframe to within 180 days of when EPA grants the request to conduct the evaluation, with the total amount to be paid over a series of three installments.

Similarly, the 2018 Fee Rule established a 120-day timeline for TSCA section 4 test order and test rule payments. This timeline has been found to be too short for creating invoice payments and other Agency work related to allocating such payments before fees are assessed for entities submitting data. EPA has extended the timeframe for test order and test rule payments to 180 days after the effective date of the order or rule. This timeframe aligns with the proposed timeframe for the initial fee payment associated with EPA-initiated risk evaluations under TSCA section 6. The change would provide EPA with sufficient time to review fee payments, identify and allocate fees across several different entities, and issue invoices.

TABLE 10—CHANGES TO TIMING WITHIN THE FEE RULE

Stage in the fees process	Timing under 2018 fee rule	Final timing changes
Payment of fees for EPA-initiated risk evaluations.	Payment is collected in one installment 120 days after EPA publishes the final scope of a chemical risk evaluation.	Payment is collected over two installments, the first payment of 50 percent is due 180 days after EPA publishes the final scope of a chemical risk evaluation and the second payment is due not later than 545 days after EPA publishes the final scope of a chemical risk evaluation.
Payment of fees for manufacturer-requested risk assessments.	Initial payment is due within 30 days of EPA providing notice of granting a MRRE. Payment is collected in two installments over the course of the activity.	Initial payment is due within 180 days of EPA providing notice of granting a MRRE. Payments are collected over three installments.
Payment of fees for test rules and test orders ..	Payment is collected in one installment 120 days after the effective date of a test rule or test order.	Payment is collected in one installment 180 days after the effective date of a test rule or test order.
Intent to form a consortia	Must notify EPA within 60 days of the triggering event.	Must notify EPA within 90 days of the triggering event.

L. Recordkeeping

EPA is finalizing recordkeeping requirements related to the exemptions and production volume-based fee methodology for EPA-initiated risk evaluations, as discussed in the 2022 Supplemental Notice, with slight modifications. These requirements can be found in 40 CFR 700.45(b)(10).

Under this final rule, all manufacturers other than those listed in 40 CFR 700.45(a)(2)(i) through (v) or (a)(3)(i) through (v) (*i.e.,* all manufacturers other than those which qualify for the exemptions related to articles, byproducts, impurities, non-isolated intermediates, and/or research and development) must maintain production volume records related to their production volume submission (discussed in Unit III.H.). These records must be maintained for a period of five years from the date the notice is submitted to EPA.

Manufacturers that manufacture or import a chemical substance in quantities below a 1,100 lbs annual production volume for test rules or 2,500 lbs annual production volume for EPA-initiated risk evaluations (*i.e.,* those meeting the exemption criteria in 40 CFR 700.45(a)(2)(v) or (a)(3)(v)) must maintain production volume records related to compliance with the exemption criteria. These records must be maintained for a period of five years from the date notice is submitted to EPA.

Manufactures of a chemical substance as a non-isolated intermediate (*i.e.,* those meeting the exemption criteria in 40 CFR 700.45(a)(2)(iv) or (a)(3)(iv)) must maintain manufacturing and other business records related to compliance with that exemption criteria.

Manufacturers of small quantities of a chemical substance solely for research and development (*i.e.,* the exemption criteria in 40 CFR 700.45(a)(2)(v) or (a)(3)(v)) must also maintain manufacturing and other business records related to compliance with that exemption, such as production volume, plans of study, information from research and development notebooks, study reports, or notice solely for research and development use. These records must be maintained for a period of five years from the date notice is submitted to EPA.

IV. References

The following is a listing of the documents specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. The Frank R. Lautenberg Chemical Safety for the 21st Century Act. June 22, 2016. Public Law 114–182.
2. U.S. EPA. Final Rule; Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 83 FR 52694, October 17, 2018 (FRL–9984–41).
3. U.S. EPA. Proposed Rule; Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 86 FR 1890, January 11, 2021 (FRL–10018–40).
4. U.S. EPA. Supplemental Notice of Proposed Rulemaking; Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 86 FR 1890, November 16, 2022 (FRL–10018–40).
5. U.S. EPA. Response to Public Comments on the 2021 Proposed Rule and 2022 Supplemental Proposed Rule Addressing Fees for the Administration of the Toxic Substances Control Act (RIN 2070–AK64). January 23, 2024.
6. U.S. EPA. Economic Analysis of the Final Rule; Fees for the Administration of the Toxic Substances Control Act (TSCA); RIN 2070–AK46. January 23, 2024.
7. EPA. Technical Support Document: Final Rulemaking; Fees for the Administration of the Toxic Substances Control Act (TSCA); RIN 2070–AK64. January 23, 2024.
8. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf.*
9. EPA. Supporting Statement for an Information Collection Request (ICR) under the Paperwork Reduction Act (PRA): Fees for the Administration of the Toxic Substances Control Act (TSCA); Final Rule (RIN 2070–AK64). EPA ICR No. 2569.06; OMB Control No. 2070–0208. January 23, 2024.
10. EPA. Supporting Statement for an Information Collection Request (ICR) under the Paperwork Reduction Act (PRA): User Fees for the Administration of the Toxic Substances Control Act (TSCA); Proposed Rule (RIN 2070–AK64). EPA ICR No. 2569.03; OMB Control No. 2070–0208. January 31, 2021.
11. EPA. Supporting Statement for an Information Collection Request (ICR) under the Paperwork Reduction Act (PRA): ''Reporting Requirements Associated with the Payment of Fees under Section 26(b) of the Toxic Substances Control Act (TSCA); Supplemental Proposed Rule (RIN 2070–AK64).'' EPA ICR No. 2569.05; OMB Control No. 2070–0208. September 2022.
12. OMB. Notice of Office of Management and Budget Action under the Paperwork Reduction Act on the ICR entitled: ''User Fees for the Administration of the Toxic Substances Control Act (TSCA) (Proposed Rule).'' EPA ICR No. 2569.03; OMB Control No. 2070–0208; OMB ICR Reference No. 202101–2070–002. April 5, 2021. *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202101-2070-002#*.
13. OMB. Notice of Office of Management and Budget Action under the Paperwork

Reduction Act on the ICR entitled: ''User Fees for the Administration of the Toxic Substances Control Act (TSCA) (Supplemental Proposed Rule).'' EPA ICR No. 2569.05; OMB Control No. 2070–0208; OMB ICR Reference No. 202211–2070–001. January 11, 2023. *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202211-2070-001#*.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a ''significant regulatory action'' as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA, submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 Review. Documentation of any changes made in response to the Executive Order 12866 Review is available in the docket.

EPA prepared an economic analysis of the potential impacts associated with this action (Ref. 6), which is available in the docket and is summarized in Unit I.E.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted to OMB for approval under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR No. 2569.06 (Ref. 9). EPA previously prepared and submitted ICRs for the 2021 Proposed Rule (Ref. 10) and the 2022 Supplemental Notice (Ref. 11), and in both cases, the Notice of OMB Action that was issued identified the OIRA Conclusion Action as ''Comment filed on proposed rule and continue'' (Refs. 12 and 13). EPA intends for the final rule ICR to amend and replace the existing ICR that is currently approved under OMB Control No. 2070–0208 through February 28, 2025. You can find a copy of the ICR (Ref. 9) in the docket for this rule, and it is briefly summarized in this unit.

The information collection activities associated with this final rule include familiarization with the revised regulation; reduced fee eligibility determination; CDX registration (for new entrants); formation, management and notification to EPA of participation in consortia; self-identification and certification; and electronic payment of fees through *Pay.gov*.

Respondents/affected entities: Persons who manufacture or process a chemical substance (or any combination of such activities) and are required to submit information to EPA under TSCA sections 4 or 5 or manufacture a chemical substance that is the subject of a risk evaluation under TSCA section 6. See also Unit I.A.

Respondent's obligation to respond: Mandatory under TSCA section 26(b).

Total estimated number of respondents: 802.

Frequency of response: On occasion.

Total estimated number of responses: 502.

Total estimated burden: 383 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $ 555,663 (per year), includes $0 annualized capital or operation and maintenance costs.

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 OMB control numbers for EPA regulations in title 40 of the CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities expected to be subject to the requirements of this action are small chemical manufacturers and processors, small petroleum refineries, and small chemical and petroleum wholesalers. There may be some potentially affected firms within other sectors, but not all firms within those sectors will be potentially affected firms. The Agency has determined that 58 small businesses, including 12 processors and 47 manufacturers, may be affected annually by TSCA section 4 actions; 153 small businesses may be affected by TSCA section 5 actions; and 31 small businesses may be affected by TSCA section 6 actions. EPA estimates the annual revenue distribution using U.S. Census data for small businesses likely to be affected by TSCA sections 4, 5, and 6 actions, and compares it to incremental fee amounts to estimate the economic impact. For example, EPA expects 88 small businesses to pay incremental TSCA section 5 Exemption fees of $1,062. According to the estimated revenue distribution, 96 percent of parent firms have an annual revenue greater than $106,200, 4 percent have an annual revenue between $106,200 and $35,400, and no firms have revenues less than $35,400. Accordingly, of the 88 small businesses affected, 96 percent will have an impact under 1 percent, 4 percent will have an impact between 1 percent and 3 percent, and none will have an impact greater than 3 percent. Estimates for each fee category are available in section 6.3 of the economic analysis. The average annual incremental cost per affected small business is expected to be about $336 for TSCA section 4; $1,748 for TSCA section 5, and $35,665 for TSCA section 6. As a result, EPA estimates that, of the 242 small businesses paying fees every year, 217 will have impacts under 1 percent, 15 will have impacts between 1 percent and 3 percent, and 10 will have impacts greater than 3 percent. Details of this analysis are presented in the economic analysis (Ref. 6), which is available in the docket.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it does not concern an environmental health or safety risk. Since this action does not concern human health, EPA's 2021 Policy on Children's Health also does not apply. Although this action does not concern human health or environmental conditions, EPA identifies and addresses children's environmental health concerns in the risk evaluations conducted under TSCA section 6(b).

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards under NTTAA section 12(d), 15 U.S.C. 272.

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

This action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to the potential for disproportionate and adverse effects on communities with environmental justice concerns in accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14096 (88 FR 25251, April 26, 2023). Although this action does not concern human health or environmental conditions, EPA identifies and addresses environmental justice concerns in the risk evaluations conducted under TSCA section 6(b).

K. Congressional Review Act (CRA)

This action is subject to the 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. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects 40 CFR Part 700

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, User fees.

Michael S. Regan,

Administrator.

Therefore, for the reasons stated in the preamble, 40 CFR part 700 is amended as follows:

PART 700—GENERAL

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625 and 2665, 44 U.S.C. 3504.

■ 2. Amend § 700.43 by adding in alphabetical order the definitions of ''Production volume'' and ''Small quantities solely for research and development.''

The additions read as follows:

§ 700.43 Definitions applicable to this subpart.

* * * * *

Production volume means manufactured (including imported) amount in pounds.

* * * * *

Small quantities solely for research and development (or ''small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product'') means quantities of a chemical substance manufactured (including imported), or processed or proposed to be manufactured (including imported), or processed solely for research and development that are not greater than reasonably necessary for such purposes.

* * * * *

■ 3. Amend § 700.45 by:
■ a. Revising paragraphs (a)(2) and (3);
■ b. Revising paragraphs (b)(5) and (7) and adding (b)(10);
■ c. Revising paragraphs (c) and (d);
■ d. Revising paragraphs (f)(2)(i), (3)(i), (4), and (5) and adding paragraph (f)(6); and
■ e. Revising paragraphs (g)(3)(i) and (iv), (5) and (6).

The revisions and additions read as follows:

§ 700.45 Fee payments.

(a)* * *

(2) Manufacturers and processors of chemical substances and mixtures required to submit information for these chemical substances and mixtures under a TSCA section 4(a) test order or enforceable consent agreement, or manufacturers of chemical substances and mixtures required to submit information for these chemical substance and mixtures under a TSCA section 4(a) test rule, shall remit for each such test rule, order, or enforceable consent agreement the applicable fee identified in paragraph (c) of this section in accordance with the procedures in paragraphs (f) and (g) of this section. Manufacturers of a chemical substance subject to a test rule under TSCA section 4(a) are exempted from fee payment requirements in this section, if they meet one or more of the exemptions under this paragraphs (a)(2)(i) through (v) of this section on or after the certification cutoff date identified in paragraph (b)(6) of this section and do not conduct manufacturing outside of those exemptions after the certification cutoff dates or if they meet the exemptions under paragraph (a)(2)(vi) of this section for the five-year period preceding publication of the preliminary list and do not conduct manufacturing outside of that exemption during the five-year period preceding publication of the preliminary list; and the exemptions are only available if the manufacturer will meet one or more of the exemptions in this paragraph (a)(2)(i) through (vi) in the successive five years; and will not conduct manufacturing outside of the exemptions in paragraphs (a)(2)(i) through (v) of this section in the successive five years or will meet the exemption in paragraph (a)(2)(vi) of this section in the successive five years:

(i) Import articles containing that chemical substance;

(ii) Produce that chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use;

(iii) Manufacture that chemical substance as an impurity as defined in 40 CFR 704.3;

(iv) Manufacture that chemical substance as a non-isolated intermediate as defined in 40 CFR 704.3;

(v) Manufacture small quantities of that chemical substance solely for research and development, as defined in 40 CFR 700.43; or

(vi) Manufacture that chemical substance in quantities below a 1,100 lbs annual production volume as described in § 700.43, unless all manufacturers of that chemical substance manufacture that chemical in quantities below a 1,100 lbs annual production volume as defined in § 700.43, in which case this exemption is not applicable.

(3) Manufacturers of a chemical substance that is subject to a risk evaluation under section 6(b) of the Act,

shall remit for each such chemical risk evaluation the applicable fee identified in paragraph (c) of this section in accordance with the procedures in paragraphs (f) and (g) of this section. Manufacturers of a chemical substance subject to risk evaluation under section 6(b) of the Act are exempted from fee payment requirements in this section, if they meet one or more of the exemptions under paragraphs (a)(3)(i) through (v) of this section on or after the certification cutoff date identified in paragraph (b)(6)(i) of this section and do not conduct manufacturing outside of those exemptions after the certification cutoff dates or if they meet the exemptions under paragraph (a)(3)(vi) of this section for the five-year period preceding publication of the preliminary list and do not conduct manufacturing outside of that exemption during the five-year period preceding publication of the preliminary list; and the exemptions are only available if the manufacturer will meet one or more of the exemptions in paragraphs (a)(3)(i) through (vi) of this section in the successive five years and will not conduct manufacturing outside of the exemptions in paragraphs (a)(3)(i) through (v) of this section in the successive five years or will meet the exemption in paragraph (a)(3)(vi) of this section in the successive five years:

(i) Import articles containing that chemical substance;

(ii) Produce that chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use;

(iii) Manufacture that chemical substance as an impurity as defined in 40 CFR 704.3;

(iv) Manufacture that chemical substance as a non-isolated intermediate as defined in 40 CFR 704.3;

(v) Manufacture small quantities of that chemical substance solely for research and development, as defined in § 700.43; or

(vi) manufacture that chemical substance in quantities below a 2,500 lbs annual production volume as described in § 700.43, unless all manufacturers of that chemical substance manufacture that chemical in quantities below a 2,500 lbs annual production volume as defined in § 700.43, in which case this exemption is not applicable.

* * * * *

(b) * * *

(5) *Self-identification.* All manufacturers other than those listed in paragraphs (a)(2)(i) through (iii) and (a)(3)(i) through (iii) of this section who have manufactured (including imported) the chemical substance in the previous five years must submit notice to EPA, irrespective of whether they are included in the preliminary list specified in paragraph (b)(3) of this section. The notice must be submitted electronically via EPA's Central Data Exchange (CDX), the Agency's electronic reporting portal, using the Chemical Information Submission System (CISS) reporting tool, and must contain the following information:

(i) *Contact information.* The name and address of the submitting company, the name and address of the authorized official for the submitting company, and the name and telephone number of a person who will serve as technical contact for the submitting company and who will be able to answer questions about the information submitted by the company to EPA.

(ii) *Certification of cessation.* If a manufacturer has manufactured in the five-year period preceding publication of the preliminary list but has ceased manufacture prior to the certification cutoff dates identified in paragraph (b)(6) of this section and will not manufacture the substance again in the successive five years, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) of this section and will not be obligated to pay the fee under this section.

(iii) *Certification of no manufacture.* If a manufacturer is identified on the preliminary list but has not manufactured the chemical in the five-year period preceding publication of the preliminary list, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) of this section and will not be obligated to pay the fee under this section.

(iv) *Certification of meeting exemption.* If a manufacturer is identified on the preliminary list and exclusively meets one or more of the exemptions as described in paragraph (a)(2) or (a)(3) of this section, the manufacturer must submit a certification statement attesting to these facts in order to not be included in the final list of manufacturers described in paragraph (b)(7) of this section. If a manufacturer is not on a preliminary list and exclusively meets one or more of the exemptions as described in paragraph (a)(2) or (a)(3) of this section, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) of this section and will not be obligated to pay the fee under this section, unless all manufacturers of that chemical substance meet the exemption as described in (a)(2)(vi) or (a)(3)(vi) of this section.

(v) *Production volume.* If a manufacturer has not submitted certification of cessation, as described in paragraph (b)(5)(ii) of this section, or certification of no manufacture, as described in paragraph (b)(5)(iii) of this section, for purposes of identifying manufacturers subject to fees for TSCA section 6 EPA-initiated risk evaluations and does not meet one or more of the exemptions in paragraph (a)(3)(i) through (v) of this section, the manufacturer must submit their production volume as defined in 40 CFR 700.43 for the applicable substance for the three calendar years prior to publication of the preliminary list. Only production volume reported to EPA prior to the final list being published will be used in determining fees described in § 700.45(f).

* * * * *

(7) *Publication of final list.* EPA expects to publish a final list of manufacturers to identify the specific manufacturers subject to the applicable fee. This list will indicate if additional manufacturers self-identified pursuant to paragraph (b)(5) of this section, if other manufacturers were identified through credible public comment, and if manufacturers submitted certification of cessation, no manufacture, or meeting exemption pursuant to paragraph (b)(5)(ii), (iii), or (iv) of this section. The final list will be published no later than concurrently with the final scope document for risk evaluations initiated by EPA under TSCA section 6, and with the final test rule for test rules under TSCA section 4. EPA may modify the list after the publication of the final list.

* * * * *

(10) *Recordkeeping.* After April 22, 2024:

(i) All manufacturers other than those listed in paragraph (a)(2)(i) through (v) or (a)(3)(i) through (v) of this section must maintain production volume records related to compliance with paragraph (b)(5)(v) of this section. These records must be maintained for a period of five years from the date notice is

submitted pursuant to paragraph (b)(5) of this section.

(ii) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(2)(iv) or (a)(3)(iv) of this section must maintain manufacturing and other business records related to compliance with the exemption criteria described in paragraph (a)(2)(iv) or (a)(3)(iv) of this section, respectively. These records must be maintained for a period of five years from the date the notice is submitted pursuant to paragraph (b)(5) of this section.

(iii) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(2)(v) or (a)(3)(v) of this section must maintain manufacturing and other business records related to compliance with the exemption criteria described in paragraph (a)(2)(v) or (a)(3)(v) of this section, respectively, such as production volume, plans of study, information from research and development notebooks, study reports, or notice solely for research and development use. These records must be maintained for a period of five years from the date the notice is submitted pursuant to paragraph (b)(5) of this section.

(iv) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(2)(vi) or (a)(3)(vi) of this section must maintain production volume records related to compliance with the exemption criteria described in paragraph (a)(2)(vi) or (a)(3)(vi) of this section, respectively. These records must be maintained for a period of five years from the date the notice is submitted pursuant to paragraph (b)(5) of this section.

* * * * *

(c) Fees for the 2024, 2025, and 2026 fiscal years. Persons shall remit fee payments to EPA as follows:

(1) *Small business concerns.* Small business concerns shall remit fees as follows:

(i) *Premanufacture notice and consolidated premanufacture notice.* Persons shall remit a fee totaling $6,480 for each premanufacture notice (PMN) or consolidated PMN submitted in accordance with part 720 of this chapter.

(ii) *Significant new use notice.* Persons shall remit a fee totaling $6,480 for each significant new use notice (SNUN) submitted in accordance with part 721 of this chapter.

(iii) *Exemption application.* Persons shall remit a fee totaling $2,180 for each of the following exemption requests submitted under TSCA section 5:

(A) *Low releases and low exposures exemption* or *LoREX* request submitted to EPA pursuant to section 5(a)(1) of the Act in accordance with § 723.50(a)(1)(ii) of this chapter.

(B) *Low volume exemption* or *LVE* request submitted to EPA pursuant to section 5(a)(1) of the Act in accordance with § 723.50(a)(1)(i) of this chapter.

(C) *Test marketing exemption* or *TME* application submitted to EPA pursuant to section 5 of the Act in accordance with §§ 725.300 through 725.355 of this chapter.

(D) *TSCA experimental release application* or *TERA* application submitted to EPA pursuant to section 5 of the Act for research and development activities involving microorganisms in accordance with §§ 725.200 through 725.260 of this chapter.

(E) *Tier II exemption* application submitted to EPA pursuant to section 5 of the Act in accordance with §§ 725.428 through 725.455 of this chapter.

(iv) *Instant photographic film article exemption notice.* Persons shall remit a fee totaling $2,180 for each instant photographic film article exemption notice submitted in accordance with § 723.175 of this chapter.

(v) *Microbial commercial activity notice* and *consolidated microbial commercial activity notice.* Persons shall remit a fee totaling $6,480 for each microbial commercial activity notice (MCAN) or consolidated MCAN submitted in accordance with §§ 725.25 through 725.36 of this chapter.

(vi) Persons shall remit a total of twenty percent of the applicable fee under paragraph (c)(2)(vi), (vii) or (viii) of this section for a test rule, test order, or enforceable consent agreement.

(vii) Persons shall remit a total fee of twenty percent of the applicable fee under paragraphs (c)(2)(ix) of this section for an EPA-initiated risk evaluation.

(viii) Persons shall remit the total fee under paragraph (c)(2)(x) or (xi) of this section, as applicable, for a manufacturer-requested risk evaluation.

(2) *Others.* Persons other than small business concerns shall remit fees as follows:

(i) *PMN* and *consolidated PMN.* Persons shall remit a fee totaling $37,000 for each PMN or consolidated PMN submitted in accordance with part 720 of this chapter.

(ii) *SNUN.* Persons shall remit a fee totaling $37,000 for each significant new use notice submitted in accordance with part 721 of this chapter.

(iii) *Exemption applications.* Persons shall remit a fee totaling $10,870 for each of the following exemption requests, and modifications to previous exemption requests, submitted under section 5 of the Act:

(A) *Low releases and low exposures exemption* or *LoREX* request submitted to EPA pursuant to section 5(a)(1) of the Act in accordance with § 723.50(a)(1)(ii) of this chapter.

(B) *Low volume exemption* or *LVE* request submitted to EPA pursuant to section 5(a)(1) of the Act in accordance with § 723.50(a)(1)(i) of this chapter.

(C) *Test marketing exemption* or *TME* application submitted to EPA pursuant to section 5 of the Act in accordance with §§ 725.300 through 725.355 of this chapter, unless the submitting company has graduated from EPA's Sustainable Futures program, in which case this exemption fee is waived.

(D) *TSCA experimental release application* or *TERA* application submitted to EPA pursuant to section 5 of the Act for research and development activities involving microorganisms in accordance with §§ 725.200 through 725.260 of this chapter.

(E) *Tier II exemption* application submitted to EPA pursuant to section 5 of the Act in accordance with §§ 725.428 through 725.455 of this chapter.

(iv) *Instant photographic film article exemption notice.* Persons shall remit a fee totaling $10,870 for each exemption notice submitted in accordance with § 723.175 of this chapter.

(v) *MCAN and consolidated MCAN.* Persons shall remit a fee totaling $37,000 for each MCAN or consolidated MCAN submitted in accordance with §§ 725.25 through 725.36 of this chapter.

(vi) *Test rule.* Persons shall remit a fee totaling $50,000 for each test rule.

(vii) *Test order.* Persons shall remit a fee totaling $25,000 for each test order.

(viii) *Enforceable consent agreement.* Persons shall remit a fee totaling $50,000 for each enforceable consent agreement.

(ix) *EPA-initiated chemical risk evaluation.* Persons shall remit a fee totaling $4,287,000.

(x) *Manufacturer-requested risk evaluation of a Work Plan Chemical.* Persons shall remit an initial fee of $1,414,924, a second payment of $1,414,924, and final payment to total 50% of the actual costs of this activity, in accordance with the procedures in paragraph (g) of this section. The final payment amount will be determined by EPA, and invoice issued to the requesting manufacturer.

(xi) *Manufacturer-requested risk evaluation of a non-work plan chemical.* Persons shall remit an initial fee of $2,829,847, a second payment of

$2,829,847, and final payment to total 100% of the actual costs of the activity, in accordance with the procedures in paragraph (g) of this section. The final payment amount will be determined by EPA, and invoice issued to the requesting manufacturer.

(d) *Fees for 2026 fiscal year and beyond.* (1) Fees for the 2026 and later fiscal years will be adjusted on a three-year cycle by multiplying the fees in paragraph (c) of this section by the current PPI index value with a base year of 2024 using the following formula:

$$FA = F \times I$$

Where:

FA = the inflation-adjusted future year fee amount.
F = the fee specified in paragraph (c) of this section.
I = Producer Price Index for Chemicals and Allied Products inflation value with 2024 as a base year.

(2) Updated fee amounts for PMNs, SNUNs, MCANs, exemption notices, exemption applications, and manufacturer-requested risk evaluation requests apply to submissions received by the Agency on or after October 1 of every three-year fee adjustment cycle beginning in fiscal year 2024 (October 1, 2023). Updated fee amounts also apply to test rules, test orders, enforceable consent agreements and EPA-initiated risk evaluations that are ''noticed'' on or after October 1 of every three-year fee adjustment cycle, beginning in fiscal year 2026.

(3) The Agency will initiate public consultation through notice-and-comment rulemaking prior to making fee adjustments beyond inflation. If it is determined that no additional adjustment is necessary beyond for inflation, EPA will provide public notice of the inflation-adjusted fee amounts through posting to the Agency's web page by the beginning of each three-year fee adjustment cycle (October 1, 2026, October 1, 2029, etc.). If the Agency determines that adjustments beyond inflation are necessary, EPA will provide public notice of that determination and the process to be followed to make those adjustments.

* * * * *

(f) * * *

(2) * * *

(i) The consortium must identify a principal sponsor and provide notification to EPA that a consortium has formed. The notification must be accomplished within 90 days of the publication date of a test rule under section 4 of the Act, or within 90 days of the effective date of a test order under section 4 of the Act, or within 90 days of the signing of an enforceable consent agreement under section 4 of the Act. EPA may permit additional entities to join an existing consortium after the expiration of the notification period if the principal sponsor provides updated notification.

* * * * *

(3) * * *

(i) Notification must be provided to EPA that a consortium has formed. The notification must be accomplished within 90 days of the publication of the final scope of a chemical risk evaluation under section 6(b)(4)(D) of the Act or within 90 days of EPA providing notification to a manufacturer that a manufacturer-requested risk evaluation has been granted. EPA may permit additional entities to join an existing consortium after the expiration of the notification period if the principal sponsor provides updated notification.

* * * * *

(4) If multiple persons are subject to fees triggered by section 4 or 6(b) of the Act and no consortium is formed, EPA will determine the portion of the total applicable fee to be remitted by each person subject to the requirement.

(i) Each person's share of the applicable fees triggered by section 4 of the Act specified in paragraph (c) of this section shall be in proportion to the total number of manufacturers and/or processors of the chemical substance, with lower fees for small businesses:

$$P_s = 0.2 \times \left[\frac{F}{M_t}\right]$$

$$P_o = \frac{F - [0.2 \times \left[\frac{F}{M_t}\right] \times M_s]}{(M_t - M_s)}$$

Where:

P_s = the portion of the fee under paragraph (c) of this section that is owed by a person who qualifies as a small business concern under § 700.43 of this chapter.
P_o = the portion of the fee owed by a person other than a small business concern.
F = the total fee required under paragraph (c) of this section.
M_t = the total number of persons subject to the fee requirement.
M_s = the number of persons subject to the fee requirement who qualify as a small business concern.

(ii) Each person's share of the applicable fees triggered by section 6(b) of the Act specified in paragraph (c) of this section shall be in proportion to the total number of manufacturers and their reported production volume as described in § 700.45(b)(v) of the chemical substance, with lower fees for small businesses:

$$P_s = 0.2 \times \left[\frac{F}{M_t}\right]$$

$$F_o = F - \left[0.2 \times \left[\frac{F}{M_t}\right] \times M_s\right]$$

(iii) Remaining manufacturers (*i.e.,* those that do not qualify as a small business concern) are then ranked in ascending order (from lowest to highest) based on reported production volume as described in § 700.45(b)(v). Each remaining manufacturer is assigned a number with 1 for lowest production volume, 2 for second lowest production volume, etc.

TABLE 1 TO PARAGRAPH (f)(4)(iii)—EXAMPLE OF PLACING MANUFACTURERS THAT DO NOT QUALIFY AS A SMALL BUSINESS CONCERN IN ASCENDING ORDER

Manufacturer(s)	Assigned No. (N)
Manufacturer with lowest production volume	1
Manufacturer with 2nd lowest production volume	2

TABLE 1 TO PARAGRAPH (f)(4)(iii)—EXAMPLE OF PLACING MANUFACTURERS THAT DO NOT QUALIFY AS A SMALL BUSINESS CONCERN IN ASCENDING ORDER—Continued

Manufacturer(s)	Assigned No. (N)
Manufacturer with 3rd lowest production volume	3
. . . etc.	

$$N_{20th} = [0.8 \times [M_t - M_s]]$$

$$P_{\geq 20th} = \frac{0.8 \times F_o}{M_{\geq 20th}}$$

$$P_{<20th} = \frac{[F_o - [0.8 \times F_o]]}{M_{<20th}}$$

Where:

P_s = the portion of the fee under paragraph (c) of this section that is owed by a person who qualifies as a small business concern under § 700.43 of this chapter.

$P_{\geq 20th}$ = the portion of the fee owed by a person other than a small business concern in the top 20th percentile.

$P_{<20th}$ = the portion of the fee owed by a person other than a small business concern not in the top 20th percentile.

F = the total fee required under paragraph (c) of this section.

M_t = the total number of persons subject to the fee requirement.

M_s = the number of persons subject to the fee requirement who qualify as a small business concern.

N_{20th} = The assigned number as illustrated in Table 1 to the manufacturer(s) with a production volume as described in 700.45(b)(v) at which the manufacturers with production volume greater than or equal to are in the top 20th percentile.

$M_{\geq 20th}$ = the total number of persons with production volume as described in 700.45(b)(v) greater than or equal to the manufacturer(s) with a production volume as N_{20th}.

$M_{<20th}$ = the total number of persons with production volume as described in 700.45(b)(v) less than the manufacturer(s) with a production volume as N_{20th}.

F_o = the total fee required under paragraph (c) of this section by all person(s) other than a small business concern.

(iv) In the event there are three or less manufacturers identified for a chemical substance, EPA will distribute the fee evenly among those three or less fee payers, regardless of production volume.

(v) In the event the number assigned to the top 20th percentile is not an integer, EPA will round to the nearest integer to determine the manufacturer(s) with the reported production volume as described in § 700.45(b)(v) greater than or equal to the top 20th percentile.

(vi) In the event multiple manufacturers report the same production volume as described in § 700.45(b)(v) and are greater than or equal to the top 20th percentile, EPA will include all manufacturers with that same production volume in the fee calculation for the top 20th percentile group.

(5) If multiple persons are subject to fees triggered by section 4 of the Act and some inform EPA of their intent to form a consortium while others choose not to associate with the consortium, EPA will take the following steps to allocate fee amounts:

(i) Count the total number of manufacturers, including the number of manufacturers within any consortia; divide the total fee amount by the total number of manufacturers; and allocate equally on a per capita basis to generate a base fee;

(ii) Provide all small businesses who are either not associated with a consortium, or associated with an all-small business consortium, with an 80% discount from the base fee referenced previously;

(iii) Calculate the total remaining fee and total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified;

(iv) Reallocate the remaining fee across those remaining individuals and groups in equal amounts, counting each manufacturer in a consortium as one person; and

(v) Inform consortia and individuals of their requisite fee amount. Small businesses in a successfully-formed

consortium, other than a consortium of all small businesses, will not be afforded the 80% discount by EPA, but consortia managers are strongly encouraged to provide a discount for small business concerns.

(6) If multiple persons are subject to fees triggered by section 6(b) of the Act and some inform EPA of their intent to form a consortium while others choose not to associate with the consortium, EPA will take the following steps to allocate fee amounts:

(i) Count the total number of manufacturers, including the number of manufacturers within any consortia; divide the total fee amount by the total number of manufacturers; and allocate equally on a per capita basis to generate a base fee;

(ii) Provide all small businesses who are either not associated with a consortium, or associated with an all-small business consortium, with an 80% discount from the base fee referenced previously;

(iii) Calculate the total remaining fee and total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified;

(iv) Place remaining manufacturers in ascending order (from lowest to highest) based on reported production volume as described in § 700.45(b)(v). Assign each remaining manufacturer a number with 1 for lowest production volume, 2 for second lowest production volume, etc.;

(v) Determine the manufacturer(s) in the top 20th percentile by multiplying the total number of remaining manufacturers by 0.8. then comparing that number to the manufacturer(s) with that assigned number as described in paragraph (f)(6)(iv) of this section;

(vi) Reallocate 80% of the total remaining fee evenly across that manufacturer(s) with a production volume amount equal to or larger than that manufacturer(s) (the top 20th percentile), counting each manufacturer in a consortium as one person;

(vii) Reallocate the remaining fee evenly across the remaining manufacturers, counting each manufacturer in a consortium as one person; and

(viii) Inform consortia and individuals of their requisite fee amount. Small businesses in a successfully formed consortium, other than a consortium of all small businesses, will not be afforded the 80% discount by EPA, but consortia managers are strongly encouraged to provide a discount for small business concerns.

* * * * *

(g) * * *

(3) * * *

(i) *Test orders and test rules.* The applicable fee specified in paragraph (c) of this section shall be paid in full not later than 180 days after the effective date of a test rule or test order under section 4 of the Act.

* * * * *

(iv) *Risk evaluations.* (A) For EPA-initiated risk evaluations, the applicable fee specified in paragraph (c) of this section shall be paid in two installments, with the first payment of 50% due 180 days after publishing the final scope of a risk evaluation and the second payment for the remainder of the fee due 545 days after publishing the final scope of a risk evaluation under section 6(b)(4)(D) of the Act.

(B) For manufacturer-requested risk evaluations under section 6(b)(4)(C)(ii) of the Act, the applicable fees specified in paragraph (c) of this section shall be paid as follows:

(*1*) The applicable fee specified in paragraph (c) of this section shall be paid in three installments. The first payment shall be due no later than 180 days after EPA provides the submitting manufacture(s) notice that it has granted the request.

(*2*) The second payment shall be due no later than 545 days after EPA provides the submitting manufacturer(s) notice that it has granted the request.

(*3*) The final payment shall be due no later than 30 days after EPA publishes the final risk evaluation.

* * * * *

(5) *Small business certification.* (i) Each person who remits the fee identified in paragraph (c)(1) of this section for a PMN, consolidated PMN, or SNUN shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $6,480 in accordance with 40 CFR 700.45(c).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits the fee identified in paragraph (c)(1) of this section for a LVE, LoREX, TERA, TME, or Tier II exemption request under TSCA section 5 shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $2,180 in accordance with 40 CFR 700.45(c).'' in the exemption application.

(iii) Each person who remits the fee identified in paragraph (c)(1) of this section for an exemption notice under § 723.175 of this chapter shall include the words, ''The company or companies identified in this notice is/are a small business concern under 40 CFR 700.43 and has/have remitted a fee of $2,180 in accordance with 40 CFR 700.45(c).'' in the certification required in § 723.175(i)(1)(x) of this chapter.

(iv) Each person who remits the fee identified in paragraph (c)(1) of this section for a MCAN or consolidated MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $6,480 in accordance with 40 CFR 700.45(c).'' in the certification required in § 725.25(b) of this chapter.

(6) *Payment certification statement.* (i) Each person who remits a fee identified in paragraph (c)(2) of this section for a PMN, consolidated PMN, or SNUN shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $37,000 specified in 40 CFR 700.45(c).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits a fee identified in paragraph (c)(2) of this section for a LVE, LoREX, TERA, TME, or Tier II exemption request under TSCA section 5 shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $10,870 specified in 40 CFR 700.45(c).'' in the exemption application.

(iii) Each person who remits the fee identified in paragraph (c)(2) of this section for an exemption notice under § 723.175 of this chapter shall include the words, ''The company or companies identified in this notice has/have remitted a fee of $10,870 in accordance with 40 CFR 700.45(c).'' in the certification required in § 723.175(i)(1)(x) of this chapter.

(iv) Each person who remits the fee identified in paragraph (c)(2) of this section for a MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $37,000 in accordance with 40 CFR 700.45(c).'' in the certification required in § 725.25(b) of this chapter.

* * * * *

[FR Doc. 2024–02735 Filed 2–20–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 240208–0039; RTID 0648–XR118]

Endangered and Threatened Wildlife and Plants; Final Rule To List the Atlantic Humpback Dolphin as an Endangered Species Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, NMFS, are issuing a final rule to list the Atlantic humpback dolphin (*Sousa teuszii*) as endangered under the Endangered Species Act (ESA), in response to a petition from the Animal Welfare Institute, the Center for Biological Diversity, and VIVA Vaquita. We have reviewed the status of the Atlantic humpback dolphin, including efforts being made to protect the species, and considered public comments submitted on the proposed listing rule as well as new information received since publication of the proposed rule. Based on all of this information, we have determined that the Atlantic humpback dolphin warrants listing as an endangered species. We will not designate critical habitat for this species, because the geographical areas occupied by this species are entirely outside U.S. jurisdiction.

DATES: This final rule is effective March 22, 2024.

ADDRESSES: References and documents supporting this final rule are available online at: *https://www.fisheries.noaa.gov/species/atlantic-humpback-dolphin#conservation-management,* or may be obtained by contacting Heather Austin, Endangered Species Conservation Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910. Public comments are available online at *https://www.regulations.gov,* search docket number NOAA–NMFS–2021–0110 (note: copying and pasting the FDMS Docket Number directly from this document may not yield search results).

FOR FURTHER INFORMATION CONTACT: Heather Austin, NMFS Office of Protected Resources, *Heather.Austin@noaa.gov,* 301–427–8422.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2021, we received a petition from the Animal Welfare Institute, the Center for Biological Diversity, and VIVA Vaquita to list the Atlantic humpback dolphin (*Sousa teuszii*) as a threatened or endangered species under the ESA. On December 2, 2021, we published a 90-day finding for the Atlantic humpback dolphin with our determination that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (86 FR 68452). We also announced the initiation of a status review of the species, as required by section 4(b)(3)(A) of the ESA, and requested information to inform the agency's decision on whether this species warrants listing as endangered or threatened under the ESA. On April 7, 2023, we published a proposed rule to list the Atlantic humpback dolphin as endangered (88 FR 20829). We requested public comments on the information in the proposed rule and associated status review during a 60-day public comment period, which closed on June 6, 2023.

Following publication of the proposed rule (88 FR 20829), we became aware of cartographic guidance bulletin 38, issued by the Department of State's Office of the Geographer and Global Issues on December 16, 2020, and determined that the preamble to our proposed rule was not in alignment with the guidance. Thus, we issued a correction notice to remove all references to ''Western Sahara'' from the proposed rule's preamble and identify Morocco as a country within the species' range, per the guidance (88 FR 46727). Additionally, the correction notice included changes to the ''International Regulatory Mechanisms'' subsection of the proposed rule resulting from the inclusion of Morocco as a range country for the Atlantic humpback dolphin (88 FR 46727). We also reopened the public comment period for the proposed rule for an additional 60 days, which closed on September 18, 2023, to allow the Kingdom of Morocco, as well as any other interested person, an opportunity to provide comments on our proposal. We found that bringing the preamble to the proposed rule to list the Atlantic humpback dolphin into alignment with the guidance bulletin presented good cause for reopening the public comment period, in accordance with 50 CFR 424.16(c)(2).

This final rule provides a discussion of the public comments received in response to the proposed rule, the correction notice, and our final determination on the petition to list the Atlantic humpback dolphin under the ESA.

Listing Determinations Under the ESA

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species,'' which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a distinct population segment (DPS) of a taxonomic species (''DPS Policy,'' 61 FR 4722). The joint DPS Policy identifies two elements that must be considered when identifying a DPS: (1) the discreteness of the population segment in relation to the remainder of the taxon to which it belongs; and (2) the significance of the population segment to the remainder of the taxon to which it belongs.

Section 3 of the ESA defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range and a threatened species as one which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6), 16 U.S.C. 1532(20)). Thus, we interpret an ''endangered species'' to be one that is presently in danger of extinction. A ''threatened species,'' on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or not presently but within the foreseeable future (threatened).

Under section 4(a)(1) of the ESA and our implementing regulations, we must determine whether any species is endangered or threatened as a result of any one or a combination of any of the following factors: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory

mechanisms; or (E) other natural or manmade factors affecting its continued existence (16 U.S.C. 1533(a)(1); 50 CFR 424.11(c)). We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species' status and after taking into account efforts, if any, being made by any state or foreign nation (or subdivision thereof) to protect the species (16 U.S.C. 1533(b)(1)(A)).

In assessing the extinction risk of the Atlantic humpback dolphin, we considered demographic risk factors, such as those developed by McElhany *et al.* (2000), to organize and evaluate the forms of risks. The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our previous status reviews (see *https://www.nmfs.noaa.gov/pr/species* for links to these reviews). Under this approach, the collective condition of individual populations is considered at the species level according to four demographic risk factors: (1) abundance; (2) growth rate and productivity; (3) spatial distribution and connectivity; and (4) genetic diversity. These risk factors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk.

Scientific conclusions about the overall risk of extinction faced by the Atlantic humpback dolphin under present conditions and in the foreseeable future are based on our evaluation of the species' demographic risks and section 4(a)(1) threat factors. Our assessment of overall extinction risk considered the likelihood and contribution of each particular factor, synergies among contributing factors, and the cumulative impact of all demographic risks and threats on the species.

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect the species. Therefore, prior to making a listing determination, we also assessed protective efforts to determine if they are adequate to mitigate the existing threats.

Summary of Comments

In response to our request for comments on the proposed rule and the subsequent correction notice, we received a total of 18 public comments from non-governmental organizations, foreign governments, and individual members of the public. All comments were supportive of the proposed endangered listing for the Atlantic humpback dolphin and the large majority provided no new or substantive data or information relevant to the listing of the Atlantic humpback dolphin that was not already considered in the status review report (Austin 2023) and proposed rule. We have considered all public comments, and we provide responses to all relevant issues raised by comments as summarized below.

Comment 1: All public comments received were supportive of the proposed listing determination for the Atlantic humpback dolphin as endangered. A majority of these comments were general statements expressing support for listing the Atlantic humpback dolphin as endangered under the ESA. A few commenters described general repercussions within the ecosystem of the coastal Atlantic waters of western Africa, if this species went extinct. Most of these comments were not accompanied by information or references. Several of the comments were accompanied by information that is consistent with, or cited directly from, our proposed rule or draft status review report (Austin 2023).

A number of commenters reiterated information and many of the points from the draft status review report (Austin 2023) and proposed rule for the Atlantic humpback dolphin, notably the species small population size, fragmented distribution, restricted range in coastal Atlantic waters of western Africa, the severity of range-wide threats (fisheries bycatch and human use, coastal development, and the inadequacy of existing regulatory mechanisms to protect the dolphin), and the need for more stringent regulations to protect the species. In addition, a couple of commenters reiterated information from the draft status review report (Austin 2023) and proposed rule regarding the species' conservation efforts to date, most notably the recent assessment by the International Union for Conservation of Nature (IUCN) which classified the Atlantic humpback dolphin into the Red List category of ''Critically Endangered'' in 2017, and the conservation efforts by the Convention on the Conservation of Migratory Species of Wild Animals (CMS or Bonn Convention) and West African Cetacean Research and Conservation Programme (WAFCET) since the 1990s.

Several commenters also noted that this listing would: (1) help raise awareness for the species; (2) help scientists and conservationists protecting the Atlantic humpback dolphin to raise funds for projects aimed at conserving this species and its habitat; (3) foster international cooperation and facilitate increased collaboration to improve outcomes of any conservation actions; (4) facilitate the enhancement of legal protections in the national laws of the species' range countries (especially relating to laws addressing bycatch); and (5) strengthen the monitoring, control, and surveillance regimes in each range country. Additionally, one commenter noted that protecting this species under the ESA would help encourage commercial farmers and industries within this species' habitat to be conscientious about avoiding the Atlantic humpback dolphin during fishing activities, which would hopefully lead to more sustainable and ethical fishing practices to protect other wildlife as well.

Response: We acknowledge all of these comments in support of our listing determination and the public interest in conserving the Atlantic humpback dolphin.

Comment 2: We received a comment letter from a group of commenters that stated that the final rule on fish and fish product import provisions of the Marine Mammal Protection Act (MMPA import rule) (81 FR 54389, August 15, 2016) may help to provide external motivation for Atlantic humpback dolphin range countries that export fish and fish products to the United States. The commenters also provided some new scientific and commercial information related to the threat of fisheries bycatch to the Atlantic humpback dolphin off the coasts of Mauritania and Senegal. Specifically, the commenters emphasized that there are records of Atlantic humpback dolphins being bycaught off the coasts of Mauritania and Senegal based on reports by Gascoigne *et al.* (2021a, b, and c), and these reports also note that most coastal fisheries have high overlap with this species' habitat preferences. The commenters discussed the Marine Stewardship Council (MSC), a non-profit organization which aims to set standards for sustainable fishing. Fisheries that wish to demonstrate that they are well-managed and sustainable compared to MSC's standards are assessed to evaluate whether they meet MSC's environmental standard for sustainable fishing. Based on the reports by Gascoigne *et al.* (2021a, b, and c), the coastal fisheries in this region were unable to proceed to the next level of the MSC's certification due in part to the potential high risk posed to the

Atlantic humpback dolphin and other species. Additionally, the commenters submitted updated information on distribution, sightings, and habitat parameters for the species within the Saloum Delta in Senegal (specifically the preliminary results of the 2021 and 2022 *S. teuszii* surveys in the Saloum Delta, Senegal) with the majority sightings clustered in the Saloum River in the northern portion of the delta (Minton *et al.* 2022). Lastly, the commenters provided information about a male Atlantic humpback dolphin that washed ashore on the coast of Mauritania just south of Banc d'Arguin National Park on May 10, 2013 (Bilal *et al.* 2023).

Response: We reviewed the scientific and commercial information submitted by the commenters related to the threat of fisheries bycatch to the Atlantic humpback dolphin off the coasts of Mauritania and Senegal, and the updated information the commenters submitted on distribution, sightings, and habitat parameters for the species within the Saloum Delta in Senegal. While most of the material cited and/or provided by these commenters had already been considered in our status review report (Austin 2023) and proposed rule, we have updated our status review report (Austin 2023) to include the new information regarding the distribution, sightings, and habitat parameters for the Atlantic humpback dolphin within the Saloum Delta in Senegal, from the preliminary results of the 2021 and 2022 *S. teuszii* surveys in the Saloum Delta described in Minton *et al.* (2022). We also incorporated new information related to the threat of fisheries bycatch off the coasts of Mauritania and Senegal into our status review report (Austin 2023). Additionally, we included information in our status review report (Austin 2023) regarding a record of a male Atlantic humpback dolphin specimen washed ashore on the coast of Mauritania just south of Banc d'Arguin National Park on May 10, 2013 (Bilal *et al.* 2023). We find that although this new information does not alter our previous conclusions regarding the threat of bycatch in this region, it further supports our endangered listing determination for this species.

Comment 3: Some commenters expressed strong support for our conclusion that the inadequacy of legal protections in the range countries of the Atlantic humpback dolphin are contributing to a high risk of extinction for this species. These commenters conducted a review of the current laws and regulations in Atlantic humpback dolphin range countries to assess if there had been any changes in the legal framework since the CMS' Draft Single Species Action Plan (Action Plan) was drafted in 2022. They found that the regulatory framework in place at the time of their work on the Action Plan remains the same, with no apparent evidence of any improvements in protections for this species generally or from the threat of bycatch in particular. Consequently, the commenters concluded that their findings support our conclusion in the proposed rule regarding the inadequacy of existing regulatory mechanisms to address the primary threats to Atlantic humpback dolphins (*i.e.,* bycatch and coastal development).

Additionally, these commenters refer to the discussion in the status review report (Austin 2023) about the difficulties faced by Senegal in enforcing its longstanding ban on monofilament nets and noted that there is presently no indication that the country of Senegal is making any headway on this management issue. In support of this statement, the commenters cite an April 2023 news article from ''Voice of America'' that discusses the threats faced by the Atlantic humpback dolphin in Senegalese waters (see Voice of America, ''Senegal: Critically Endangered Dolphin Threatened by Illegal Fishing Nets,'' April 11, 2023).

Response: We appreciate and acknowledge the commenters' support of our conclusions for ESA listing criterion D (the inadequacy of existing regulatory mechanisms), in particular regarding how the inadequacy of legal protections in the species' range countries contributes to a high risk of extinction for the Atlantic humpback dolphin. Additionally, we agree that there have been no changes in the legal status quo since these commenters initially researched and compiled the legislative summary within the CMS' Draft Single Species Action Plan, and that there is no indication of improved protections, in general or from the threat of bycatch in particular, for the Atlantic humpback dolphin. As described in our status review report (Austin 2023) and proposed rule, regulatory mechanisms that currently exist are not adequate to address the species' primary threats of bycatch and coastal development, due to lack of enforcement, resources, implementation, and/or effectiveness within each range country. Thus, we maintain our conclusion that the inadequacy of existing regulatory mechanisms contributes to a high risk of extinction for the Atlantic humpback dolphin.

Additionally, we note the commenters' statement that there is no indication of improved enforcement of the monofilament net ban in Senegalese waters. We agree that the best available scientific and commercial data supports that conclusion. Therefore, we incorporated this new information into our status review report (Austin 2023), and find it further supports our endangered listing determination for the Atlantic humpback dolphin.

Comment 4: One commenter proposed a new strategy to recover and conserve the species via a proposed conservation policy which targets the species' primary threat of fisheries bycatch and is predicated on financial assistance under section 8(a) of the ESA, with an emphasis on the Saloum Delta region of Senegal (the commenter notes that this area houses a concentrated population of the species and Senegal already has enacted laws focused on conservation). The commenter stated that section 8(a) of the ESA provides the Executive Branch with discretion to disburse monies to foreign countries to aid in the development and management of programs ''useful for the conservation of any endangered species'' (16 U.S.C. 1537(a)). The commenter states that NMFS should provide financial assistance to Senegal under section 8(a) of the ESA, in collaboration with the United States Agency for International Development (USAID). To support this proposition, the commenter included citations to foreign policy articles regarding the Biden Administration's Africa strategy and USAID's Municipal Waste Recycling Program, as well as sources discussing the use of acoustic instruments that act as a deterrent to dolphins by allowing them to echolocate monofilament fishing nets (*i.e.,* pingers), which have been shown to reduce bycatch in other dolphin species around the world.

Response: We appreciate the commenter's input and ideas for how to advance recovery for the Atlantic humpback dolphin. However, because this comment addresses potential future conservation efforts for the Atlantic humpback dolphin, it is not relevant to our assessment of extinction risk and the final listing determination for the Atlantic humpback dolphin.

Comment 5: We received comments from two foreign countries, the Kingdom of Morocco and the Republic of Cameroon, expressing support for listing the Atlantic humpback dolphin as endangered under the ESA. Each country also provided additional information regarding existing domestic laws in their respective countries to

protect the species. The Kingdom of Morocco submitted documentation from its Order of the Minister of Agriculture, Maritime Fisheries, Rural Development and Waters and Forests No. 464–23 (signed February 21, 2023), which prohibits fishing for the Atlantic humpback dolphin in Moroccan maritime waters for a period of 25 years, beginning on June 1, 2023. The Republic of Cameroon submitted documentation from their Ministry of Forestry and Wildlife ''Establishing the Modality of the Distribution of Animal Species in Protected Classes,'' which lists the Atlantic humpback dolphin, along with four other marine mammal species, as a legally protected species within the waters of Cameroon (Arrêté N°0053/ Ministry of Forestry and Wildlife (MINFOF), passed on April 1, 2020).

A separate public comment also reiterated information provided by the Kingdom of Morocco, and noted that recent efforts have been made by the Kingdom of Morocco to help mitigate threats to the species by highlighting that the prohibition of any harmful act towards the species in Moroccan maritime waters has been established for a period of 25 years. The commenter also agreed with our proposal to list the species as endangered under the ESA and our issuance of the correction notice to include Morocco as a country within the species' range.

Response: We appreciate these comments from the Kingdom of Morocco and the Republic of Cameroon supporting our Atlantic humpback dolphin listing determination. Additionally, we reviewed the supporting documentation regarding legal protections afforded to the species in these two countries and incorporated this new information into the status review report (Austin 2023). While we acknowledge that the Kingdom of Morocco and Republic of Cameroon have legal protections in place for the Atlantic humpback dolphin, these countries are only two of the four (out of 19) range countries that have specific protections for the Atlantic humpback dolphin, and effective bycatch mitigation has not been documented in most range countries. This is a serious concern, given that bycatch is considered linked to the species' population decline and poses an immediate range-wide threat. Additionally, because Morocco's prohibition is new (*i.e.,* it became effective on June 1, 2023), we cannot yet gauge its effectiveness in protecting the Atlantic humpback dolphin in Moroccan maritime waters. As described in our status review report (Austin 2023) and proposed rule, regulatory mechanisms that currently exist throughout the majority of the species' range are not adequate to address the species' primary threats of bycatch and coastal development, due to lack of enforcement, resources, implementation, and/or effectiveness within most range countries. Additionally, government agencies in many range countries lack the resources to effectively monitor and mitigate threats and to design and implement research and conservation measures specific to the Atlantic humpback dolphin. As such, we ranked ESA listing criterion D (the inadequacy of existing regulatory mechanisms) as a ''high'' level threat, particularly due to lack of enforcement, resources, implementation, and/or effectiveness within each range country. We maintain our conclusion that inadequacy of existing regulatory mechanisms contributes to a high risk of extinction for the Atlantic humpback dolphin. Therefore, we conclude the new information regarding legal protections afforded to the Atlantic humpback dolphin provided by the Kingdom of Morocco and the Republic of Cameroon does not alter our conclusion that the Atlantic humpback dolphin meets the definition of an endangered species under the ESA.

Summary of Changes From the Proposed Listing Rule

We did not receive, nor did we find, data or references that presented substantial new information to change our proposed listing determination. We did, however, make some revisions to the status review report (Austin 2023) to incorporate, as appropriate, relevant information that we received in response to our request for public comments or identified ourselves. Specifically, we updated the status review report (Austin 2023) to include new information regarding the distribution, sightings, and habitat parameters for the Atlantic humpback dolphin within the Saloum Delta in Senegal and information about the male Atlantic humpback dolphin that washed ashore on the coast of Mauritania. We also updated the status review report (Austin 2023) to include new information related to the threat of fisheries bycatch off the coasts of Mauritania and Senegal. Lastly, we incorporated into our status review report (Austin 2023) additional information regarding existing domestic laws from the Kingdom of Morocco and the Republic of Cameroon that protect the Atlantic humpback dolphin in these countries' waters.

Status Review

The status review for the Atlantic humpback dolphin was completed by NMFS staff from the Office of Protected Resources. To complete the status review, we compiled the best scientific and commercial data available on the species' biology, ecology, life history, threats, and conservation status by examining the petition and cited references, and by conducting a comprehensive literature search and review. We also considered information submitted to us in response to our petition finding. The draft status review report (Austin 2023) was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03, December 16, 2004). The draft status review report (Austin 2023) was peer reviewed by four independent scientists selected from the academic and scientific community with expertise in cetacean biology, conservation, and management, and with specific knowledge of the Atlantic humpback dolphin. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the draft status review report (Austin 2023) as well as the findings made in the ''Extinction Risk Analysis'' section of the report. All peer reviewer comments were addressed prior to finalizing the draft status review report (Austin 2023) that was subsequently made available to the public at the proposed rule stage.

We subsequently reviewed the status review report (Austin 2023), and its cited references, and we find the status review report (Austin 2023), upon which the proposed and final rules are based, provides the best available scientific and commercial data on the Atlantic humpback dolphin. All peer reviewer comments are available online at: *https://www.noaa.gov/information-technology/endangered-species-act-status-review-report-atlantic-humpback-dolphin-sousa-teuszii-id447.* The final status review report (cited as Austin 2023) is available online at: *https://www.fisheries.noaa.gov/species/atlantic-humpback-dolphin#conservation-management.*

ESA Section 4(a)(1) Factors Affecting the Atlantic Humpback Dolphin

As stated previously and as discussed in the proposed rule (88 FR 20829, April 7, 2023), we considered whether any one or a combination of the five threat factors specified in section 4(a)(1) of the ESA is contributing to the extinction risk of the Atlantic humpback dolphin. A few commenters provided additional

information related to threats such as fisheries bycatch and the inadequacy of existing regulatory mechanisms in a number of Atlantic humpback dolphin range countries. The information provided was consistent with or reinforced information in the status review report (Austin 2023) and proposed rule, and thus did not change our conclusions regarding any of the section 4(a)(1) factors. Therefore, we incorporate and affirm herein all information, discussion, and conclusions regarding the factors affecting the Atlantic humpback dolphin from the final status review report (Austin 2023) and the proposed rule (88 FR 20829, April 7, 2023).

Extinction Risk

As discussed previously, the status review evaluated the demographic risks to the Atlantic humpback dolphin according to four categories: (1) abundance; (2) growth rate and productivity; (3) spatial distribution and connectivity; and (4) genetic diversity (see McElhany *et al.* (2000)). As a concluding step, after considering the best available information regarding demographic and other threats to the species, we rated the species' extinction risk according to a qualitative scale (high, moderate, and low risk). While we updated our status review report (Austin 2023) as described above (see Summary of Changes from the Proposed Listing Rule) with (1) the latest threat information for the Atlantic humpback dolphin, (2) information on distribution, sightings, and habitat parameters for the species within Senegal, and (3) information about the male Atlantic humpback dolphin which washed ashore on the coast of Mauritania, none of the comments or information we received on the proposed rule changed the outcome of our extinction risk analysis for the species. As such, our conclusions regarding extinction risk for the Atlantic humpback dolphin remain the same. Therefore, we incorporate and affirm, herein, all information, discussion, and conclusions on the extinction risk of the Atlantic humpback dolphin in the final status review report (Austin 2023) and proposed rule (88 FR 20829, April 7, 2023).

Protective Efforts

In addition to regulatory measures (*e.g.,* fishing and gillnet regulations and domestic laws), we considered other efforts being made to protect the Atlantic humpback dolphin. We considered whether such protective efforts altered the conclusions of the extinction risk analysis for this species; however, none of the information we received on the proposed rule affected our conclusions regarding conservation efforts to protect the dolphin. Therefore, we incorporate and affirm herein all information, discussion, and conclusions on the protective efforts of the Atlantic humpback dolphin in the final status review report (Austin 2023) and proposed rule (88 FR 20829, April 7, 2023).

Final Listing Determination

We summarize the factors supporting our final listing determination as follows: (1) the best scientific and commercial data available indicates that the species has a low abundance, with fewer than 3,000 dolphins likely remaining, with observed or suspected population declines increasing the risk of local extirpation for extremely small stocks (*e.g.,* Dakhla Bay and Angola) in the near future; (2) continued declines in abundance are expected given the ongoing and projected increase of identified range-wide threats (specifically, fisheries bycatch and coastal development), suggesting that the species will continue to decline in the absence of interventions; (3) the Atlantic humpback dolphin has a fragmented distribution with limited connectivity between stocks; (4) the Atlantic humpback dolphin has a restricted geographic range, being endemic to the tropical and subtropical waters along the Atlantic African coast where ongoing habitat destruction (including coastal development) contributes to a high risk of extinction; (5) the species' preference for nearshore habitat increases its vulnerability to incidental capture (*i.e.,* fisheries bycatch) which also contributes to a high risk of extinction; and (6) existing regulatory mechanisms are inadequate for addressing the most important threats of fisheries bycatch and coastal development.

As a result of the foregoing findings, which are based on the best scientific and commercial data available, as summarized herein, in our proposed rule (88 FR 20829, April 7, 2023), and in the status review report (Austin 2023), and after consideration of protective efforts, we find that the Atlantic humpback dolphin is presently in danger of extinction throughout its range. Therefore, we find that the Atlantic humpback dolphin meets the definition of an endangered species under the ESA and list it as such.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include the development and implementation of recovery plans (16 U.S.C. 1533(f)); designation of critical habitat, if prudent and determinable (16 U.S.C. 1533(a)(3)(A)); and a requirement that Federal agencies consult with NMFS under section 7 of the ESA to ensure their actions are not likely to jeopardize the species or result in adverse modification or destruction of designated critical habitat (16 U.S.C. 1536). For endangered species, protections also include prohibitions related to ''take'' and trade (16 U.S.C. 1538). Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). Recognition of the species' imperiled status through listing may also promote conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Activities That Would Constitute a Violation of Section 9 of the ESA

On July 1, 1994, NMFS and the U.S. Fish and Wildlife Service (USFWS) published a policy (59 FR 34272) that requires us to identify, to the maximum extent practicable, at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the potential effects of species listings on proposed and ongoing activities.

Because we are listing the Atlantic humpback dolphin as endangered, all of the prohibitions of section 9(a)(1) of the ESA will apply to this species. Section 9(a)(1) includes prohibitions against the import, export, use in foreign commerce, and ''take'' of the listed species. These prohibitions apply to all persons subject to the jurisdiction of the United States, including all persons in the United States or its territorial sea, and U.S. citizens on the high seas. Activities that could result in a violation of section 9 prohibitions for Atlantic humpback dolphins include, but are not limited to, the following:

(1) Delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce any Atlantic humpback dolphin or any of its parts, in the course of a commercial activity;

(2) Selling or offering for sale in interstate or foreign commerce any part of an Atlantic humpback dolphin, except antique articles at least 100 years old; and

(3) Importing or exporting Atlantic humpback dolphins or any parts of these dolphins.

Whether a violation results from a particular activity is entirely dependent upon the facts and circumstances of each incident. Further, an activity not

listed here may in fact constitute a violation of the ESA.

Identification of Those Activities That Would Not Likely Constitute a Violation of Section 9 of the ESA

Although the determination of whether any given activity constitutes a violation is fact dependent, we consider the following actions, depending on the circumstances, as being unlikely to violate the prohibitions in ESA section 9 with regard to Atlantic humpback dolphins: (1) take authorized by, and carried out in accordance with the terms and conditions of, an ESA section 10(a)(1)(A) permit issued by NMFS for purposes of scientific research or the enhancement of the propagation or survival of the species; and (2) continued possession of Atlantic humpback dolphins or any parts that were in possession at the time of listing. Such parts may be non-commercially exported or imported; however, the importer or exporter must be able to provide evidence to show that the parts meet the criteria of ESA section 9(b)(1) (*i.e.,* held in a controlled environment at the time of listing, in a non-commercial activity).

Identifying Section 7 Consultation Requirements

Section 7(a)(2) (16 U.S.C. 1536(a)(2)) of the ESA and joint NMFS/USFWS regulations require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. It is unlikely that the listing of the Atlantic humpback dolphin under the ESA will increase the number of section 7 consultations because this species occurs outside of the United States and is unlikely to be affected by U.S. Federal actions.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. However, critical habitat cannot be designated in foreign countries or other areas outside U.S. jurisdiction (50 CFR 424.12(g)). The Atlantic humpback dolphin is endemic to coastal Atlantic waters of western Africa and does not occur within areas under U.S. jurisdiction, which are well outside the natural range of this species. Therefore, we are not designating critical habitat for this species.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal Government's scientific information, and applies to influential scientific information or highly influential scientific assessments disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we solicited peer review comments on the draft status review report (Austin 2023) from four independent scientists selected from the academic and scientific community with expertise on cetaceans in general and specific knowledge regarding the Atlantic humpback dolphin in particular. We received and reviewed comments from these scientists and, prior to publication of the proposed rule, incorporated their comments into the draft status review report (Austin 2023), which was then made available for public comment. As stated earlier, peer reviewer comments on the status review report (Austin 2023) are available online at: *https://www.noaa.gov/information-technology/endangered-species-act-status-review-report-atlantic-humpback-dolphin-sousa-teuszii-id447.*

References

A complete list of the references used is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

National Environmental Policy Act

Section 4(b)(1)(A) of the ESA restricts the information that may be considered when assessing species for listing and sets the basis upon which listing determinations must be made. Based on the requirements in section 4(b)(1)(A) of the ESA and the opinion in *Pacific Legal Foundation* v. *Andrus,* 657 F. 2d 829 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act.

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process.

In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In accordance with E.O. 13132, we determined that this final rule does not have significant federalism effects and that a federalism assessment is not required. Given that this species occurs entirely outside of U.S. waters, there will be no federalism impacts because listing the species will not affect any state programs.

List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

Dated: February 12, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR part 224 as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C 1361 *et seq.*

■ 2. In § 224.101, amend the table in paragraph (h) by adding an entry for

''Dolphin, Atlantic humpback'' in alphabetical order by common name under ''Marine Mammals'' to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(h) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
Marine Mammals					
Dolphin, Atlantic humpback.	*Sousa teuszii*	Entire species	[Insert **Federal Register** page where the document begins], 2/21/2024.	NA	NA
*	*	*	* * *	*	

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2024–03162 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 35
Wednesday, February 21, 2024

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[Doc. No. AMS–SC–22–0088]

Softwood Lumber Research, Promotion, Consumer Education, and Information Order; Adjustment to Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the modification of the membership of the Softwood Lumber Board (Board) established under the Softwood Lumber Research, Promotion, Consumer Education and Industry Information Order (Order). This action would modify the membership of the Board by adding the alternate position for certain seats and a public member. In addition, Harmonized Tariff Schedule (HTS) numbers for softwood lumber would be updated with the latest numbers from the U.S. International Trade Commission. The Board administers the Order with oversight by the U.S. Department of Agriculture (USDA).

DATES: Comments must be received by March 22, 2024.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments may be mailed to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted electronically by Email: *MDDComments@usda.gov;* or via internet at *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at *https://www.regulations.gov.* Comments submitted in response to this proposed rule will be included in the rulemaking record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: Katie Cook, Marketing Specialist, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 1406–S, Stop 0244, Washington, DC 20250–0244; Telephone: (202) 720–8085; or Email: *Katie.Cook@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule affecting the Order (7 CFR part 1217) is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7411–7425).

Executive Orders 12866, 13563 and 14094

USDA's Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed rule is not a significant regulatory action within the meaning of Executive Order 12866. Accordingly, this action has not been reviewed by the Office of Management and Budget under section 6 of the Executive Order.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. AMS has assessed the impact of this proposed rule on Indian Tribes and determined that this proposed rule would not have Tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with Tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations will be shared during an upcoming quarterly call, and Tribal leaders will be informed about the proposed revisions to the regulation and the opportunity to submit comments. AMS will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regard to these proposed changes to the Order.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under sec. 519 of the Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

Under the Order, which became effective on August 3, 2011, the Board administers a nationally coordinated program of research, development, advertising, and promotion designed to strengthen softwood lumber's competitive position and expand domestic markets for softwood lumber. This program is financed by assessments on domestic manufacturers and importers of softwood lumber. The Board administers the Order with oversight by the USDA.

This proposed rule would modify the membership of the Board by adding two domestic manufacturer alternates, one importer alternate, a public member and alternate, and updating HTS numbers. The Board discussed the recommendations over several months and on May 17, 2023, unanimously recommended the proposed changes to the membership and the update to the HTS numbers. Board members present for the vote represented domestic manufacturers and importers.

Board Recommendation To Adjust Membership by Adding Certain Alternate Positions and a Public Member

Section 1217.40 of the Order provides for the membership of the Board and authorizes these proposed changes. The Board is comprised of 10 domestic manufacturers and four importers who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Currently the Board struggles to find individuals from under-represented populations who are eligible to serve with the current membership requirements. To mitigate this issue, this proposed rule would add alternate positions (two for domestic manufacturers; one for importers) and a public member (and an alternate public member) to the Board.

Unlike most other research and promotion programs, the members on this Board have corporate backgrounds and serve in leadership positions at their respective companies. Individuals who usually serve on the Board are from large, international corporations. Furthermore, according to the Board, about 90% of the manufacturing companies are family owned, therefore these companies typically pass leadership positions on to a family member. It is common industry practice to nominate executive-level employees to serve on the Board, so they are among their counterparts, which allows for robust discussions and thoughtful decision making, all with the goal of increasing demand for softwood lumber in the U.S. The Board has stated that adding alternates for manufacturers would provide a developmental opportunity for junior-level stakeholders and expand the pool of members.

Adding a public member and alternate would expand the pool of members and would allow the Board to tap into broader backgrounds and more diverse perspectives. Ideally, the public member position would be filled by an individual in architecture, construction, engineering, or development sectors, who would participate, voice their opinions and vote to the benefit of their industry in relation to the softwood lumber market. Much like the alternates for manufacturers, adding an alternate public member would give junior-level professionals in the architecture, construction, and engineering industries an opportunity to provide input and unique perspective on Board actions.

This proposed rule would be the second change to the Board's membership since its inception. In response to industry consolidation in 2019, the membership was reduced from 19 to 14 and more flexibility was added to the Order in terms of certain seats being open to representatives of any size manufacturer or importer. While previous rulemaking sought to decrease membership, this proposed rule would add certain alternate positions and a public member to help create opportunities for a more diverse and inclusive Board. The Board does not believe they will have difficulty filling the new positions from this proposed rule because the new positions would target junior level stakeholders. Industry consolidation remains a concern, but the proposed rule would open eligibility to a new class of underrepresented industry members.

In addition to providing more opportunities to recruit diverse candidates, adding alternates would help the Board meet quorum requirements, which became a greater issue after the Board reduced its membership in 2019. Including alternates would allow for an absent member seat or vacant seat to be filled as needed to vote on Board motions. Since alternates would not be broken out by size, they would serve in the stead of any size seat if it is from the same region they represent for the two domestic seats, and any importing region for the importer seat.

With the proposed changes to § 1217.40, the membership of the Board would increase from 14 to 15 members and four alternates. The proposed Board would be composed of 10 domestic manufacturer members and two alternates, four importer members and one alternate, and one public member and one alternate. Further, domestic manufacturers would represent three regions with five members and one alternate representing the South region; four members and one alternate representing the West region; and one member representing the Northeast and Lake States region. Alternates for the domestic manufacturers may represent companies of any size. For importer representation, the four members would be two large, one small, and one of any size, while the alternate may represent importers of any size from any region.

As a point of clarification, current § 1217.41(f) of the Order states no two members shall be employed by a single corporation, company, partnership, or any other legal entity. The intention of the proposed changes to the membership of the Board is to maintain this stipulation for alternates, ensuring the Order is not violated in the event a member permanently ceases to serve and needs an alternate to step in. Board members and industry representatives are encouraged to identify and nominate junior-level professionals from manufacturers and importers not represented on the Board at the time. Although there is consolidation in the industry, there are a sufficient number of companies who would be able to fill the 15 member seats and four alternate seats.

Section 1217.44, which is currently ''Procedure'', would be revised to be titled ''Alternates''; it would create the alternate position and explain the role of alternate members on the Board. In the event a member is unable to attend a Board meeting due to death, removal, resignation, disqualification, illness, or any other reason, the alternate from the same group (domestic manufacturer, importer, or public member) and region (if applicable) may serve in the member's stead. For example, if a member is unable to attend a singular meeting, an alternate from the same category could step in and serve as a member, counting towards quorum and would be eligible to vote. On the other hand, if a member is unable to serve permanently, an alternate from the same category would succeed as the next member, vacating an alternate position.

Currently, § 1217.44 specifies the Board's procedures, § 1217.45 specifies the reimbursement and attendance policies when performing Board business, § 1217.46 specifies the powers and duties of the Board, and § 1217.47 specifies prohibited activities. Current §§ 1217.44 to 1217.47 would be

redesignated and become §§ 1217.45 to 1217.48 to accommodate the addition of the role of the newly created alternate member positions in § 1217.44. Redesignated §§ 1217.45 to 1217.47 would also be revised to include references to alternates.

Conforming Changes

Section 1217.5 defines conflict of interest for current Board members or Board employees. This section would be revised to include alternate members to the Board and is a conforming change.

Section 1217.41 specifies the nomination procedures. This proposed rule would revise § 1217.41(b) and (c) and redesignated § 1217.41(g) to include alternate members and the public member. Section 1217.41(b) would specify that domestic manufacturers, importers, and public members and alternates may submit a short background statement outlining their qualifications to serve on the Board. Section 1217.41(c) would state that all members and alternates may seek nomination for all open or vacant seats for which they are eligible. Section 1217.41(e) would be added to prescribe nomination procedures specifically for the public member and alternate positions on the Board.

The nomination procedure provides that the Board conduct outreach and solicit nominees for domestic manufacturers, importers, and public members who are interested in serving on the Board. A nominee could seek nomination to the Board for all seats for which they qualify. The Board would evaluate all nominees and submit one recommended candidate for each open seat and at least one additional nominee for each open seat to the Secretary for consideration. Any additional qualified persons interested in serving in any of the open seats but not one of the two forwarded by the Board would be designated as additional nominees for consideration by the Secretary.

Current § 1217.41(f), which states that no two members shall be employed by a single legal entity, would be redesignated and revised to include alternates.

Section 1217.42 specifies the term of office. Section 1217.42(a) would be revised to include alternates and to allow members to serve as an alternate when they are ineligible to serve in the member position after two consecutive terms. In addition, § 1217.42(b) would stagger the alternate member position terms so that not all the alternates would term off the Board at the same time. Like their member counterparts, alternate members would be able to serve two consecutive, 3-year terms as alternates. If an alternate is nominated and appointed as a member, the eligibility starts over. For example, if an alternate member serves two consecutive terms, they would be eligible to serve as a member immediately after their service as an alternate.

Section 1217.43 specifies the removal and filling of vacancies on the Board. Section 1217.43(a) would be revised to address the addition of alternates to the Board, and state that if any member or alternate ceases to serve in their appointed capacity, whether they leave their position at their manufacturing or importing entity, or if they no longer qualify as a Board member or alternate in the respective group or region in which they were appointed, that position would become vacant. As discussed above, if a member seat were to be vacated, the alternate in the same group and region (if applicable) would fill that member seat, leaving that alternate position vacant. Section 1217.43(b) would be revised to add alternates, specifying that, similar to members, if an alternate refuses to perform their duties, the Secretary may remove the member or alternate from the Board. Section 1217.43(c) would be revised to use alternate members to fill member vacancies until the end of the member's normal term.

Board Recommendation To Update HTS Numbers

Section 1217.52(h) specifies the HTS numbers and assessment rates on imported softwood lumber. This proposed rule would update HTS numbers to the latest codes published by the U.S. International Trade Commission.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the action on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to the actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small firms which engage in ''Support Activities for Forestry'' (domestic softwood lumber manufacturers and importers) as those having annual receipts of no more than $11.5 million.[1]

The RISI/Fast Markets Random Lengths Publication's yearly average framing lumber composite price was $759 per thousand board feet (mbf) in 2022. Dividing the $11.5 million threshold that defines a small firm which provides ''Support Activities for Forestry'' by this price results in a maximum threshold of 15.15 million board feet (mmbf) of softwood lumber per year that a domestic manufacturer or importer may ship to be considered a small entity for purposes of the RFA. Table 1 shows the number of entities and the amount of volume they represent that may be categorized as small or large based on the SBA definition. This table is based on data from Forest Economic Advisors (FEA) and Customs and Border Protection (CBP).

TABLE 1—DOMESTIC MANUFACTURERS AND IMPORTERS BY SBA SIZE STANDARDS, 2022

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Small	150	960	753	1,034	903	1,984
Large	174	36,616	110	14,904	284	51,520

[1] SBA does have a small business size standard for ''Sawmills'' of 550 employees (see *https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf*). Based on AMS's understanding of the lumber industry, using this criterion would be impractical as sawmills often use contractors rather than employees to operate and, therefore, many mills would fall under this criterion while being, in reality, a large business. Therefore, AMS used the definition of a small firm which engages in ''Support Activities for Forestry'' as a more appropriate criterion for this analysis.

TABLE 1—DOMESTIC MANUFACTURERS AND IMPORTERS BY SBA SIZE STANDARDS, 2022—Continued

	Domestic manufacturers		Importers		Totals	
	Entities	Volume (MMBF)	Entities	Volume (MMBF)	Entities	Volume (MMBF)
Total	324	37,566	863	15,938	1,187	53,504

Sources: Forest Economic Advisors; Customs and Border Protection.

Table 1 shows that there was a combined total of 1,187 domestic manufacturers and importers of softwood lumber in the industry in 2022. Of these, 903 entities, or 76 percent, shipped or imported less than 15.15 mmbf and would be considered small based on the SBA definition. These 903 entities domestically manufactured or imported 1.984 billion board feet (bbf) in 2022, less than 4 percent of total volume. The proposed rule would not disproportionately burden small domestic manufacturers and importers of softwood lumber.

This proposal would revise § 1217.44 to add the alternate position, revise § 1217.40 to specifically add four alternates and a public member on the Board and make conforming changes throughout the Order. The Order is administered by the Board with oversight by the USDA. In accordance with the program requirements, assessments are collected from domestic manufacturers and importers, and used for research and promotion projects designed to strengthen the position of softwood lumber in the marketplace. Revising the Order to add two domestic manufacturer alternates, one importer alternate, and one public member and one public member alternate positions would provide more opportunities for diverse candidates to serve on the Board.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic manufacturers and importers of softwood lumber.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Regarding alternatives, the Board considered not changing the current Board makeup and continuing to have issues with meeting quorum and diverse members serving on the Board. The Board decided against this option to avoid meeting delays and continued concerns with nominations. Therefore, the alternatives were rejected.

Regarding outreach efforts, the full Board determined making this proposed change would give further opportunity for industry to engage with the Board and expand the availability of positions to those from under-represented communities and populations. This proposal was discussed by the Industry Relations and Governance Committee on June 29, 2022, and the full Board unanimously recommended rulemaking on August 11, 2022. Further discussions among the full Board took place on May 17, 2023. AMS has performed this initial RFA analysis regarding the impact of this action on small entities and invites comments concerning potential effects of this action.

While this proposed rule as set forth below has not yet received the approval of AMS, it has been determined that it is consistent with and would effectuate the purposes of the Act. A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Agricultural research, Confidential business information, Consumer protection, Forest and forest products, Inventions and patents, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 1217 as follows:

PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1217 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. Revise § 1217.5 to read as follows:

§ 1217.5 Conflict of interest.

Conflict of interest means a situation in which a member, alternate, or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

■ 3. In § 1217.40, revise paragraphs (a) and (b) to read as follows:

§ 1217.40 Establishment and membership.

(a) *Establishment of the Board.* There is hereby established a Softwood Lumber Board to administer the terms and provisions of the Order and promote the use of softwood lumber. The Board shall be composed of manufacturers for the U.S. market who manufacture and domestically ship or import 15 million board feet or more of softwood lumber in the United States during a fiscal period. Seats on the Board shall be apportioned based on the volume of softwood lumber production that is manufactured and shipped within the United States by domestic manufacturers and the volume of softwood lumber imported into the United States. Seats on the Board shall also be apportioned based on size of operation within each geographic region, as specified in paragraphs (b)(l) and (2) of this section. For purposes of this section, ''large'' means manufacturers for the U.S. market who account for the top two-thirds of the total annual volume of assessable softwood lumber and ''small'' means those who account for the remaining one-third of the total annual volume of assessable softwood lumber. If there are no eligible nominees for a large or small seat within a region, that seat may be filled by a nominee representing an eligible manufacturer for the U.S. market of any size. Should the size of

a manufacturer for the U.S. market change during a member's or alternate's term of office, that member or alternate may serve for the remainder of the term.

(b) *Composition of the Board.* The Board shall be composed of 15 members and four alternates, as follows:

(1) *Domestic manufacturers.* Domestic manufacturers must reside in the United Stated. Ten members and two alternates shall represent domestic manufacturers who reside in the following three regions:

(i) Five members and one alternate shall represent manufacturers of softwood lumber in the U.S. South Region, which consists of the states of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Of these five members, two members must represent large, two members must represent small, and one member may represent domestic manufacturers of any size. The region's alternate may represent domestic manufacturers of any size;

(ii) Four members and one alternate shall represent manufacturers of softwood lumber in the U.S. West Region, which consists of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming. Of these four members, two members must represent large, one member must represent small, and one member may represent domestic manufacturers of any size. The region's alternate may represent domestic manufacturers of any size; and

(iii) One member shall represent manufacturers of softwood lumber in the Northeast and Lake States Region, which consists of the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Wisconsin and all other parts of the United States not listed in paragraph (b)(1)(i), (ii), or (iii) of this section. This member may represent domestic manufacturers of any size.

(2) *Importers.* Four members and one alternate shall represent importers. Of these four members, two members must represent large, one member must represent small, and one member may represent importers of any size. The alternate may represent importers of any size from any region. At least three of the members must import softwood lumber from the following regions:

(i) Two members must import softwood lumber from the Canadian West Region, which consists of the provinces of British Columbia and Alberta; and

(ii) One member must import softwood lumber from the Canadian East Region, which consists of the Canadian territories and all other Canadian provinces not listed in paragraph (b)(2)(i) of this section that import softwood lumber into the United States.

(3) *Public Member.* One member and one alternate of the Board shall represent the public. The public member and alternate may not be manufacturers for the U.S. market as defined in § 1217.14.

* * * * *

■ 4. Amend § 1217.41 by:
■ a. Revising paragraphs (b) and (c);
■ b. Redesignating paragraphs (e) through (g) as paragraphs (f) through (h), respectively;
■ c. Adding new paragraph (e); and
■ d. Revising redesignated paragraph (g).

The revisions and addition read as follows:

§ 1217.41 Nominations and appointments.

* * * * *

(b) Domestic manufacturers, importer, and public member nominees, for both member and alternate positions, may provide the Board a short background statement outlining their qualifications to serve on the Board;

(c) Domestic manufacturer, importer, public member and all alternate nominees may seek nomination to the Board for all open or vacant seats for which the nominees are eligible;

* * * * *

(e) Nominations for the public member shall be made by the Board. The Board shall submit the names of at least two nominees for the public member seat and at least two nominees for the public member alternate seat to the Secretary.

* * * * *

(g) No two members or alternates shall be employed by a single corporation, company, partnership, or any other legal entity. This includes subsidiaries and affiliates thereof; and

* * * * *

■ 5. Revise § 1217.42 to read as follows:

§ 1217.42 Term of office.

(a) Board members and alternates will serve a three-year term or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and end on December 31. No member or alternate may serve more than two consecutive terms, excluding any term of office less than three years. A Board member may serve as an alternate during the years he or she is ineligible to serve in a member position.

(b) For the initial Board alternates, their terms shall be staggered for two, three, and four years. Determination of which alternates shall serve a term of two, three, or four years shall be recommended to the Secretary by the Board.

■ 6. Revise § 1217.43 to read as follows:

§ 1217.43 Removal and vacancies.

(a) In the event that any member or alternate of the Board ceases to work for or be affiliated with the domestic manufacturer or importer, or ceases to do business in the group or region from which the member or alternate was appointed to the Board, such position shall automatically become vacant.

(b) The Board may recommend to the Secretary that a member or alternate be removed from office if the member or alternate consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member or alternate if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member or alternate may be removed by the Secretary upon showing of adequate cause, including the failure by a member or alternate to submit reports or remit assessments required under this part, if the Secretary determines that such member's or alternate's continued service would be detrimental to the achievement of the purposes of the Act.

(c) If a member position becomes vacant, the alternate member shall automatically assume the member position. The alternate shall serve until the end of the member's normal term. If there is no alternate member to assume the position of member, the successor member and alternate shall be nominated and selected following the process set forth in § 1217.41. A vacancy will not be required to be filled if the unexpired term is less than 6 months.

§§ 1217.44 through 1217.47 [Redesignated as §§ 1217.45 through 1217.48]

■ 7. Redesignate paragraphs §§ 1217.44 through 1217.47 as §§ 1217.45 through 1217.48, respectively.
■ 8. Add new § 1217.44 to read as follows:

§ 1217.44 Alternates.

An alternate member of the Board, during the absence of a member from the same group (domestic manufacturer, importer, or public member) and region

(as applicable) may serve in the place and stead of such member and perform such duties as assigned. In the event of the death, removal, resignation, or disqualification of any member, the alternate for that group and region shall automatically assume the position of said member. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate from a different group or region to serve in such member's or alternate's place and stead for the meeting.

■ 9. Revise redesignated § 1217.45 to read as follows:

§ 1217.45 Procedure.

(a) A majority of Board members (exclusive of vacant seats) will constitute a quorum so long as at least two of the members present are importer members and five of the members present are domestic manufacturers. An alternate will be counted for the purpose of determining a quorum only if a member from his or her group and region is absent or disqualified from participating. If participation by telephone or other means is permitted, members participating by such means shall count as present in determining quorum or other voting requirements set forth in this section.

(b) All votes at meetings of the Board, executive committee, and other committees will be cast in person or by electronic voting or other means as the Board and Secretary deem appropriate to allow members participating by telephone or other electronic means to cast votes. Voting by proxy will not be allowed.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a majority of Board members (exclusive of vacant seats), except for recommendations to change the assessment rate or to adopt a budget, both of which require affirmation by at least a majority of Board members plus two (exclusive of vacant seats).

(d) The Board must give its members, alternates, and the Secretary timely notice of all Board, executive committee, and other committee meetings.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members, alternates, and the Secretary are notified.

(2) Members and alternates acting in a member's stead are provided the opportunity to vote. A majority of Board members or alternates acting in the member's stead (exclusive of vacant seats) vote in favor of the action (unless a vote of a majority of Board members plus two (exclusive of vacant seats) is required under the Order); and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

■ 10. Revise redesignated § 1217.46 to read as follows:

§ 1217.46 Reimbursement and attendance.

Board members and alternates will serve without compensation, but will be reimbursed for reasonable travel expenses, as approved by the Board, which they incur when performing Board business.

■ 11. Revise redesignated § 1217.47 to read as follows:

§ 1217.47 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer this Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board and such rules, regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among its members a chairperson and, such other officers as may be necessary;

(d) To create an executive committee of five members of the Board comprised of the chairperson and four other members elected by the Board. The duties of the executive committee shall be specified in bylaws that are recommended by the Board and approved by the Secretary;

(e) To create other committees or subcommittees, which may include individuals other than Board members, as the Board deems necessary from its membership and other representatives it deems appropriate;

(f) To employ or contract with such persons, other than the members or alternates, as it may deem necessary to assist the Board in carrying out its duties, and to determine the compensation and define the duties of each;

(g) To notify manufacturers for the U.S. market of all Board meetings through press releases or other means and to give the Secretary the same notice of Board meetings, executive committee, and subcommittee meetings that is given to members and alternates in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary;

(h) To develop and administer programs, plans, and projects and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for promotion, research, and information, including consumer and industry information, research and advertising designed to strengthen the softwood lumber industry's position in the marketplace and to maintain, develop, and expand markets for softwood lumber. The payment of costs for such activities shall be with funds collected pursuant to the Order, including funds collected pursuant to§ 1217.50(f). Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget that specifies the cost to be incurred to carry out the activity;

(2) The contractor or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

(i) To prepare and submit to the Secretary for approval 60 calendar days in advance of the beginning of a fiscal period, rates of assessment and a budget of the anticipated expenses to be incurred in the administration of the Order, including the probable cost of each promotion, research, and information activity proposed to be developed or carried out by the Board;

(j) To borrow funds necessary for startup expenses of the Order;

(k) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;

(l) To recommend changes to the assessment rates as provided in this part;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and at such

other times as the Secretary may request, and to submit a report of each audit directly to the Secretary;

(n) To periodically prepare and make public and to make available to manufacturers for the U.S. market reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended;

(o) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it, and to submit to the Secretary such information pertaining to this part or subpart as he or she may request;

(p) To act as an intermediary between the Secretary and any manufacturer for the U.S. market;

(q) To receive, investigate and report to the Secretary complaints of violations of the Order; and

(r) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the purposes of the Act.

■ 12. Revise redesignated § 1217.48 to read as follows:

§ 1217.48 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof, other than recommending to the Secretary amendments to the Order; and

(c) No program, plan or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Softwood lumber of all geographic origins shall be treated equally.

■ 13. In § 1217.52, revise paragraph (h) to read as follows:

§ 1217.52 Assessments.

* * * * *

(h) The HTSUS categories and assessment rates on imported softwood lumber are listed in the following table. The assessment rates are computed using the following conversion factors: One cubic meter (m^3) equals 0.423776001 thousand board feet, and one square meter (m^2) equals 0.010763104 thousand board feet. Accordingly, the assessment rate per cubic meter and square meter is as follows.

TABLE 1 TO PARAGRAPH (h)

Softwood lumber (by HTSUS No.)	Assessment $/cubic meter	Assessment $/square meter
4407.11.00	0.1737	0.004412
4407.12.00	0.1737	0.004412
4407.13.00	0.1737	0.004412
4407.14.00	0.1737	0.004412
4407.19.00	0.1737	0.004412
4409.10.05	0.1737	0.004412
4409.10.10	0.1737	0.004412
4409.10.20	0.1737	0.004412
4409.10.90	0.1737	0.004412
4418.99.10	0.1737	0.004412

* * * * *

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–03372 Filed 2–20–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0233; Project Identifier MCAI–2023–01003–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A330–800 and A330–900 series airplanes. This proposed AD was prompted by a report of a protective cap found still in place on the drain hole of a fire extinguishing pipe, and by further investigations indicating these caps may have remained on other airplanes. This proposed AD would require a one-time general visual inspection (GVI) of the engine fire extinguishing pipe drain hole and, depending on findings, removal of the protective cap, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 8, 2024.

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

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0233; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2024–0233.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0233; Project Identifier MCAI–2023–01003–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0169, dated September 4, 2023 (EASA AD 2023–0169) (also referred to as the MCAI), to correct an unsafe condition for certain Airbus SAS Model A330–800 and A330–900 series airplanes. The MCAI states that a protective cap was found still in place on the drain hole of a fire extinguishing pipe. Further investigations indicated that this failure to remove those caps may have occurred on other airplanes. This condition, if not detected and corrected, could lead to accumulation of water and ice in the pipe and, in case of an engine fire, prevent extinguishing that engine fire, possibly resulting in reduced control of the airplane.

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

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0233.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0169 specifies procedures for a GVI of the engine fire extinguishing pipe drain hole and, if found, removal of the protective cap. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2023–0169 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2023–0169 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2023–0169 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0169 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0169. Service information required by EASA AD 2023–0169 for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0233 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 8 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$2,720

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD 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.

For the reasons discussed above, I certify this proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2024–0233; Project Identifier MCAI–2023–01003–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 8, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A330–841 and A330–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2023–0169, dated September 4, 2023 (EASA AD 2023–0169).

(d) Subject

Air Transport Association (ATA) of America Code 26, Fire Protection.

(e) Unsafe Condition

This AD was prompted by a report of a protective cap found still in place on the drain hole of a fire extinguishing pipe, and by further investigations indicating these caps may have remained on other airplanes. The FAA is issuing this AD to address protective caps possibly remaining in place on fire extinguishing pipes installed on the affected airplanes. The unsafe condition, if not addressed, could result in accumulation of water and ice in the pipe and, in case of an engine fire, prevent extinguishing that engine fire, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0169.

(h) Exceptions to EASA AD 2023–0169

(1) Where EASA AD 2023–0169 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0169.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2023–0169 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0169, dated September 4, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0169, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on February 14, 2024.

Victor Wicklund,

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

[FR Doc. 2024–03464 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 270

[Release No. IC–35129; File No. S7–2024–01]

RIN 3235–AN33

Qualifying Venture Capital Funds Inflation Adjustment

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: To implement the requirements of the Economic Growth,

Regulatory Relief, and Consumer Protection Act of 2018 (''EGRRCPA''), the Securities and Exchange Commission (''Commission'') is proposing a rule that would adjust for inflation the dollar threshold used in defining a ''qualifying venture capital fund'' under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The proposed rule also would allow the Commission to adjust for inflation this threshold amount by order every five years and specify how those adjustments would be determined.

DATES: Comments should be submitted on or before March 22, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–2024–01 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–2024–01. 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 of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

A summary of the proposal of not more than 100 words is posted on the Commission's website (*https://www.sec.gov/rules/2024/02/qvcf-inflation-adjustment*).

FOR FURTHER INFORMATION CONTACT: Michael Khalil, Senior Counsel, Brad Gude, Branch Chief, or Brian McLaughlin Johnson, Assistant Director, Investment Company Regulation Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 3(a) of the Investment Company Act defines the term ''investment company'' for purposes of the Act, and section 3(c)(1) provides certain exclusions from that definition.[1] Section 504 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (''EGRRCPA'') amended section 3(c)(1) of the Investment Company Act by excluding ''qualifying venture capital funds'' from the investment company definition.[2] Section 504 of EGRRCPA also added new Investment Company Act section 3(c)(1)(C), defining a ''qualifying venture capital fund'' as ''a venture capital fund that has not more than $10,000,000 in aggregate capital contributions and uncalled committed capital.'' [3] The statutory definition requires this $10,000,000 threshold ''be indexed for inflation once every 5 years by the Commission, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest $1,000,000.'' [4]

II. Discussion

Pursuant to section 3(c)(1)(C) of the Act and section 504 of EGRRCPA, we are proposing a new rule under the Investment Company Act, 17 CFR 270.3c–7 (''rule 3c–7''), that would update for inflation the dollar threshold for defining a qualifying venture capital fund under section 3(c)(1)(C) of the Act. Proposed rule 3c–7 would also provide that the Commission will subsequently issue orders every five years making future inflation adjustments to the definition of qualifying venture capital fund and specify how those adjustments would be determined.

A. Current Inflation-Adjusted Definition of Qualifying Venture Capital Fund

Proposed rule 3c–7(a) would state the current inflation-adjusted dollar threshold for purposes of defining a qualifying venture capital fund under section 3(c)(1)(C) of the Investment Company Act.[5] Pursuant to EGRRCPA,[6] proposed rule 3c–7(a) would use December 2023 as the current measurement date and adjust the current dollar threshold for determining a qualifying venture capital fund under section 3(c)(1)(C) of the Act to $12,000,000 or, following a date five years after the effective date of any final rule, the dollar amount specified in the most recent order issued by the Commission in accordance with the proposed rule and as published in the **Federal Register**.[7]

This revised dollar threshold would take into account the effects of inflation by reference to the historic and current levels of the Personal Consumption Expenditures Chain-Type Price Index (''PCE Index''),[8] which is published by the Department of Commerce.[9] The PCE Index is often used as an indicator of

[1] *See* 15 U.S.C. 80a–3(a) and 80a–3(c)(1).

[2] Public Law 115–174, section 504 (May 24, 2018); 15 U.S.C. 80a–3(c)(1). In order to meet this statutory exclusion, a qualifying venture capital fund's outstanding securities cannot be beneficially owned by more than 250 persons, and the fund must not be making, or presently proposing to make, a public offering of its securities. *Id.*

[3] Public Law 115–174, section 504 (May 24, 2018); 15 U.S.C. 80a–3(c)(1)(C)(i). For purposes of section 3(c)(1), a ''venture capital fund'' has the meaning given the term in 17 CFR 275.203(l)–1. 15 U.S.C. 80a–3(c)(1)(C)(i).

[4] *Id.*

[5] Proposed rule 3c–7's definition of qualifying venture capital fund is expressly limited to construing the term for purposes of section 3(c)(1) of the Act. Under 12 CFR 351.10, the term qualifying venture capital fund has a different meaning.

[6] Public Law 115–174, section 504 (May 24, 2018); 15 U.S.C. 80a–3(c)(1) (defining a ''qualifying venture capital fund'' as ''a venture capital fund that has not more than $10,000,000 in aggregate capital contributions and uncalled committed capital'' and requiring the Commission to adjust this dollar threshold for inflation once every 5 years, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest $1,000,000).

[7] Such orders would also be available on the Commission's website.

[8] The revised dollar threshold would reflect inflation as of Dec. 2023, and is rounded to the nearest $1,000,000 as required by section 3(c)(1)(C) of the Act. The Dec. 2023 PCE Index was 121.421, and the May 2018 PCE Index was 101.941. 121.421/101.941 × $10,000,000 = $11,910,909; $11,910,909 rounded to the nearest multiple of $1,000,000 = $12,000,0000.

[9] The values of the PCE Index are available from the Bureau of Economic Analysis, a bureau of the Department of Commerce. *See https://www.bea.gov.* The PCE Index measures the prices that people living in the United States, or those buying on their behalf, pay for goods and services. The PCE Index is known for capturing inflation (or deflation) across a wide range of consumer expenses and reflecting changes in consumer behavior. *See https://www.bea.gov/data/personal-consumption-expenditures-price-index.*

inflation in the personal sector of the U.S. economy.[10] Additionally, the Commission routinely has used the PCE Index in similar contexts in Commission rules and provisions of the federal securities laws.[11]

We are proposing to use the PCE Index to calculate inflation adjustments for this rulemaking because the methodology and scope of the PCE Index (which considers both urban and rural households and expenditures made on their behalf by third parties) reflects a broad sector of the U.S. economy.[12]

We also considered other inflation adjustment calculations. For example, the Commission has been required by statute to use the Consumer Price Index for all Urban Consumers (''CPI–U'') [13] to conduct certain inflation adjustments.[14] We calculated the rate of inflation between May 2018 and December 2023 using both PCE Index and CPI–U. While these indexes yielded slightly different rates of inflation for the measured time period,[15] after rounding to the nearest $1,000,000 as required by EGRRCPA, both indexes yielded an adjusted inflation threshold of $12,000,000, or an increase of $2,000,000.[16]

Notwithstanding that the PCE Index and CPI–U yield the same inflation adjustment for this time-period after the rounding required by EGRRCPA, we are proposing to use the PCE Index to calculate inflation adjustments for this rulemaking because the PCE Index reflects a broader scope of the U.S. economy and in light of the additional considerations discussed below in the Economic Analysis.

B. Future Inflation Adjustments to the Definition of Qualifying Venture Capital Fund

Proposed rule 3c–7(b) would provide a mechanism for future inflation adjustments. Specifically, the Commission would issue an order every five years adjusting for inflation the dollar threshold for qualifying venture capital funds for purposes of section 3(c)(1) of the Act.[17] Proposed rule 3c–7(b) would also specify the PCE Index (or any successor index thereto) as the inflation index used to calculate future inflation adjustment of the dollar threshold in the rule.[18] We are proposing to use the PCE Index for these updates for the same reasons we are proposing to use the PCE Index for the proposed initial adjustment.[19]

We request comment on proposed rule 3c–7.

(1) Is the proposed use of the PCE Index as a measure of inflation appropriate? Is there another index (such as the CPI–U) or other measure that would be more appropriate, and if so, why?

(2) The proposed rule would establish the original $10,000,000 threshold stated in EGRRCPA as the baseline for all future inflation adjustments, as a consistent denominator for all future calculations. Should we instead establish each future adjustment of the dollar amount as a new baseline for the next calculation of the threshold amount? If we were to adopt that approach, because EGRRCPA's amendments to section 3(c)(1)(C) of the Act requires that the revised threshold be rounded to the nearest $1,000,000, could the establishment of a new baseline at the rounded amount, each time the threshold is adjusted, result in the underestimation or overestimation of the effects of inflation in subsequent periods?

C. Effective Date

Because the rule would implement a required inflation adjustment to an existing statutory exclusion from regulation, we are not proposing a compliance period or extended effective date. Reliance on section 3(c)(1) is voluntary and a fund that newly met the definition of a qualifying venture capital fund under rule 3c–7 could choose whether to rely on the exclusion provided by section 3(c)(1) for such funds.

(3) Do commenters see a benefit to including a compliance period or extended effective date for this proposed rule? If so, please describe.

III. Economic Analysis

The Commission is sensitive to the economic effects that could result from proposed rule 3c–7. To comply with the inflation adjustment required under

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[10] *See* Clinton P. McCully, Brian C. Moyer & Kenneth J. Stewart, *Comparing the Consumer Price Index and the Personal Consumption Expenditures Price Index,* Survey of Current Bus., Nov. 2007, at 26 n.1 (PCE Index measures changes in ''prices paid for goods and services by the personal sector in the U.S. national income and product accounts'' and is primarily used for macroeconomic analysis and forecasting). *See also* Federal Reserve Board, Monetary Policy Report to the Congress, at n.1 (Feb. 17, 2000), *available at https://www.federalreserve.gov/boarddocs/hh/2000/february/ReportSection1.htm#FN1* (noting the reasons for using the PCE Index rather than the consumer price index).

[11] *See, e.g.,* Investment Adviser Performance Compensation, Investment Advisers Act Release No. 3372 (Feb. 15, 2012) [77 FR 10358, 10367 (Feb. 22, 2012)] (stating that the Commission had proposed and was adopting the PCE Index in relation to the definition of ''qualified clients'' because it is widely used as a broad indicator of inflation in the economy, and because the Commission has used it in other provisions of the federal securities laws); Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks, Securities Exchange Act Release No. 56501 (Sept. 24, 2007) [72 FR 56514 (Oct. 3, 2007)] (using PCE Index in adopting periodic inflation adjustments to the fixed-dollar thresholds for both ''institutional customers'' and ''high net worth customers'' under Rule 701 of Regulation R ''because it is a widely used and broad indicator of inflation in the U.S. economy''); *see also* Amendments to Form ADV, Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49234 (Aug. 12, 2010)] (using PCE Index in increasing for inflation the threshold amount for prepayment of advisory fees that triggers an adviser's duty to provide clients with an audited balance sheet and the dollar threshold triggering the exception to the delivery of brochures to advisory clients receiving only impersonal advice). The Dodd-Frank Act also requires the use of the PCE Index to calculate inflation adjustments for the cash limit protection of each investor under the Securities Investor Protection Act of 1970. *See* section 929H(a) of the Dodd-Frank Act, 15 U.S.C. 78fff–3.

[12] *See infra* section III.

[13] The CPI–U is the statistical metric developed by the U.S. Bureau of Labor Statistics to monitor the change in the price of a set list of products. The CPI–U represents changes in prices of all goods and services purchased for consumption by urban households. *See Consumer Price Index* available at *https://www.bls.gov/cpi* (last visited Feb. 7, 2024, 12:51 p.m.).

[14] *See, e.g.,* Inflation Adjustments and Other Technical Amendments Under Titles I and III of the Jobs Act, Securities Act Release No. 10332 (Mar. 31, 2017) [82 FR 17545 (Apr. 12, 2017)] (citing the Jumpstart Our Business Startups Act (''JOBS Act''), Public Law 112–106, 126 Stat. 306 (2012); Crowdfunding, Securities Act Release No. 9974 (Oct. 30, 2015) [80 FR 71387 (Nov. 16, 2015)] (citing the JOBS Act); 17 CFR 201.1001 (Adjustment of civil monetary penalties); Adjustments to Civil Monetary Penalty Amounts, Investment Company Act Release No. 22310 (Nov. 1, 1996) [61 FR 57773 (Nov. 8, 1996)] (citing the Debt Collection Improvement Act of 1996 (Pub. L. 104–134)).

[15] Inflation as measured by PCE Index was 19.11%, while inflation as measured by CPI–U was 23.15%. *See* footnote 8 (showing PCE Index calculation). The May 2018 PCE Index was 101.941 and the Dec. 2023 PCE Index was 121.421 $((121.421/101.941 - 1) \times 100 = 19.11\%)$. The May 2018 CPI–U was 250.792 and the Dec. 2023 CPI–U was 308.850 $((308.850/250.792 - 1) \times 100 = 23.15\%)$.

[16] Before conducting the mandated rounding to the nearest million, inflation as calculated according to the PCE Index would have resulted in an increase of $1.911 million (*i.e.,* a new $11,911,000 threshold), while inflation as calculated according to CPI–U would have resulted in an increase of $2.315 million (*i.e.,* a new $12,315,000 threshold).

[17] Proposed rule 3c–7 would provide that the Commission will issue an order effective on or about five years after the effective date of the rule, and approximately every five years thereafter, adjusting for inflation the dollar threshold necessary to be a qualifying venture capital fund for purposes of section 3(c)(1) of the Act.

[18] Proposed rule 3c–7 would provide that the dollar threshold for qualifying venture capital funds will be adjusted for inflation by (i) dividing the year-end value of the PCE Index for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of the PCE Index for the calendar year 2018, (ii) multiplying $10,000,000 (*i.e.,* the original 2018 statutory threshold for a qualifying venture capital fund) by that quotient, and (iii) rounding the product to the nearest multiple of $1,000,000.

[19] *See supra* footnotes 8–12 and accompanying text and *infra* section III.

EGRRCPA, we are proposing rule 3c–7 to state the current threshold for qualifying venture capital funds as indexed for inflation. This proposed rule would allow the Commission to adjust the current threshold in the definition of the term ''qualifying venture capital fund'' from $10,000,000 to $12,000,000 in response to inflation as measured by the PCE Index, and to perform future statutorily required inflation adjustments using the same methodology.

For purposes of analyzing the economic effects of the proposed rule, we use as our baseline the current venture capital fund market and the current regulatory framework. To be excepted from registration under section 3(c)(1), an issuer (including a venture capital fund) must, among other things, either have not more than 100 beneficial owners, or in the case of a qualifying venture capital fund, which currently is defined as having no more than $10,000,000 in aggregate capital contributions and uncalled committed capital, have no more than 250 beneficial owners.

An adviser to a venture capital fund that is either registered with the Commission or is an ''exempt reporting adviser'' is required to file reports on Form ADV.[20] Based on this data, there are at least 23,759 venture capital funds, of which at least 14,822 are qualifying venture capital funds as of December 2022.[21] Of the qualifying venture capital funds, 653 have more than 100 beneficial owners and so could not use the section 3(c)(1) exclusion absent meeting the current $10,000,000 asset threshold. Increasing the asset threshold in the definition of the term ''qualifying venture capital fund'' will increase the number of venture capital funds that can be qualifying venture capital funds. Specifically, we estimate that there are approximately three venture capital funds that are not currently excluded from registration under section 3(c)(1) but that could be defined as a qualifying venture capital fund if the threshold were adjusted for inflation to $12,000,000 as proposed.[22]

Incentives for funds to change their behaviors to stay within the regulatory definition of a ''qualifying venture capital fund'' would also strengthen or be mitigated depending on the specific circumstances of the fund. If the threshold is increased to $12,000,000, a fund near the current $10,000,000 threshold in aggregate capital contributions and uncalled capital commitments, and a number of beneficial owners above 100 but well below 250, would have additional room to raise capital while remaining a qualifying venture capital fund. Accordingly, it would have weaker incentives to prevent growth until its aggregate capital contributions and uncalled capital commitments approach the new threshold. Funds near an anticipated future adjusted threshold of aggregate capital contributions and uncalled capital commitments could have a greater incentive to maintain a balance below this future threshold and maintain fewer than 250 beneficial owners.

While the immediate impacts described above are likely to be meaningful for funds near the existing and future adjusted thresholds, the overall effect of the proposed rule on the venture capital fund market would be minimal; the inflation adjustment should maintain the scope of funds that can be defined as a qualifying venture capital fund, thereby preserving the economic effects associated with the original provision.

Relatively few funds would be directly impacted by the proposed change in the asset threshold. Accordingly, the proposed rule would not substantively impact efficiency, competition, or capital formation in the near term. In addition, over time, as future inflation adjustments are made, the proposed rule would preserve the costs and benefits associated with the original provision by maintaining a consistent threshold standard. At the margin, the proposed rule may encourage market competition by lowering barriers to entry for emerging venture capital managers. Specifically, it could lower compliance costs for eligible funds by exempting them from certain regulatory requirements such as registration as an investment company and make it easier for their managers to raise smaller amounts of capital from a larger number of accredited investors.

Absent the periodic inflation adjustments that the proposed rule would implement, the capital threshold for qualifying venture capital funds would, over time, shrink in real terms. This would either result in higher compliance costs for these types of funds—because these funds would be newly required to register under the Act—or cause the managers of these funds to change their strategies. For example, such funds may decide to merge with other funds to spread out any fixed costs from registration or stop operating these types of funds altogether. They may also choose to limit the number of investors to be under the conventional section 3(c)(1) limit of no more than 100 beneficial owners. Either of these shifts could limit the types of funds available for investment, especially to accredited investors with relatively fewer assets. For example, funds that merge or choose to rely on the conventional section 3(c)(1) limit could become more likely to seek larger investments from relatively fewer beneficial owners. It could also impact smaller firms' ability to raise capital since these firms disproportionately raise capital from smaller funds.[23] Whether managers changed their behavior or not, the number of qualifying venture capital funds would decrease absent the periodic inflation adjustment. At least some of the capital that would otherwise be allocated to these funds would likely go to funds that are not excluded from the Act and thus would

[20] An adviser to a venture capital fund may or may not be required to register with the Commission depending on its specific facts and circumstances including the adviser's total regulatory assets under management, the state of its principal office, and whether it solely manages private funds or venture capital funds. Many of the advisers to qualifying venture capital funds are ''exempt reporting advisers.'' *See, e.g.,* Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets Under Management, and Foreign Private Advisers, Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39645 (July 6, 2011)], at n.20 and accompanying text. Exempt reporting advisers are not subject to the investment adviser registration requirements under the Advisers Act. They are, however, subject to certain other requirements under the Advisers Act and its rules that also apply to registered advisers, including the requirement to file reports on Form ADV and the Advisers Act's antifraud provisions. *See* 17 U.S.C. 80b–3(l).

[21] Based on Form ADV data between Jan. 1, 2022 and Dec. 31, 2022. These estimates encompass all private funds reported on Form ADV that advisers indicated are venture capital funds. The estimate of qualifying venture capital funds includes only these funds that qualify for the exclusion from the definition of investment company under section 3(c)(1) of the Act, have no more than 250 beneficial owners, and report gross assets of no more than $10,000,000. These numbers somewhat underestimate the total number of relevant funds. First, gross assets may include assets that are not considered aggregate capital contributions or uncalled capital commitments. Second, with certain exceptions, advisers with less than $25 million in regulatory assets under management are prohibited from registering with the Commission and must instead register with state regulators, with certain exceptions. Some states require these advisers to file Form ADV under state registration, while other states do not. Accordingly, these estimates do not capture funds managed by advisers registered in states that do not require filing Form ADV.

[22] This estimate is based on the number of venture capital funds reported on Form ADV between Jan. 1, 2022 and Dec. 31, 2022, that have gross asset value between $10,000,000 and $12,000,000, between 100 and 250 beneficial owners, and currently do not qualify for an exception under section 3(c)(1).

[23] *See, e.g.,* Mark Humphery-Jenner, *Private Equity Fund Size, Investment Size, and Value Creation,* 16 Rev. Fin. 799 (2012). In Table IV, the authors find a correlation between the natural logarithm of private equity fund size and the natural logarithm of investment size of 0.56.

receive the investor protection benefits provided by the Act.

Because the proposed rule would implement the statutory inflation adjustments mandated by EGRRCPA, the only reasonable alternative to be considered relates to the choice of inflation index to be used. As discussed above, two indexes were considered—the PCE Index and CPI–U. These measures differ because of different scopes and different methodologies. CPI–U reflects only expenditures made directly by urban households, whereas the PCE Index considers both urban and rural households and considers expenditures made on their behalf by third parties, such as employer-paid health insurance. The PCE Index also better captures substitution effects since its category weights update quarterly whereas those of the CPI–U update annually. Category weights reflect the quantity of goods and services purchased in a particular category. As some determinants of prices change, consumers will substitute purchases between categories. Category weights that change less frequently will less accurately capture these substitution effects. The indexes' survey methodologies also differ: CPI–U relies on two voluntary consumer surveys whereas the PCE Index incorporates multiple surveys of businesses, some of which are government mandated and carry fines for nonresponse. The scope of the PCE Index, covering all American households, is more relevant to the affected parties of this proposed rule than is the scope of the CPI–U, which only reflects urban households.

We request comment on all aspects of the economic analysis of proposed rule 3c–7. To the extent possible, we request that commenters provide supporting data and analysis. In particular, we ask commenters to consider the following questions:

(4) The proposed rule would require that the PCE Index or its successor index be used to perform future inflation adjustments. Are there additional factors beyond those discussed in this release that should be considered regarding which index to use for these adjustments?

(5) We estimate that three of the funds reported on Form ADV would be directly impacted by the proposed change in threshold. This is the number of reported venture capital funds that have gross asset value between $10,000,000 and $12,000,000, between 100 and 250 beneficial owners, and currently do not qualify for an exception under section 3(c)(1). Does this estimate capture the likely number of directly affected funds? How could this estimate be improved?

(6) Are the costs and benefits of the proposed rule accurately characterized?

(7) Are the effects on competition, efficiency, and capital formation arising from the proposed rule accurately characterized?

IV. Paperwork Reduction Act

Proposed rule 3c–7 does not contain a ''collection of information'' requirement within the meaning of the Paperwork Reduction Act of 1995 (''PRA'') nor would it create any new filing, reporting, recordkeeping, or disclosure reporting requirements.[24] Accordingly, the PRA is not applicable and we are not submitting the proposed rule to the Office of Management and Budget for review under the PRA.[25] We request comment on whether our conclusion that there is no collection of information is correct.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (''RFA'') requires the Commission, when issuing a rulemaking proposal, to prepare and make available for public comment an initial regulatory flexibility analysis (''IRFA'') that describes the impact of the proposed rule on small entities,[26] unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[27] Pursuant to 5 U.S.C. 605(b), we hereby certify that proposed new rule 3c–7 under the Investment Company Act would not, if adopted, have a significant economic impact on a substantial number of small entities. We are proposing new rule 3c–7 pursuant to the authority set forth in the Investment Company Act, particularly sections 3 and 38 thereof [15 U.S.C. 80a *et seq.*], and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, particularly section 504 [Pub. L. 115–174, 132 Stat. 1296]. Generally, for purposes of the Investment Company Act and the RFA, an investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[28]

To qualify for a section 3(c)(1) exclusion, an issuer must (among other things) have no more than 100 beneficial owners, or in the case of a qualifying venture capital fund, no more than 250 beneficial owners.[29] Based on Form ADV filings, as of December 2022, there were at least 14,822 funds that had met the definition of a qualifying venture capital fund.[30] Of those funds, approximately 653 had between 100 and 250 beneficial owners, such that they would have had to rely on meeting the definition of a qualifying venture capital fund in order to qualify for a section 3(c)(1) exclusion. A review of Form ADV filings also suggest that there are approximately three venture capital funds that are not currently relying on the exclusion in section 3(c)(1) but that have between $10,0000 and $12,000,000 in aggregate capital contributions and uncalled committed capital, and between 100 and 250 beneficial owners, such that they could meet the definition of a qualifying venture capital fund under proposed rule 3c–7.[31] We do not believe that three out of 653 total venture capital funds with between 100 and 250 beneficial owners represent a ''substantial number'' of small entities. For these reasons, the Commission believes that proposed rule 3c–7 would not, if adopted, have a significant economic impact on a substantial number of small entities.

The Commission encourages written comments on the certification. We solicit comment as to whether the proposed rule could have an effect on small entities that has not been considered. We ask that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[32] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposal would be a ''major rule'' for

[24] 44 U.S.C. 3502(3).

[25] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[26] 5 U.S.C. 603(a).

[27] 5 U.S.C. 605(b).

[28] 17 CFR 270.0–10(a).

[29] 15 U.S.C. 80a–3(c)(1).

[30] *See supra* footnote 21.

[31] *See supra* footnote 22.

[32] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Statutory Authority

The new rule contained in this release is being proposed under the authority set forth in the Investment Company Act, particularly sections 3 and 38 thereof [15 U.S.C. 80a *et seq.*] and the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018, particularly section 504 thereof [115 Pub. L. 174, 132 Stat. 1296].

List of Subjects in 17 CFR Part 270

Investment companies, Securities.

For reasons set forth in the preamble, we are proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

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

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 270.3c–7 is added to read as follows:

§ 270.3c–7 Inflation-adjusted definition of qualifying venture capital fund.

(a) *Inflation-adjusted definition of qualifying venture capital fund.* For purposes of section 3(c)(1)(C)(i) of the Act (15 U.S.C. 80a–3(c)(1)(C)(i)), the term *qualifying venture capital fund* means a venture capital fund (as that term is defined in 17 CFR 275.203(1)–1 or any successor regulation) that has not more than $12,000,000 in aggregate capital contributions and uncalled committed capital, or, following [DATE FIVE YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the dollar amount specified in the most recent order issued by the Commission in accordance with paragraph (b) of this section and as published in the **Federal Register**.

(b) *Future inflation adjustments.* Pursuant to section 3(c)(1)(C)(i) of the Act (15 U.S.C. 80a–3(c)(1)(C)(i)), the dollar amount specified in paragraph (a) of this section shall be adjusted by order of the Commission, issued on or about [DATE FIVE YEARS AFTER EFFECTIVE DATE OF FINAL RULE] and approximately every five years thereafter. The adjusted dollar amount established in such orders shall be computed by:

(1) Dividing the year-end value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the United States Department of Commerce, for the calendar year preceding the calendar year in which the order is being issued, by the year-end value of such index (or successor) for the calendar year 2018; and

(2) Multiplying $10,000,000 times the quotient obtained in paragraph (b)(1) of this section and rounding the product to the nearest multiple of $1,000,000.

By the Commission.

Dated: February 14, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–03436 Filed 2–20–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 924

[Docket No. FHWA–2023–0045]

RIN 2125–AG07

Highway Safety Improvement Program

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice of proposed rulemaking (NPRM) is to update the Highway Safety Improvement Program (HSIP) regulations to address provisions in the Infrastructure Investment and Jobs Act (IIJA) (also known as the ''Bipartisan Infrastructure Law'' (BIL)) and reflect current priorities and state-of-practice. Specifically, FHWA proposes to amend the regulatory language to incorporate the Safe System Approach, clarify the scope of the HSIP to focus on the safety of all road users on the entire public road network, improve evaluation practices, streamline reporting efforts, and ensure States are collecting Model Inventory of Roadway Elements (MIRE) fundamental data elements. The proposed changes would clarify provisions regarding the planning, implementation, evaluation, and reporting of HSIPs that are administered in each State. These changes would further strengthen and advance the safety and equity priorities of the DOT National Roadway Safety Strategy (NRSS) and assist States with making safety gains designed to eliminate fatalities and serious injuries on the Nation's roads.

DATES: Comments must be received on or before April 22, 2024.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, 1200 New Jersey Avenue SE, Washington, DC 20590, or submit electronically at *www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Scurry, Office of Safety, (202) 897–7168, *karen.scurry@dot.gov;* or Mr. David Serody, Office of the Chief Counsel, (202) 366–4241, *david.serody@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or access all comments received by the DOT online through: *www.regulations.gov.* Electronic submission and retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from the **Federal Register**'s home page at: *www.federalregister.gov.*

Executive Summary

I. Purpose of the Regulatory Action

The FHWA proposes to update the HSIP regulations to reflect the changes to HSIP made in BIL (Pub. L. 117–58), further strengthen and advance the Department's safety and equity priorities consistent with the NRSS,[1] and assist States with making safety gains designed to eliminate fatalities and serious injuries on the Nation's roads. The Department recognizes that the current status of traffic fatalities in the United States is unacceptable [2] and has adopted the Safe System Approach as the guiding paradigm to address roadway safety and achieve the goal of zero roadway fatalities and serious injuries in the NRSS.

The Safe System Approach is a worldwide movement that has been in place for more than 30 years. The Safe System Approach requires a paradigm shift in how road safety is addressed for all users. Whereas traditional road safety strives to modify human behavior and prevent all crashes, the Safe System Approach refocuses transportation system design and operation on anticipating human mistakes and lessening impact forces on the human body to reduce crash severity and save lives. It is based on a shared responsibility and emphasizes that all stakeholders have a role to play in ensuring that crashes do not lead to fatal or serious injuries.

The HSIP is a key place to integrate the Safe System Approach as it sets the funding and policy tone for national roadway safety implementation efforts. Therefore, FHWA proposes updates to the HSIP regulation to include regulatory language to incorporate the Safe System Approach. The proposed changes are based on the opportunities identified in the NRSS and informational report on Integrating the Safe System Approach with the HSIP.[3]

II. Summary of the Major Provisions of the Regulatory Action in Question

The purpose of this NPRM is to update the HSIP regulations to incorporate the Safe System Approach, clarify the scope of the HSIP to focus on the safety of all road users on the entire public road network, improve evaluation practices, streamline reporting efforts, and ensure States are collecting MIRE fundamental data elements. Specifically, this rulemaking proposes to amend FHWA's regulations to incorporate the Safe System Approach by revising the policy of the HSIP regulation to focus on advancing a Safe System Approach in support of the long-term goal to eliminate fatalities and serious injuries, emphasize how a State's Strategic Highway Safety Plan (SHSP) can support a Safe System Approach, clarify that a State's SHSP must include a vulnerable road user safety assessment in accordance with 23 U.S.C. 148(l), and require each State to conduct a systemwide safety risk assessment as part of its HSIP data analysis process. This rulemaking also proposes to clarify throughout the regulation that the HSIP applies to all public roads and for all road users and ensure a State's HSIP process meet legislative requirements, including those added by BIL. The FHWA also proposes to improve HSIP evaluation practices by requiring each State to establish a process to evaluate the effectiveness of data improvement activities for MIRE fundamental data elements and clarifying that HSIP evaluation shall include individual project evaluations, countermeasure evaluations, and program evaluations. To streamline HSIP reporting efforts, FHWA proposes to update the required content of the annual HSIP report to minimize duplication and focus on progress implementing highway safety improvement projects and the effectiveness of those projects. Finally, to ensure States are collecting the required MIRE fundamental data elements, FHWA proposes to require each State to submit MIRE fundamental data elements as part of their regular Highway Performance Monitoring System submittal beginning in 2026.

III. Costs and Benefits

In accordance with Executive Order (E.O.) 12866, Office of Management and Budget (OMB) guidance, and DOT guidance, FHWA evaluated this proposed rule for quantifiable costs, cost savings, and benefits. The FHWA anticipates increased data collection and reporting requirements will impose additional burden on State departments of transportation (States) as well as additional review burden by FHWA. The FHWA anticipates that cost savings to FHWA and States will result from changing the focus of the HSIP report.

In accordance with OMB guidance, FHWA estimated the costs and cost savings over a 10-year analysis period using both a 7 percent and a 3 percent discount rate.[4] For the 10-year period from 2024 through 2033, FHWA estimated the costs of the proposed rule at $64.9 million, or $9.2 million on an annual basis, measured in 2022 dollars and using a 7 percent discount rate. If a 3 percent discount rate is used these costs are estimated at $70.3 million for the same 10-year period, or $8.2 million on an annual basis, measured in 2022 dollars. The FHWA also expects the proposed rule to have some cost savings. For the 10-year period from 2024 through 2033, FHWA estimated the cost savings of the proposed rule at $227,442, or $32,383 on an annual basis using a 7 percent discount rate. If a 3 percent discount rate is used, these cost savings are estimated at $276,230 for the same 10-year period, or $32,383 on an annual basis.

Changes resulting from the proposed rule are expected to advance the purpose of the HSIP by increasing safety and resulting in fewer traffic-related injuries and fatalities. In accordance with OMB guidance, FHWA follows a break-even analysis approach to calculate the number of lives that need to be saved in each year for the benefits of the proposed rule to outweigh the costs. The break-even analysis concludes that a single life saved annually justifies the proposed rule.

A supporting analysis and a spreadsheet in the rulemaking docket (FHWA–2023–0045) contain additional details. The FHWA requests data and comments that could inform the economic analysis for this rulemaking, including any estimates of resulting benefits.

Background and Legal Authority

In 2020, an average of approximately 106 people lost their lives on roads in the U.S. every day.[5] From 2011 to 2020, traffic fatalities in the U.S. increased by 20 percent nationally, representing the highest number of fatalities since 2007.[6] At the same time, the number of non-motorist (pedestrians, pedalcyclists, and others) fatalities increased by 44 percent from 2011 to 2020.[7] The number of people dying on U.S. roads is

[1] National Roadway Safety Strategy | U.S. Department of Transportation *https://www.transportation.gov/NRSS.*

[2] *USDOT Releases New Data Showing That Road Fatalities Spiked in First Half of 2021 | NHTSA.*

[3] *Integrating The Safe System Approach With The Highway Safety Improvement Program: An Informational Report (dot.gov)* FHWA–SA–20–018.

[4] Office of Management and Budget. *Circular A–4, Regulatory Analysis.* 68 FR 58366, October 9, 2003.

[5] National Highway Traffic Safety Administration (NHTSA), Fatality Analysis Reporting System (FARS) database, (2020 data based on FARS data publication, 1st release.) *https://www-fars.nhtsa.dot.gov/Main/index.aspx.*

[6] NHTSA, Overview of Motor Vehicle Crashes in 2020. (2022, March). DOT HS 813 266 *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813266.*

[7] NHTSA, FARS database, (2020 data based on FARS data publication, 1st release.) *https://www-fars.nhtsa.dot.gov/Main/index.aspx.*

unacceptable. Through collective action from all roadway system stakeholders—from system managers and vehicle manufacturers to law enforcement and everyday users—we can move to a Safe System Approach that helps to anticipate human mistakes and keeps impact energy on the human body to tolerable levels, with the goal of eliminating fatalities and serious injuries for all road users.

The Safe System Approach is a worldwide movement that has been in place for more than 30 years, and it involves a paradigm shift in how road safety is addressed. Whereas traditional road safety strives to modify human behavior and prevent all crashes, the Safe System Approach refocuses transportation system design and operation on anticipating human mistakes and lessening impact forces on the human body to reduce crash severity and save lives. It is based on a shared responsibility and emphasizes that all stakeholders have a role to play in ensuring that crashes do not lead to fatal or serious injuries. In line with DOT's and FHWA's top priority of safety, DOT and FHWA fully support the vision of zero deaths and serious injuries on the Nation's roadway system and have adopted the Safe System Approach as part of the NRSS. Implementing the Safe System Approach requires evaluating the current state-of-practice, evolving the approach for consistency, and institutionalizing the paradigm shift. The HSIP, which sets the funding and policy tone for national roadway safety implementation efforts, is a key place to start.

The HSIP is a core Federal-aid highway program with the purpose of achieving a significant reduction in fatalities and serious injuries on all public roads. *See* 23 U.S.C. 148(b)(2). The HSIP requires a data-driven strategic approach to improving highway safety on all public roads that focuses on performance. *See* 23 U.S.C. 148(c). The FHWA proposes to update the HSIP regulations to address provisions in BIL and reflect current priorities and state-of-practice. Specifically, FHWA proposes to incorporate the Safe System Approach, clarify the scope of a State's HSIP to focus on the safety of all road users on the entire public road network in support of the long-term goal to eliminate fatalities and serious injuries, include the vulnerable road user assessment as part of the State SHSP, improve evaluation practices, streamline reporting efforts, and ensure States are collecting MIRE fundamental data elements.

The FHWA's authority to administer the HSIP is provided in 23 U.S.C. 148. In addition, 23 U.S.C. 130 provides authority to fund the elimination of hazards of railway-highway crossings, and 23 U.S.C. 150 directs FHWA to establish performance measures and standards to ensure the effective administration of the Federal-aid highway program, including the HSIP. Section 150 of title 23, U.S.C., also requires each State to set and report on performance targets in relation to the performance measures developed by FHWA.

Section-by-Section Analysis

The proposed regulatory text follows the same format and section titles currently in 23 CFR part 924. The FHWA proposes changes in each section as follows.

Section 924.1 Purpose

The FHWA proposes to revise § 924.1 to state that the purpose of the regulation is to set forth requirements for the planning (instead of development) of a HSIP, as well as the requirements for the reporting of the HSIP in each State for consistency with the existing structure of the regulation.

Section 924.3 Definitions

The FHWA proposes to revise five definitions to provide clarity or consistency for each as related to the regulation.

The FHWA proposes to revise the definition for the term ''Highway Safety Improvement Program (HSIP),'' as used in part 924, to clarify that the purpose of the program is to significantly reduce fatalities and serious injuries, consistent with the statutory purpose of the program. *See* 23 U.S.C. 148(b)(2). The FHWA also proposes revisions to the HSIP definition to emphasize that these significant reductions should be continuous and that the program supports the long-term goal to eliminate such fatalities and serious injuries, consistent with the Safe System Approach principle that any deaths and serious injuries on public roads are unacceptable. States carry out the HSIP's purpose by funding projects each year that advance safety. The FHWA believes it is important to encourage States to continue to seek reductions in traffic fatalities and serious injuries year after year, which will support the ultimate goal of having zero fatalities and serious injuries.

To be clear, FHWA is not requiring that States eliminate all roadway fatalities and serious injuries, nor is FHWA proposing to hold States accountable for not eliminating all roadway fatalities and serious injuries. Instead, FHWA is emphasizing that achieving the national goal of a significant reduction in traffic fatalities and serious injuries on all public roads, which is the purpose of the HSIP, is ultimately a goal of reducing the incidence of fatalities and serious injuries to zero.

The FHWA also proposes to clarify that, consistent with 23 U.S.C. 148, the HSIP applies to all road users, in addition to all public roads. The existing regulation says this in some places but not all.

The FHWA proposes to revise the definition of ''highway safety improvement project'' to clarify that a highway safety improvement project includes strategies, activities or projects for all road users. While the definition of ''highway safety improvement project'' in 23 U.S.C. 148(a)(4) does not mention ''all road users,'' it does require that all highway safety improvement projects correct or improve a hazardous road location or feature or address a highway safety problem. The FHWA believes that hazardous roadway location and features and highway safety problems may impact the safety of any road user and, therefore, to achieve HSIP's purpose of significantly reducing fatalities and serious injuries, all road users need to be considered in the implementation of highway safety improvement projects.

The FHWA also proposes to revise this definition to ensure that highway safety improvement projects advance a Safe System Approach. The FHWA views the Safe System Approach, as defined further below, as a means to ensure that highway safety improvement projects correct or improve a high-risk road location or feature or address a highway safety need. *See* 23 U.S.C. 148(a)(4)(A).

After consultation with States, FHWA also proposes minor technical edits to the definition to replace ''hazardous'' with ''high risk'' and ''safety problem'' with ''safety need''. Lastly, FHWA proposes to clarify that highway safety improvement projects include one or more of the projects listed in 23 U.S.C. 148(a)(4)(B). Section 148(e)(3)(C)(i) of title 23, U.S.C., requires ''specified safety projects,'' which are defined in 23 U.S.C. 148(a)(11), to meet all requirements under 23 U.S.C. 148 that apply to highway safety improvement projects. For clarity, when the term highway safety improvement project is used in this regulation, it refers to both highway safety improvement projects under 23 U.S.C. 148(a)(4) and specified safety projects under 23 U.S.C.

148(a)(11) as the same requirements apply to both.

The FHWA proposes to revise the definition of ''railway-highway crossing protective device'' to replace ''track circuit improvements'' in the current regulation with ''track circuitry.'' The current regulations suggest that ''track circuit improvements'' are an example of a system component associated with traffic control devices. The FHWA is making this revision to make clear that the component associated with traffic control devices is the track circuitry itself.

The FHWA proposes to revise the definition of ''safety data'' to clarify that it also applies to all road users, as reducing traffic fatalities and serious injuries through the use of safety data requires a consideration of all affected road users. The FHWA also proposes to clarify that safety data also includes crash and exposure data for non-motorized users consistent with 23 U.S.C. 148(c)(2)(A)(vi), which requires States to improve the collection of data on non-motorized crashes as part of their HSIP.

The FHWA proposes to revise the definition of ''safety stakeholder'' to include representatives from public health agencies and underserved communities. The FHWA proposes to include public health agencies to emphasize that road traffic crashes are not only a traffic safety problem, but also a public health problem. In the U.S., motor vehicle crashes are a leading cause of death, and kill approximately 106 people every day. Public health agencies have implemented various injury prevention programs and initiatives and their input would add value to the SHSP update process. The FHWA also proposes to include representatives from underserved communities to ensure that the needs of all road users are represented in the planning, implementation, and evaluation of the HSIP, where appropriate. As described in the *National Roadway Safety Strategy,* underserved communities such as racial minorities and communities with higher poverty rates suffer from disproportionately higher rates of roadway fatalities compared to the overall population.[8] Including members of underserved communities within the definition of safety stakeholder aligns with the statutory requirements regarding the SHSP, including the requirements that it consider high-fatality segments of public roads and describe a program of strategies to reduce or eliminate safety hazards. *See* 23 U.S.C. 148(a)(13)(D) and (a)(13)(F).

The FHWA further proposes to add seven new definitions of terms used in the revised regulation.

The FHWA proposes to add a definition for the term ''non-motorized user'' because it is used in several places throughout the existing regulation. The proposed definition is synonymous with the definition of ''vulnerable road user'' that was added by BIL at 23 U.S.C. 148(a)(15), which includes the types of road users described by the definitions for ''number of non-motorized fatalities'' and ''number of non-motorized serious injuries'' in 23 CFR 490.205, *i.e.,* pedestrian, bicyclist, other cyclist, or person on personal conveyance.

The FHWA proposes to add a definition for the term ''road user'' because it would be used more frequently in the proposed updates to the regulation. The term ''road user'' is defined in 23 U.S.C. 148(a)(8) as ''a motorist, passenger, public transportation operator or user, truck driver, bicyclist, motorcyclist, or pedestrian, including a person with disabilities.'' The definition proposed for inclusion in § 924.3 substitutes the words ''non-motorized user'' for ''pedestrian'' and ''bicyclist'' because ''non-motorized user,'' as defined in this NPRM, is more inclusive of the full range of people who use the Nation's roads. The FHWA does not view the definition of ''road user'' in 23 U.S.C. 148(a)(8) as limiting the type of road users who the HSIP is supposed to benefit to the listed groups. Such an interpretation would mean that a program whose purpose is to achieve a significant reduction in traffic fatalities and serious injuries on all public roads would not necessarily consider certain types of individuals who may be involved in traffic fatalities and serious injuries. Instead, for the purpose of this regulation, FHWA is interpreting ''bicyclist'' and ''pedestrian'' as used in 23 U.S.C. 148(a)(8) as referring generally to ''non-motorized users.'' This interpretation will include non-motorized users, such as users of micromobility devices, who may not be considered ''bicyclists'' or ''pedestrians'' under strict readings of those terms but who are equally affected by highway safety problems. In addition, as noted above, BIL added the term ''vulnerable road user'' to 23 U.S.C. 148(a), and the proposed rule also uses the term ''non-motorized user'' synonymously with ''vulnerable road user.'' The FHWA believes that it is appropriate to interpret the statute's reference to ''pedestrian'' and ''bicyclist'' in 23 U.S.C. 148(a)(8) to include the full range of non-motorized road users because the definition of ''road user'' at 23 U.S.C. 148(a)(8) necessarily encompasses ''vulnerable road user,'' which includes pedestrians, bicyclists, and other non-motorized users.

The FHWA proposes to add a definition for the term ''Safe System Approach.'' As discussed above, the Safe System Approach aims to eliminate fatal and serious injuries for all road users through a holistic view of the road system that first, anticipates human mistakes and second, keeps impact energy on the human body at tolerable levels. Adopting the Safe System Approach provides a substantial opportunity to eliminate deaths and serious injuries on the Nation's roads and achieve the purpose of the HSIP. As stated in 23 U.S.C. 148(b)(2), the purpose of the HSIP is to ''achieve a significant reduction in traffic fatalities and serious injuries on all public roads,'' which, if successfully implemented over time, should lead to the elimination of fatalities and serious injuries on all public roads.

The FHWA believes that the Safe System Approach, as defined in the proposed rule, is a data-driven, holistic approach to safety that best achieves the HSIP's purpose. The FHWA's proposed definition aligns with the usage of that term in the NRSS, which describes an existing and widely understood approach to safety, rather than the definition of ''Safe System approach'' in 23 U.S.C. 148(a)(9), which refers to a type of roadway design for the purpose of the Vulnerable Road User Safety Assessment. The proposed definition of ''Safe System Approach'' in § 924.3, however, is not inconsistent with and would not impact the definition of ''Safe System approach'' in 23 U.S.C. 148(a)(9) for the purposes of conducting a Vulnerable Road User Safety Assessment.

Because FHWA is proposing to revise the definition of ''highway safety improvement project'' to include specified safety projects, FHWA proposes to add a definition for the term ''specified safety project,'' which would have the same meaning as that term is defined in 23 U.S.C. 148(a)(11).

The FHWA proposes to add a definition for the term ''systemwide safety risk assessment.'' This term would be incorporated into this regulation, as described in proposed changes to § 924.9. For the purposes of this regulation, the term *systemwide safety risk assessment* means a framework to assign risk ratings to all public roads considering primarily roadway characteristics, and other

[8] National Roadway Safety Strategy, p. 7.

safety data and analysis results, as appropriate. The risk ratings shall classify all sections of the roadway network in no fewer than three categories according to their level of safety. The FHWA believes that a classification framework with at least three levels of safety is needed to provide a meaningful way for States to distinguish between different safety levels to support prioritization of projects that best improve safety. Such a framework is consistent with the requirements in 23 U.S.C. 148(c)(2)(B)(iv)–(v) that States have in place a safety data system that allows for the identification of highway safety improvement projects on the basis of crash experience, crash potential, crash rate, or other data-supported means so a State can consider which projects maximize opportunities to advance safety. It is also consistent with the requirements for the SHSP in 23 U.S.C. 148(a)(13)(B) to analyze and make effective use of State, regional, local, or Tribal safety data and section 148(a)(13)(D) to consider the safety needs of, and high-fatality segments of, all public roads. This classification framework may be as simple as high-medium-low, indicating the risk for potential future crashes, or a star rating system similar to the Roadway Safety Foundation's United States Road Assessment Program (usRAP),[9] which uses a 5-star rating scale for roads, with 1-star indicating the highest risk. The FHWA welcomes feedback on the appropriate number of categories for the risk ratings.

The FHWA proposes to add a definition for the term ''underserved communities'' to emphasize the importance of equity in the HSIP. As discussed above and explained in the NRSS, underserved communities face disproportionate safety impacts. Eliminating traffic fatalities and serious injuries therefore requires a commitment to considering equity. The definition of ''underserved community'' is consistent with how that term is defined in E.O. 13985, ''Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.'' [10]

The FHWA proposes to add the term ''vulnerable road user safety assessment,'' which adopts the definition of that term in 23 U.S.C. 148(a)(16). This is a new requirement under BIL and would be incorporated into this regulation in proposed changes to § 924.9.

The FHWA proposes to retain all other definitions unchanged.

Section 924.5 Policy

The FHWA proposes to revise paragraph 924.5(a) to state that ''Each State shall plan [instead of develop], implement, evaluate, as well as report. . .'' to mirror the structure of 23 CFR 924.9 through 924.15. The FHWA also proposes to require States to advance a Safe System Approach as part of the State's HSIP. The adoption of a Safe System Approach in State HSIPs supports the Department's NRSS key action to improve State strategic highway safety plans and ensure that State safety performance targets demonstrate constant or improved performance for each safety performance measure.[11] The FHWA views the Safe System Approach as the optimal approach to safety that can guide how States view safety throughout the HSIP.

In addition, FHWA proposes to revise the policy statement under paragraph (a) to emphasize that the objective of the State's HSIP supports the long-term goal to eliminate fatalities and serious injuries. The FHWA also proposes, for the reasons explained above, to clarify that the HSIP applies to all road users in addition to all public roads.

The FHWA proposes to revise paragraph (b) to clarify that HSIP funds shall be used, rather than should be used, to maximize opportunities to advance highway safety improvement projects that have the greatest potential to reduce the State's roadway fatalities and serious injuries. Under 23 U.S.C. 148(c)(2)(B)(v), States must consider which projects maximize opportunities to advance safety. At the same time, under 23 U.S.C. 148(c)(2)(C)(ii), States must adopt strategic and performance-based goals that focus resources on areas of greatest need. The FHWA interprets these provisions in unison as requiring States to focus resources on projects that maximize opportunities to advance safety.

In paragraph (c), FHWA proposes minor technical edits to the first sentence to clarify that the policy statement in this paragraph, which elaborates on the statement in 23 U.S.C. 148(e)(2)(B), applies to any other Federal-aid program and updates the title of the Surface Transportation Block Grant Program for consistency with the name used in current legislation.

The FHWA proposes a minor technical edit to paragraph (d) to clarify that Tribal and local jurisdictions are distinct categories of governmental entities.

Section 924.7 Program Structure

The FHWA proposes to redesignate existing paragraph 924.7(b) as paragraph (c) and inserting a new paragraph (b) that would clarify the relationship between the safety performance targets and performance-based goals in the SHSP. Specifically, the safety performance targets must align with and support the SHSP performance-based goals, as is currently required in 23 CFR 490.209(a).

In paragraph (c) (as redesignated), besides a minor technical edit, FHWA proposes to clarify in the first sentence that a State's HSIP must apply to all road users. Similar to what is stated above, FHWA believes that the purpose of the HSIP can only be carried out by addressing all road users, as traffic fatalities and serious injuries can occur to any road user. The FHWA also proposes to clarify that the State shall not only have HSIP processes, but those processes shall be documented and approved by the FHWA Division Administrator. The FHWA proposes this change to improve stewardship and oversight of the program. This proposed change is also consistent with the requirement for the Division Administrator to approve the SHSP update process pursuant to existing 23 CFR 924.9(a)(3)(iii).

Section 924.9 Planning

In paragraphs (a)(1) and (a)(2), FHWA proposes to add ''and for all road users'' to the end to clarify that the process for collecting safety data and advancing safety data collection efforts shall address all road users, in addition to all public roads. The HSIP requires a data-driven, strategic approach to improve highway safety on all public roads. The FHWA believes that this can only be achieved by considering data on all those who use public roads.

In paragraph (a)(1), FHWA proposes to add a new subparagraph structure (i) through (iii). Proposed paragraph (a)(1)(i) would require safety data to be able to differentiate between vulnerable road users other road users under subparagraph (i)(A), consistent with 23 U.S.C. 148(c)(2)(A)(vi), and also disaggregate safety data by demographic variables to support the inclusion of equity in the State's HSIP in subparagraph (i)(B).

Proposed paragraph (a)(1)(ii) would require States to collect any additional roadway data beyond the MIRE fundamental data elements, if necessary to support the proposed systemwide

[9] usRAP | United States Road Assessment Program, *http://www.usrap.org/*.

[10] See E.O. 13985 of Jan. 20, 2021, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, § 2, 86 FR 7009.

[11] NRSS, p. 21.

safety risk assessment. While States can conduct a systemwide risk assessment with the MIRE fundamental data elements and other asset-related data, other roadway data would add value to the process.

The language in proposed paragraph (a)(1)(iii) is unchanged from the existing rule.

The FHWA proposes various updates to the SHSP provisions in paragraph (a)(3). Under 23 U.S.C. 148(d)(1) and 148(d)(2)(B), FHWA is authorized to establish requirements for the contents of SHSP updates and State's processes for updating the SHSP.

In the introductory language to paragraph (a)(3) and in proposed paragraph (a)(3)(vi), FHWA proposes a minor technical edit to change ''safety problem'' to ''safety need.'' The FHWA also proposes to require the SHSP update to include a signature and effective date in paragraph (a)(3)(iv). The effective date would also be referenced in paragraph (a)(3)(i) to clarify that the timeline for updating the SHSP. Section 924.9(a)(3)(i) of 23 CFR currently requires that an SHSP update must be completed no later than 5 years from the date of the previous approved version. The FHWA believes that a reference to ''5 years from the date of the previous approved version'' is not clear, and FHWA is revising the text to clarify that an SHSP update must be completed no later than 5 years from the effective date of the previous approved version. To implement this change, FHWA is requiring that the SHSP update include an effective date, which FHWA is proposing to make in 23 CFR 924.9(a)(3)(iv). The FHWA is also proposing to require the signature of the Governor of a State or a responsible State official that is delegated by the Governor. The signature demonstrates approval as required by 23 U.S.C. 148(a)(13)(H), and including an effective date will enable better tracking of SHSP updates.

In proposed paragraph (a)(3)(v), FHWA proposes to clarify that the performance-based goals must be adopted for the duration of the SHSP. For example, if the SHSP covers a 5-year period, then the SHSP performance-based goals would also cover a 5-year period. Connecting the duration of performance-based goals to the duration of the overall SHSP is consistent with the requirement in 23 U.S.C. 148(a)(13)(B) for the SHSP to analyze and make effective use of State, regional, local, or Tribal safety data. In addition, the current provision only requires States to adopt performance-based goals that are consistent with safety performance measures established by FHWA in accordance with 23 U.S.C. 150 without acknowledging that SHSPs cover multiple years. The FHWA is proposing this revision to rectify this issue.

The FHWA proposes changes to paragraphs (a)(3)(vi) through (a)(3)(xi) to advance the Safe System Approach and ensure equity is addressed in SHSP updates. Specifically, in paragraph (a)(3)(vi) FHWA proposes to emphasize that the analysis and use of safety data also addresses safety needs and opportunities in underserved communities to ensure the safety needs of all road users are met. Ensuring that SHSP updates address the safety needs of underserved communities is necessary to implement 23 U.S.C. 148(d)(1)(B)(ii)–(iii), which require that SHSP updates take into consideration the locations of fatalities and serious injuries and locations that possess risk factors for potential crashes (regardless of whether there is a documented history of fatalities and serious injuries). Further, paragraph (a)(3)(vi) currently requires that an SHSP update must ''[a]nalyze and make effective use of safety data to address safety problems and opportunities on all public roads and for all road users.'' The FHWA is proposing this revision to highlight that ''all road users,'' as used in the current regulations, must necessarily include road users in underserved communities.

In paragraph (a)(3)(vii), FHWA proposes to require that SHSP emphasis areas and strategies are consistent with the Safe System Approach. A key aspect of the SHSP is that it evaluates highway safety holistically to identify which strategies and projects can best advance the goal of eliminating roadway fatalities and serious injuries. *See* 23 U.S.C. 148(a)(13)(C) (defining the SHSP, in part, as a plan that ''addresses engineering, management, operation, education, enforcement, and emergency services elements . . . of highway safety as key factors in evaluating highway safety.''). This corresponds to the Safe System Approach's focus on holistically integrating the elements of safe road users, safe vehicles, safe speeds, safe roads, and post-crash care to reduce highway fatalities and serious injuries to zero. In addition, paragraph (a)(3)(vii) currently requires that an SHSP update must ''[i]dentify key emphasis areas and strategies that have the greatest potential to reduce highway fatalities and serious injuries and focus resources on areas of greatest need.'' The FHWA believes that the Safe System Approach provides the appropriate framework to determine what ''greatest potential'' and ''greatest need'' mean.

The FHWA proposes to add equity to the list of elements to address as a key feature in the identification of SHSP strategies in paragraph (a)(3)(viii). This will ensure that the SHSP considers the safety needs of all public roads and considers the results of State and regional planning processes, which must consider the needs of underserved communities. *See* 23 U.S.C. 148(a)(13)(D)–(E); 23 CFR 450.210(a)(1)(viii) and 450.316(a)(1)(vii).

The FHWA also proposes to add a new requirement under proposed paragraph (a)(3)(ix) for States to describe in the SHSP update how the SHSP supports a Safe System Approach. Pursuant to 23 U.S.C. 148(d)(1)(B)(viii), FHWA must ensure that States take into consideration, with respect to updated SHSPs, safety on all public roads. The FHWA is proposing to carry out this requirement, in part, by having States identify key emphasis areas and strategies that are consistent with a Safe System Approach and describing how the SHSP supports a Safe System Approach, as FHWA considers the Safe System Approach to be the optimal method for considering safety.

The FHWA proposes to add new paragraph (a)(3)(x) to include the vulnerable road user safety assessment as part of the State SHSP, consistent with 23 U.S.C. 148(a)(13)(G). The FHWA proposes to modify redesignated paragraph (a)(3)(xi) (current paragraph (a)(3)(ix)) to require public involvement as part of the SHSP update process. Public involvement would help ensure the needs of all road users are addressed in the SHSP update and, in accordance with 23 U.S.C. 148(a)(13)(I), ensure the SHSP is consistent with 23 U.S.C. 135(g), which includes a requirement for public involvement in the development of the Statewide Transportation Improvement Plan.

In redesignated paragraph (a)(3)(xii) (current paragraph (a)(3)(x)), FHWA proposes to separate Tribal from local governments since they are distinct units of government. The FHWA also proposes to clarify that the SHSP update shall provide strategic direction for not only other State, Tribal, and local plans as stated in the current regulation, but also programs such as the HSIP because the HSIP is a program, not a plan. The FHWA also proposes to add a Traffic Records Strategic Plan (TRSP) to the list of plans and programs for which the SHSP update provides strategic direction. A TRSP describes the desired future of the data systems a State uses to support data driven safety decisions

and how to get there.[12] Many State SHSPs include a data emphasis area and include relevant strategies and actions that could be advanced through the TRSP. Including the TSRP in the list of plans that the SHSP must provide strategic direction to furthers the requirement in 23 U.S.C. 148(c)(2)(C) that a State HSIP advances the State's capabilities for safety data collection, analysis, and integration.

The FHWA proposes to relocate existing paragraph (a)(3)(xi) to § 924.11(c)(i) because it is more relevant to implementation. Proposed revisions to this language are discussed under the heading for § 924.11.

In paragraph (a)(4), FHWA proposes to require States to develop a process to conduct a systemwide safety risk assessment to implement 23 U.S.C. 148(c)(2)(B). That provision requires States to (i) identify hazardous locations, sections, and elements that constitute a danger to motorists, vulnerable road users, and other highway users; (ii) establish the relative severity of those locations; (iii) identify the number of fatalities and serious injuries on all public roads by location in the State; (iv) identify highway safety improvement projects on the basis of crash experience, crash potential, crash rate, or other data-supported means; and (v) consider which projects maximize opportunities to advance safety. Requiring a systemwide safety risk assessment aligns with 23 U.S.C. 148(c)(2)(B), as it would require States to assign risk ratings to all public roads after considering safety data. The systemwide safety risk assessment would allow States to establish a base level of safety performance for all roads (23 U.S.C. 148(c)(2)(B)(i), (iii)), develop safety infrastructure key performance indicators (23 U.S.C. 148(c)(2)(B)(ii)), and prioritize investments to improve safety through not only the State HSIP but all Federal-aid programs and projects (23 U.S.C. 148(c)(2)(B)(iv), (v)).

The FHWA also proposes to revise paragraph (a)(4)(i) to emphasize that the program of highway safety improvement projects would need to have the greatest potential to reduce fatalities and serious injuries on all public roads and for all road users, consistent with the Safe System Approach for similar reasons as described above for the proposed changes to § 924.5(b).

Consistent with changes described above for proposed paragraphs (a)(3)(vii) and (viii), FHWA also proposes adding a new statement to require that the program of highway safety improvement projects shall advance the Safe System Approach and address fatalities and serious injuries in underserved communities to advance equity.

The remainder of paragraph (a)(4) and paragraph (a)(5) remains unchanged.

In paragraph (a)(6), FHWA proposes revising existing item (i) to require States to consider which projects maximize the potential reduction of fatalities and serious injuries as part of their process for establishing priorities for implementing highway safety improvement projects consistent with 23 U.S.C. 148(c)(2)(B)(v). The FHWA also proposes removing existing item (iii), which currently requires States to consider SHSP priorities in their process for establishing priorities for implementing highway safety improvement projects because all projects must be consistent with the SHSP. This item is more related to eligibility than prioritization. Prioritization of highway safety improvement projects would be based on which projects maximize the potential reduction in fatalities and serious injuries and the cost effectiveness of the projects and the resources available.

Paragraphs (b) and (c) would remain unchanged.

Section 924.11 Implementation

Paragraphs (a), (e), and (f) would remain unchanged.

In paragraph (b), FHWA proposes to remove the requirement that States shall incorporate specific quantifiable and measurable anticipated improvements for the collection of MIRE fundamental data elements into their Traffic Records Strategic Plan by July 1, 2017, since the date for that requirement has passed. The FHWA also proposes to require each State to submit the MIRE fundamental data elements as part of their regular Highway Performance Monitoring System submissions, beginning after September 30, 2026, and continuing thereafter. The FHWA would expect each State to submit new data as it becomes available or on a schedule of the State's selection. There would be no expectation for States to update this data annually. This requirement would help FHWA ensure that States adopt and use the subset of MIRE fundamental data elements per 23 U.S.C. 148(f)(2)(B).

In paragraph (c), FHWA proposes to relocate and revise the requirement from existing § 924.9(a)(3)(xi) to be consistent with existing FHWA guidance and the current state-of-practice for the SHSP action plans.

In paragraph (d), FHWA proposes minor technical edits to better track the language in 23 U.S.C. 130(e)(2).

The FHWA proposes to add new paragraph (g) to encourage States to use the various options available to them to streamline delivery of highway safety improvement projects. It is imperative that highway safety improvement projects be completed in a timely manner to realize their benefits.

The FHWA also proposes to redesignate existing paragraph (g) as new paragraph (h) without change.

Section 924.13 Evaluation

Under § 924.13(a), FHWA proposes to add new subparagraph (a)(1) that requires a State's HSIP evaluation process to include a process to evaluate the effectiveness of data improvement activities for MIRE fundamental data elements. The FHWA proposes this requirement to address 23 U.S.C. 148(c)(2)(A)(ii), which requires the State's safety data system to evaluate the effectiveness of data improvement efforts. This provision would apply only to MIRE fundamental data elements since that is a specific requirement of the HSIP under 23 U.S.C. 148(f)(2)(B). States would be required to establish and track quantifiable measures related to data quality attributes of accuracy, completeness, timeliness, uniformity, accessibility, and integration.

The FHWA proposes minor technical modifications to what would be redesignated as paragraph (a)(2) (current paragraph (a)(1)) to clarify that a State must have processes for evaluating individual highway safety improvement projects and countermeasures, as well as a process for evaluating the program of highway safety improvement projects. This is not an additional requirement but a clarification of an existing one. The existing regulation requires that States have a process to analyze and assess the results achieved by the program of highway safety improvement projects; however, to assess and analyze the program of highway safety improvement projects, States must first assess and analyze the individual projects and countermeasures that make it up. This change is also consistent with current law, FHWA practice, and existing FHWA guidance. Per 23 U.S.C. 148(c)(2)(F) and 148(h)(1)(B), States must have an evaluation process to analyze and assess results achieved by highway safety improvement projects and assess the effectiveness of those projects as part of their annual HSIP report.

The FHWA proposes a minor technical modification to what would be redesignated as paragraph (a)(3)(i) (current paragraph (a)(2)(i)) to clarify that a State should be confirming the effectiveness of SHSP strategies as part

[12] NHTSA, *State Traffic Records Coordinating Committee Strategic Planning Guide* (2019), p. viii.

of its process for updating the SHSP. Effective implementation of the SHSP requires a State to understand whether a particular strategy is working, or if it needs to be updated for future implementation.

Apart from minor technical edits, the remaining paragraphs in § 924.13 would remain unchanged.

Section 924.15 Reporting

The FHWA proposes the following changes to the content of the HSIP report.

In the introductory text to paragraph (a), rather than require the usage of a specific tool, FHWA proposes to change the reporting mechanism to a more general electronic template provided by FHWA. This gives FHWA the flexibility to use the existing HSIP online reporting tool, or another electronic means for States to submit reports if deemed more effective by FHWA.

In paragraph (a)(1), to minimize duplication with other HSIP documentation efforts, FHWA proposes to change the focus of the report to describe progress being made to implement the HSIP and the effectiveness of previously completed highway safety improvement projects. As such, FHWA proposes to remove paragraphs (a)(1)(i), which currently discusses the structure of the HSIP, and (a)(1)(ii), which currently discusses the progress in implementing highway safety improvement projects. This information would be captured in the HSIP process documentation under § 924.7(c) and, if applicable, the HSIP implementation plan under 23 U.S.C. 148(i)(2).

In redesignated paragraph (a)(1)(i)(A) (current paragraph (a)(1)(iii)(A)), FHWA proposes minor technical edits to remove the word ''total'' in the last sentence to clarify that a State must report the number of non-motorized fatalities and serious injuries separately because FHWA uses the serious injury data from the HSIP report to support the safety performance target assessment. This proposed change is also consistent with current reporting practice. The FHWA also proposes to require reporting information on fatalities and serious injuries for older drivers and pedestrians consistent with the special rule in 23 U.S.C. 148(g)(2) and existing paragraph (a)(1)(iii)(C).

The FHWA proposes to remove existing paragraphs (a)(1)(iii)(B) and (a)(1)(iii)(C). The safety performance targets previously reported under existing paragraph (a)(1)(iii)(B) would be reported separately with the other performance measures required under 23 CFR part 490. Consistent with current guidance, to carry out the special rules in 23 U.S.C. 148(g), FHWA only requires that States report information on the number of fatalities and serious injuries for non-motorized users and older drivers and pedestrians over the age of 65. By revising paragraph (a)(1)(i)(A) to require this information, existing paragraph (a)(1)(iii)(C) becomes redundant.

The FHWA proposes to add new paragraph (a)(1)(i)(B) that would require a State to discuss the progress made implementing the priorities and actions identified in the State's HSIP implementation plan under 23 U.S.C. 148(i)(2) for those States that did not meet or make significant progress toward meeting their safety performance targets.

The FHWA proposes to revise redesignated paragraph (a)(1)(ii) (current paragraph (a)(1)(iv)) to require States to report the results of individual projects, countermeasures, and program evaluations. States are currently required to report the results of countermeasure and program evaluations on an aggregated basis (*i.e.,* groupings or similar types of highway safety improvement projects). This revision would also require States to report the results of individual project evaluations. While it is currently optional for States to report this information, nearly half of the States already do so, and, as noted above when discussing proposed changes to § 924.13(a)(2), all States are necessarily required to have processes in place for individual project evaluations. Under 23 U.S.C. 148(h), FHWA is responsible for establishing the content of State reporting on the effectiveness of States' HSIPs, including reporting on the effectiveness of projects funded under section 148, and making this reporting available to the public in the interests of transparency. Requiring States to report information for individual projects will help FHWA ensure States are meeting this requirement, emphasize the importance of monitoring the effectiveness of HSIP implementation efforts, and support national program evaluations.

The FHWA proposes to add new paragraph (a)(1)(iii) for States to report on results from the new provision in § 924.13(a)(1). Specifically, each State would be required to report quantifiable progress in the quality attributes of accuracy, completeness, timeliness, uniformity, accessibility, and integration of MIRE fundamental data elements.

Lastly, FHWA proposes to make technical amendments to paragraph (a)(1)(iv) to match the structure of revised paragraph (a)(1) and to correct an error in a statutory citation. The remaining provisions in § 924.15 would remain unchanged.

Section 924.17 MIRE Fundamental Data Elements

The FHWA proposes to add language to clarify the exception in 23 U.S.C. 148(k) to MIRE fundamental data element collection requirements, which states that, subject to the conditions of 23 U.S.C. 148(k)(1), ''[a] State may elect not to collect fundamental data elements for the model inventory of roadway elements on public roads that are gravel roads or otherwise unpaved.'' The FHWA also proposes to simplify the presentation of tables 1, 2, and 3 in the regulation. In general, the content in the tables would remain the same except for citation updates to reference MIRE Version 2.0, or the most current version.[13]

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The FHWA anticipates that the proposed rule will not be a significant regulatory action within the meaning of E.O. 12866, as amended by E.O. 14094 (''Modernizing Regulatory Review''), and DOT Rulemaking and Guidance Procedures in DOT Order 2100.6A (June 7, 2021). This action complies with E.O. 12866 and E.O. 13563 to improve regulation. The FHWA anticipates that the proposed rule would not have an annual effect on the economy of $200 million or more. The FHWA anticipates that the proposed rule would not adversely affect, in a material way, any sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The proposed rule also does not raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth E.O. 12866.

[13] The FHWA may issue updates to MIRE between the time that this NPRM and a Final Rule are issued. The tables in the Final Rule will reference the most current version of MIRE at the time the Final Rule is issued. The FHWA does not anticipate that changes that may be made to MIRE as a result of any updates will have a substantive impact in terms of complying with 23 CFR part 924.

The following paragraphs summarize the economic analysis for this proposed rule. A supporting statement and a spreadsheet in the rulemaking docket (FHWA–2023–0045) contain additional details. The FHWA requests data and comments that could inform the economic analysis for this proposed rule, including any estimates of resulting benefits.

Table 1 summarizes the economic impacts of the proposed rule that were able to be quantified at this stage of the regulatory process. The quantifiable impacts are the costs and cost savings that the proposed rule would impose on States and on FHWA. The FHWA estimated the costs of the proposed rule at $64.9 million for the 10-year period, or $9.2 million on an annual basis, measured in 2022 dollars and using a 7 percent discount rate. If a 3 percent discount rate is used, these costs are estimated at $70.3 million for the same 10-year period, or $8.2 million on an annual basis, again measured in 2022 dollars. The FHWA estimated the cost savings of the proposed rule at $227,442, or $32,383 on an annual basis, measured in 2022 dollars and using 7 percent discounting. If a 3 percent discount rate is used, these cost savings are estimated at $276,230 for the same 10-year period, or $32,383 on an annual basis, again measured in 2022 dollars. Based on the estimated economic impacts and the other criteria for a significant regulatory action under § 3(f) of E.O. 12866, FHWA has preliminarily determined that this proposed rule would not be a significant regulatory action.

TABLE 1—ESTIMATED COSTS, COST SAVINGS, AND NET COSTS OF THE HIGHWAY SAFETY IMPROVEMENT PROGRAM PROPOSED RULE

[2022 dollars]

Costs of the HSIP proposed rule (2022 dollars)				
Calendar year	Analysis period year	Costs	Cost savings	Net costs
2024	1	$57,057,401	$32,383	$57,025,018
2025	2	108,615	32,383	76,232
2026	3	1,764,627	32,383	1,732,244
2027	4	108,615	32,383	76,232
2028	5	7,946,874	32,383	7,914,491
2029	6	108,615	32,383	76,232
2030	7	108,615	32,383	76,232
2031	8	108,615	32,383	76,232
2032	9	108,615	32,383	76,232
2033	10	7,946,874	32,383	7,914,491
Total to FHWA		244,363	47,824	196,539
Total to State DOTs		75,123,101	276,002	74,847,098
Undiscounted Total		75,367,464	323,826	75,043,638
Total with 3% Discounting		70,325,827	276,230	70,049,597
Total with 7% Discounting		64,910,972	227,442	64,683,530
Average Annual (Undiscounted)		7,536,746	32,383	7,504,364
Annualized, 3% Discount Rate, 10 Years		8,244,332	32,383	8,211,950
Annualized, 7% Discount Rate, 10 Years		9,241,862	32,383	9,209,479

The main purpose of the HSIP is to achieve significant reductions in traffic fatalities and serious injuries on public roads. Changes resulting from the proposed rule are expected to increase safety and result in fewer traffic related injuries and fatalities. In accordance with OMB Circular A–4, *Regulatory Analysis* (Sept. 17, 2003), FHWA follows a break-even analysis approach to calculate the number of annual lives that need to be saved for the benefits of the proposed rule to outweigh the costs. The break-even analysis concludes that a single life saved annually justifies the proposed rule.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities and has determined that the action is not anticipated to have a significant economic impact on a substantial number of small entities. The proposed rule affects State governments, and State governments do not meet the definition of a small entity. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The FHWA has evaluated this proposed rule for unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, 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 $183 million, using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. As part of this evaluation, FHWA has determined that this proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of greater than $183 million or more in any 1 year (2 U.S.C. 1532).

Further, in compliance with the Unfunded Mandates Reform Act of 1995, FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and Tribal governments and the private sector. In addition, the definition of ''Federal Mandate'' in the Unfunded Mandate Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal

Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in E.O. 13132. The FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed rulemaking would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under E.O. 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian Tribes; would not impose substantial direct compliance costs on Indian Tribal governments; and would not preempt Tribal law. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The FHWA has determined that it is not a significant energy action under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under E.O. 13211 is not required.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Local entities should refer to the Assistance Listing Number 20.205, Highway Planning and Construction, for further information.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) prior to conducting or sponsoring a ''collection of information'' as defined by the PRA. The FHWA currently has OMB approval under ''Highway Safety Improvement Programs'' (OMB Control No. 2125–0025) to collect the information required by State's annual HSIP reports. The FHWA also has OMB approval under ''Highway Performance Monitoring System (HPMS)'' (OMB Control No. 2125–0028). The FHWA invites comments about the intention to request OMB approval for a new information collection to include the components required in this NPRM. Any action that might be contemplated in subsequent phases of this proceeding will be analyzed for the purpose of the PRA for its impact to this current information collection. The FHWA will submit the proposed collections of information to OMB for review and approval at the time the NPRM is issued and, accordingly, seeks comments.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it would not have any effect on the quality of the environment and meets the criteria for the categorical exclusion at 23 CFR 771.117(c)(20), which applies to the promulgation of regulations, and that no unusual circumstances are present under 23 CFR 771.117(b).

Executive Order 12898 (Environmental Justice)

The E.O. 12898 requires that each Federal Agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The FHWA has determined that this proposed rule does not raise any environmental justice issues.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 924

Highway safety, Highways and roads, Motor vehicles, Railroads, Railroad safety, Safety, Transportation.

Shailen P. Bhatt,

Administrator, Federal Highway Administration.

For the reasons stated in the preamble, FHWA proposes to revise title 23, Code of Federal Regulations, part 924, as follows:

PART 924—HIGHWAY SAFETY IMPROVEMENT PROGRAM

■ 1. The authority citation for part 924 continues to read as follows:

Authority: 23 U.S.C. 104(b)(3), 130, 148, 150, and 315; 49 CFR 1.85.

■ 2. Revise § 924.1 to read as follows:

§ 924.1 Purpose.

The purpose of this regulation is to prescribe requirements for the planning, implementation, evaluation, and reporting of a Highway Safety Improvement Program (HSIP) in each State.

■ 3. Amend § 924.3 by:

■ a. Revising the definitions of ''*Highway Safety Improvement Program (HSIP)*'', and ''*Highway safety improvement project*'';

■ b. Adding a definition of ''*Non-motorized user* or *vulnerable road user*'' in alphabetical order;

■ c. Revising the definition of ''*Railway-highway crossing protective devices*'';

■ d. Adding the definitions of ''*Road user*'' and ''*Safe System Approach*'' in alphabetical order;

■ e. Revising the definition of ''*Safety data*'';

■ f. In the definition of ''*Safety stakeholder*'', redesignating paragraph (10) as paragraph (12) and adding paragraphs (10) and (11); and

■ g. Adding the definitions of ''*Specified safety project*'', ''*Systemwide safety risk assessment*'', ''*Underserved communities*'', and ''*Vulnerable road user safety assessment*'' in alphabetical order.

The revisions and additions read as follows: § 924.3 Definitions.

* * * * *

Highway Safety Improvement Program (HSIP) means a State safety program with the purpose to significantly reduce fatalities and serious injuries on all public roads and for all road users, in support of the long-term goal to eliminate such fatalities and serious injuries, through the implementation of the provisions of 23 U.S.C. 130, 148, and 150, including the development of a data-driven Strategic

Highway Safety Plan (SHSP), Railway-Highway Crossings Program, and program of highway safety improvement projects.

Highway safety improvement project means strategies, activities, or projects on a public road and for all road users that advance a Safe System Approach, are consistent with a State SHSP, either correct or improve a high risk road segment, location, or feature, or address a highway safety need, and are either (1) one or more of the projects listed in 23 U.S.C. 148(a)(4)(B) or (2) a specified safety project.

Non-motorized user or *vulnerable road user* means a pedestrian, bicyclist, other cyclist, or person on personal conveyance, consistent with the definition for the number of non-motorized fatalities and the number of non-motorized serious injuries in § 490.205 of this title.

* * * * *

Railway-highway crossing protective devices means those traffic control devices in the Manual on Uniform Traffic Control Devices (MUTCD) specified for use at such crossings; and system components associated with such traffic control devices, such as track circuitry and interconnections with highway traffic signals.

* * * * *

Road user means a motorist, passenger, public transportation operator or user, truck driver, motorcyclist, or non-motorized user, including a person with disabilities.

Safe System Approach means a data-driven, holistic approach to roadway safety that:

(1) Aims to eliminate death and serious injury for all road users;

(2) Anticipates and accommodates human errors;

(3) Keeps crash impact energy on the human body within tolerable levels;

(4) Proactively identifies safety risks in the system;

(5) Builds in redundancy through layers of protection so if one part of the system fails the other parts provide protection; and

(6) Shares responsibility for achieving zero roadway fatalities among all who design, build, manage, own, and use the system.

Safety data include, but are not limited to, crash, roadway characteristics, and traffic data on all public roads and for all road users. Safety data shall include crash and exposure data for non-motorized users. For railway-highway crossings, safety data also include the characteristics of highway and train traffic, licensing, and vehicle data.

Safety stakeholder means, but is not limited to:

* * * * *

(10) Representatives from public health agencies;

(11) Representatives from underserved communities; and

(12) Other Federal, State, Tribal, and local safety stakeholders.

Specified safety project has the same meaning as defined under 23 U.S.C. 148(a)(11).

* * * * *

Systemwide safety risk assessment means a framework to assign risk ratings to all public roads considering primarily roadway characteristics, and other safety data and analysis results, as appropriate. The risk ratings shall classify all sections of the roadway network in no fewer than three categories according to their level of safety.

* * * * *

Underserved communities mean populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life. Underserved communities include Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

Vulnerable road user safety assessment means an assessment of the safety performance of the State with respect to vulnerable road users and the plan of the State to improve the safety of vulnerable road users as described in 23 U.S.C. 148(l).

■ 4. Revise and republish § 924.5 to read as follows:

§ 924.5 Policy.

(a) Each State shall plan, implement, evaluate, and report on an annual basis an HSIP that advances a Safe System Approach and has the purpose to significantly reduce fatalities and serious injuries resulting from crashes on all public roads and for all road users, in support of the long-term goal to eliminate such fatalities and serious injuries.

(b) HSIP funds shall be used for highway safety improvement projects that are consistent with the State's SHSP. HSIP funds shall be used to maximize opportunities to advance highway safety improvement projects that have the greatest potential to reduce the State's roadway fatalities and serious injuries.

(c) Safety improvements should be incorporated into projects funded by all Federal-aid programs, such as the National Highway Performance Program (NHPP) and the Surface Transportation Block Grant (STBG) Program. Safety improvements that are provided as part of a broader Federal-aid project should be funded from the same source as the broader project.

(d) Eligibility for Federal funding of projects for traffic control devices under this part is subject to a State, Tribal, or local jurisdiction's substantial conformance with the National MUTCD or FHWA-approved State MUTCDs and supplements in accordance with part 655, subpart F, of this chapter.

■ 5. Amend § 924.7 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 924.7 Program structure.

* * * * *

(b) Part 490, subpart B of this chapter establishes national performance management measures for the purposes of carrying out the HSIP. The safety performance targets established under § 490.209 of this chapter shall align with and support the performance-based goals established for the SHSP in this section.

(c) The HSIP shall address all public roads and all road users in the State. The HSIP shall document separate processes for the planning, implementation, and evaluation of the HSIP components described in paragraph (a) of this section. These documented processes shall be developed by the State and approved by the FHWA Division Administrator in accordance with this section and the requirements of 23 U.S.C. 148. Where appropriate, the processes shall be developed in consultation with other safety stakeholders and officials of the various units of local and Tribal governments.

■ 6. In § 924.9 revise and republish paragraph (a):

§ 924.9 Planning.

(a) The HSIP planning process shall incorporate:

(1) A process for collecting and maintaining safety data on all public roads and for all road users.

(i) Safety data shall:

(A) Differentiate between vulnerable road users, including bicyclists, motorcyclists, and pedestrians, from other road users.

(B) Be disaggregated by demographic variables to support the inclusion of

underserved communities in the State's Highway Safety Improvement Program.

(ii) Roadway data shall include:

(A) The MIRE Fundamental Data Elements as established in § 924.17; and

(B) Any additional elements necessary to support a systemwide safety risk assessment.

(iii) Railway-highway crossing data shall include all fields from the U.S. DOT National Highway-Rail Crossing Inventory.

(2) A process for advancing the State's capabilities for safety data collection and analysis by improving the timeliness, accuracy, completeness, uniformity, integration, and accessibility of their safety data on all public roads and for all road users.

(3) A process for updating the SHSP that identifies and analyzes highway safety needs and opportunities in accordance with 23 U.S.C. 148. A SHSP update shall:

(i) Be completed no later than 5 years from the effective date of the previous approved version;

(ii) Be developed by the State DOT in consultation with safety stakeholders;

(iii) Provide a detailed description of the update process. The update process must be approved by the FHWA Division Administrator;

(iv) Be approved, including signature and effective date, by the Governor of the State or a responsible State agency official who is delegated by the Governor;

(v) Adopt performance-based goals for the duration of the SHSP that:

(A) Are consistent with safety performance measures established by FHWA in accordance with 23 U.S.C. 150; and

(B) Are coordinated with other State highway safety programs;

(vi) Analyze and make effective use of safety data to address safety needs and opportunities on all public roads and for all road users, including in underserved communities;

(vii) Identify key emphasis areas and strategies that are consistent with a Safe System Approach, have the greatest potential to reduce fatalities and serious injuries on all public roads, and focus resources on areas of greatest need;

(viii) Address engineering, management, operations, education, enforcement, emergency services, and equity elements of highway safety as key features when determining SHSP strategies;

(ix) Describe how the SHSP supports a Safe System Approach;

(x) Include a vulnerable road user safety assessment;

(xi) Consider the results of State, regional, local, and Tribal transportation and highway safety planning processes; demonstrate mutual consultation among safety stakeholders; and consider input from public involvement (as defined in § 450.210 of this chapter) in the development of transportation safety plans; and

(xii) Provide strategic direction for other State, Tribal, and local transportation plans and programs, including but not limited to the HSIP, the Highway Safety Plan, the Commercial Vehicle Safety Plan, and the Traffic Records Strategic Plan.

(4) A process for analyzing safety data and conducting a systemwide safety risk assessment to:

(i) Develop a program of highway safety improvement projects, in accordance with 23 U.S.C. 148(c)(2), that has the greatest potential to reduce fatalities and serious injuries on all public roads and for all road users through the implementation of a comprehensive program of systemic and spot safety improvement projects. The program of highway safety improvement projects shall also advance the Safe System Approach and address fatalities and serious injuries in underserved communities.

(ii) Develop a Railway-Highway Crossings program that:

(A) Considers the relative risk of public railway-highway crossings based on a hazard index formula;

(B) Includes onsite inspection of public railway-highway crossings; and

(C) Results in a program of highway safety improvement projects at railway-highway crossings giving special emphasis to the statutory requirement that all public crossings be provided with standard signing and markings.

(5) A process for conducting engineering studies (such as road safety audits and other safety assessments or reviews) to develop highway safety improvement projects.

(6) A process for establishing priorities for implementing highway safety improvement projects that considers:

(i) Which projects maximize the potential reduction in fatalities and serious injuries; and

(ii) The cost effectiveness of the projects and the resources available.

* * * * *

■ 7. Amend § 924.11 by:

■ a. Revising paragraph (b);

■ b. Revising and republishing paragraphs (c) and (d);

■ c. Redesignating paragraph (g) as paragraph (h); and

■ d. Adding new paragraph (g).

The revisions and addition read as follows:

§ 924.11 Implementation.

* * * * *

(b) Each State shall have a complete collection of the MIRE fundamental data elements on all public roads by September 30, 2026. Starting after September 30, 2026, and continuing thereafter, each State shall submit the MIRE fundamental data elements as part of their regular Highway Performance Monitoring System submittal to FHWA.

(c) The SHSP shall include or be accompanied by actions that address how the SHSP emphasis area strategies will be implemented. This includes a description of the related actions or projects, agency responsible for implementing each action, potential resources, and timeframe for implementing the strategies in each emphasis area.

(d) Funds set-aside for the Railway-Highway Crossings Program under 23 U.S.C. 130 shall be used to implement railway-highway crossing safety projects on any public road. If a State demonstrates that it has met all its needs for installation of protective devices at railway-highway crossings to the satisfaction of the FHWA Division Administrator, the State may use funds made available under 23 U.S.C. 130 for other Highway Safety Improvement Program purposes pursuant to the special rule in 23 U.S.C. 130(e)(2).

* * * * *

(g) States should use timesaving procedures, such as project bundling, indefinite delivery/indefinite quantity contracting (part 635, subpart F of this chapter), and other methods approved by FHWA to streamline HSIP project delivery. States and other Federal funding recipients can also use agency force account procedures (part 635, subpart B of this chapter) if they can demonstrate it is more cost effective than competitive bidding.

(h) Except as provided in 23 U.S.C. 120 and 130, the Federal share of the cost of a highway safety improvement project carried out with funds apportioned to a State under 23 U.S.C. 104(b)(3) shall be 90 percent.

■ 8. Amend § 924.13 by:

■ a. Redesignating paragraphs (a)(1) and (2) as paragraphs (a)(2) and (3), respectively, and adding new paragraph (a)(1);

■ b. Revising newly redesignated paragraph (a)(2) and (a)(3)(i); and

■ c. Revising the introductory text to paragraph (b).

The revisions and addition read as follows:

§ 924.13 Evaluation.

(a) * * *

(1) A process to establish and track quantifiable measures to evaluate the effectiveness of data improvement activities to improve accuracy, completeness, timeliness, uniformity, accessibility, and integration for MIRE fundamental data elements.

(2) A process to analyze and assess the results achieved by individual highway safety improvement projects, countermeasures, and the program of highway safety improvement projects in terms of contributions to improved safety outcomes and the attainment of safety performance targets established as per 23 U.S.C. 150.

(3) An evaluation of the SHSP as part of the regularly recurring update process to:

(i) Confirm the validity of the emphasis areas and effectiveness of strategies based on analysis of current safety data; and

* * * * *

(b) The information resulting from paragraph (a)(2) of this section shall be used:

* * * * *

■ 9. Amend § 924.15 by revising the introductory text to paragraphs (a) and paragraph (a)(1) to read as follows:

§ 924.15 Reporting.

(a) For the period of the previous reporting year, each State shall submit to the FHWA Division Administrator no later than August 31 of each year, the following reports related to the HSIP in accordance with 23 U.S.C. 148(h) and 130(g) using an electronic template provided by FHWA:

(1) A report describing the progress being made to implement the HSIP and the effectiveness of completed highway safety improvement projects. The report shall:

(i) Describe the progress in achieving safety outcomes and performance targets. This section shall:

(A) Provide an overview of general highway safety trends. General highway safety trends shall be presented by number and rate of fatalities and serious injuries on all public roads by calendar year, and to the maximum extent practicable, shall also be presented by functional classification and roadway ownership. General highway safety trends shall also be presented for the number of fatalities and serious injuries for non-motorized users and older drivers and pedestrians over the age of 65; and

(B) Discuss the progress made implementing the priorities and actions identified in the State's HSIP implementation plan under 23 U.S.C. 148(i)(2), if applicable.

(ii) Assess the effectiveness of the improvements. This section shall describe the effectiveness of individual highway safety improvement projects, countermeasures, and program of highway safety improvement projects previously implemented under the HSIP.

(iii) Report quantifiable progress in the quality attributes of accuracy, completeness, timeliness, uniformity, accessibility, and integration for the MIRE fundamental data elements.

(iv) Be compatible with the requirements of section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d).

* * * * *

■ 10. Amend § 924.17 by revising the introductory text and Tables 1, 2, and 3 to read as follows:

§ 924.17 MIRE fundamental data elements.

The MIRE fundamental data elements shall be collected on all public roads, as listed in Tables 1, 2, and 3 of this section, except as noted in 23 U.S.C. 148(k). For the purpose of MIRE fundamental data elements applicability, the term ''open to public travel'' shall be consistent with the definition in § 460.2(c) of this chapter.

TABLE 1—MIRE FUNDAMENTAL DATA ELEMENTS FOR NON-LOCAL [1] PAVED ROADS

MIRE name [2]	Roadway segment	Intersection	Interchange/ ramp
Annual Average Daily Traffic (AADT) [3 4]	X	X	
AADT Year [3 4]	X	X	
Access Control [3]	X		
Begin Point Segment Descriptor [3]	X		
End Point Segment Descriptor [3]	X		
Direction of Inventory	X		
Federal Aid/Route Type [3]	X		
Functional Class [3]	X		X
Interchange Type			X
Intersection/Junction Geometry		X	
Intersection/Junction Traffic Control		X	
Location Identifier for Road 1 Crossing Point		X	
Location Identifier for Road 2 Crossing Point		X	
Location Identifier for Roadway at Beginning Ramp Terminal			X
Location Identifier for Roadway at Ending Ramp Terminal			X
Median Type	X		
Number of Through Lanes [3]	X		
One/Two-Way Operations [3]	X		
Ramp AADT [3]			X
Ramp Length			X
Roadway Type at Beginning Ramp Terminal			X
Roadway Type at Ending Ramp Terminal			X
Route Number [3]	X		
Route/street Name [3]	X		
Rural/Urban Designation [3]	X		
Segment Identifier	X		
Segment Length [3]	X		
Surface Type [3]	X		
Type of Governmental Ownership [3]	X		X
Unique Approach Identifier (for each approach)		X	
Unique Interchange Identifier			X
Unique Junction Identifier		X	

TABLE 1—MIRE FUNDAMENTAL DATA ELEMENTS FOR NON-LOCAL [1] PAVED ROADS—Continued

MIRE name [2]	Roadway segment	Intersection	Interchange/ ramp
Year of Ramp AADT [3]	.....	.....	X

[1] Based on functional classification.
[2] *Model Inventory of Roadway Elements—MIRE, Version 2.0,* Report No. FHWA–SA–17–048, July 2017, *https://rosap.ntl.bts.gov/view/dot/49568.*
[3] Existing Highway Performance Monitoring System element.
[4] For each intersecting road.

TABLE 2—MIRE FUNDAMENTAL DATA ELEMENTS FOR LOCAL [1] PAVED ROADS

MIRE name [2]	Roadway segment
AADT [3]	X
Begin Point Segment Descriptor [3]	X
End Point Segment Descriptor [3]	X
Functional Class [3]	X
Number of Through Lanes [3]	X
Rural/Urban Designation [3]	X
Segment Identifier	X
Surface Type [3]	X
Type of Governmental Ownership [3]	X

[1] Based on Functional Classification.
[2] *Model Inventory of Roadway Elements—MIRE, Version 2.0,* Report No. FHWA–SA–17–048, July 2017, *https://rosap.ntl.bts.gov/view/dot/49568.*
[3] Existing Highway Performance Monitoring System element.

TABLE 3—MIRE FUNDAMENTAL DATA ELEMENTS FOR UNPAVED ROADS

MIRE name [1]	Roadway segment
Begin Point Segment Descriptor [2]	X
End Point Segment Descriptor [2]	X
Functional Class [2]	X
Segment Identifier	X
Type of Governmental Ownership [2]	X

[1] *Model Inventory of Roadway Elements—MIRE, Version 2.0,* Report No. FHWA–SA–17–048, July 2017, *https://rosap.ntl.bts.gov/view/dot/49568.*
[2] Existing Highway Performance Monitoring System element.

[FR Doc. 2024–02831 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 170

[Docket ID: DoD–2023–OS–0063]

Posting of Informational Video: Cybersecurity Maturity Model Certification (CMMC) Program

AGENCY: Office of the Department of Defense Chief Information Officer, Department of Defense (DoD).

ACTION: Notification of posting of informational video on CMMC.

SUMMARY: The Office of the Department of Defense Chief Information Officer (DoD CIO) has released an informational video to provide the public with an overview of the proposed rule for DoD's updated Cybersecurity Maturity Model Certification (CMMC) Program, which was published in the **Federal Register** on December 26, 2023 for public comment. The proposed rule establishes requirements for a comprehensive and scalable assessment mechanism to ensure defense contractors and subcontractors have, as part of the CMMC Program, implemented required existing security requirements for Federal Contract Information and Controlled Unclassified Information (CUI) and adds new CUI security requirements for certain priority programs. This document announces that a video file containing an overview briefing of the CMMC proposed rule, presented by leadership and staff from the Office of the DoD Deputy CIO for Cybersecurity, was posted on the internet on February 14, 2024.

DATES: The video is available as of February 14, 2024.

ADDRESSES: The video is available to the public at the following link: *https://www.dvidshub.net/video/912871/cybersecurity-maturity-model-certification-cmmc-proposed-rule-overview.*

FOR FURTHER INFORMATION CONTACT: Ms. Diane Knight, Office of the DoD CIO, *osd.mc-alex.dod-cio.mbx.cmmc-32cfr-rulemaking@mail.mil,* (202) 770–9100.

SUPPLEMENTARY INFORMATION: A video on the proposed rule titled ''Cybersecurity Maturity Model Certification (CMMC) Program'' (32 CFR part 170) (88 FR 89058–89138) has been posted to *https://www.dvidshub.net/video/912871/cybersecurity-maturity-model-certification-cmmc-proposed-rule-overview* to provide the public with additional information and clarification on the updated CMMC Program as detailed in the proposed rule.

This video is available to the public through the link above. Any interested member of the public may view this video. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments.

Dated: February 14, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–03460 Filed 2–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0854]

RIN 1625–AA09

Drawbridge Operation Regulation; Reynolds Channel, Atlantic Beach, NY

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Atlantic Beach Bridge across the Reynolds Channel, mile 0.4, at Atlantic Beach, NY. The bridge owner, Nassau County Bridge Authority, submitted a request on September 22, 2022 to modify the regulation to decrease the number of openings on signal from October through May. On November 16, 2023 Nassau County Bridge Authority sent an additional request to add a bridge tower call number and remove outdated language. It is expected that this change to the regulations will better serve the needs of the community while continuing to meet the reasonable needs of navigation. We invite your comments on this proposed rulemaking.

DATES: Comments and relate material must reach the Coast Guard on or before March 22, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0854 through the Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Stephanie E. Lopez, First Coast Guard District, Project Officer, telephone 571–608–5676, email *Stephanie.E.Lopez@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
SNPRM Supplemental Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, Regulatory History, and Legal Basis

The Atlantic Beach Bridge at mile 0.4, across Reynolds Channel, Atlantic Beach, NY, has a vertical clearance of 25 feet at mean high water and a horizontal clearance of 125 feet. Waterway users include recreational and commercial vessels, including fishing vessels.

The existing drawbridge operating regulations are listed at 33 CFR 117.799(e). Under the current regulation, the bridge shall open on signal from October 1 through May 14. Nassau County is requesting the bridge shall open on signal from 8 a.m. to midnight October 1 through May 14 and on signal year-round, from midnight to 8 a.m., if at least eight hours' notice is given.

The Reynolds Channel is transited by recreational vessels and commercial vessels. In recent years, a significant amount of industrial and commercial business has closed along the waterfront. This change has caused a decrease in the amount of bridge openings requested from midnight to 8 a.m.

Nassau County Bridge Authority held two public meetings, one on August 18, 2022 and another on August 25, 2022. No one from the public attended.

On August 25, 2023, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Drawbridge Operation Regulation; Reynolds Channel, Atlantic Beach, NY (88 FR 58176). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this drawbridge. During the comment period that ended September 25, 2023 we did not receive any public comments.

III. Discussion of Proposed Rule

This supplemental proposed rule provides the draw to open on signal from 8 a.m. to midnight October 1 through May 14; and from midnight to 8 a.m. year-round, the draw shall open on signal if at least 8 hours' notice is given. The reason for these changes is to reduce openings on signal during off peak hours due to a significant reduction of commercial business on the waterway. Additionally, in revised paragraph (2) of the regulation the Nassau County Bridge Authority provided a bridge tower phone number for mariners to contact when requesting a bridge opening; paragraph (3) will be rephrased to improve readability and clarity and remove unnecessary discussions of high tide predictions based on the NOAA published tide table.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analysis based on these statutes and Executive orders follows.

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 SNPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this SNPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rulemaking would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rulemaking under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of chapter 3, table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

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

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–2022–0854 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this 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. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, when a final rule is published, and of any posting or updates to the docket.

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

List of Subjects in 33 CFR Part 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.799(e) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(e) The draw of the Atlantic Beach Bridge across Reynolds Channel, mile 0.4, shall operate as follows:

(1) From October 1 through May 14 the draw shall open on signal from 8 a.m. to midnight.

(2) From midnight to 8 a.m. year-round, the draw shall open on signal if at least eight (8) hours of notice is given by calling the Bridge Tower at 516–239–1821.

(3) From May 15 through September 30, the bridge will open on signal except from 4 p.m. to 7 p.m. on weekdays and from 11 a.m. to 9 p.m. on Saturdays, Sundays, Memorial Day, Independence Day, and Labor Day when the bridge will open on the hour and half-hour.

* * * * *

Dated: February 14, 2024.

J.W. Mauger,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 2024–03455 Filed 2–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0157]

RIN 1625–AA87

Security Zone; Port Valdez and Valdez Narrows, Valdez, AK

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The current Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal) security zone encompasses a waterside portion and 2000 yards inland, which includes the shoreside portion of the terminal and adjacent land. The Coast Guard is proposing to amend the TAPS Terminal security zone to exclude the land portion from the security zone. The Coast Guard has never exercised any legal authority, nor has it enforced regulations within the inland portion of the security zone. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before March 22, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0157 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. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Junior Grade Abigail Ferrara, Marine Safety Unit Valdez, U.S. Coast Guard. Telephone 907–835–7209, email *Abigail.C.Ferrara@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Prince William Sound
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
TAPS Trans-Alaska Pipeline
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

In response to the terrorist attacks on September 11, 2001, the Coast Guard instituted several temporary security zones in the Trans-Alaska Pipeline (TAPS) Terminal and Port Valdez areas. Between 2002 and 2004, Coast Guard published several proposed and supplemental proposed rulemakings to establish security zones in the area. This culminated with a final rule (71 FR 2152) published on January 13, 2006, which established the current permanent security zones in 33 CFR 165.1710.

The current TAPS Terminal security zone encompasses a waterside portion and 2000 yards inland, which includes the shoreside portion of the terminal and adjacent land. The Coast Guard has never exercised any legal authority, nor has it enforced regulations within the inland portion of the security zone. The Captain of the Port Prince William Sound (COTP) determined that the current practice of non-enforcement within the inland portion of the security zone could create confusion for future stakeholders and the public. It would be an arbitrary and unreasonable burden upon the facility and industry employees who have freely entered the inland portion without COTP permission for decades if a COTP were to begin enforcing their authority over the inland portion of the security zone in the future.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70051 and 70124.

III. Discussion of Proposed Rule

The COTP is proposing to amend the current security zone found in 33 CFR 165.1710(a)(1) to excise the 2000-yard inland portion of the zone. This would result in the security zone encompassing only the water up to the shoreline. 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.

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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size and location of the current waterside portion security zone remaining the same. Moreover, the landside portion of the facility has had other security regulations in place for roughly two decades.

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.

This regulatory change would not affect any small entities, as the COTP does not enforce the requirements for the landside portion of the security zone, and the waterside security zone coordinates will remain unchanged.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rulemaking would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please 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 excising the 2000-yard inland portion TAPS Terminal security zone. Normally such actions are categorically excluded from further review under paragraph L60(b) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

V. Public Participation and Request for Comments

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

Submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0157 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. Also, if you click on the Dockets tab and then the proposed rule, you should see a ''Subscribe'' option for email alerts. The option will notify you when comments are posted, or a final rule is published.

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, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 165.1710(a)(1) to read as follows:

§ 165.1710 Port Valdez and Valdez Narrows, Valdez, Alaska—security zones.

(a) * * *

(1) *Trans-Alaska Pipeline (TAPS) Valdez Terminal complex (Terminal), Valdez, Alaska and TAPS tank vessels.* All waters enclosed within a line beginning on the southern shoreline of Port Valdez at 61°05′03.6″ N, 146°25′42″ W; thence northerly to yellow buoy at 61°06′00″ N, 146°25′42″ W; thence east to the yellow buoy at 61°06′00″ N, 146°21′30″ W; thence south to 61°05′06″ N, 146°21′30″ W; thence west along the shoreline to the beginning point.

* * * * *

Dated: February 14, 2024.

S.K. Rousseau,

Commander, U.S. Coast Guard, Captain of the Port Prince William Sound.

[FR Doc. 2024–03486 Filed 2–20–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2023–0058]

RIN 0651–AD75

Expanding Opportunities To Appear Before the Patent Trial and Appeal Board

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its initiatives to expand access to practice before the U.S. Patent and Trademark Office (USPTO or Office), the USPTO proposes to amend the rules regarding admission to practice before the Patent Trial and Appeal Board (PTAB or Board) in proceedings under the Leahy-Smith America Invents Act (AIA proceedings) to give parties the option to designate non-registered practitioners who are recognized *pro hac vice* (*i.e.,* granted recognition in a specific PTAB proceeding) as lead counsel; excuse parties from the requirement to designate back-up counsel upon a showing of good cause such as a lack of resources to hire two counsel; establish a streamlined alternative procedure for recognizing counsel *pro hac vice* that is available when counsel has previously been recognized *pro hac vice* in a different PTAB proceeding; and clarify that those recognized *pro hac vice* have a duty to inform the Board of subsequent events that render inaccurate or incomplete representations they made to obtain *pro hac vice* recognition.

DATES: Written comments must be received on or before May 21, 2024.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, one should enter docket number PTO–P–2023–0058 on the homepage and select ''search.'' The site will provide search results

listing all documents associated with this docket. Commenters can find a reference to this proposed rule and select the ''Comment'' icon, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe® portable document format or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of or access to comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Michael P. Tierney, Vice Chief Administrative Patent Judge, or Scott C. Moore, Acting Senior Lead Administrative Patent Judge, at 571–272–9797.

SUPPLEMENTARY INFORMATION:

Background

The Director of the USPTO has statutory authority to require those seeking to practice before the Office to show that they possess ''the necessary qualifications to render applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.'' 35 U.S.C. 2(b)(2)(D). Thus, courts have determined that the USPTO Director bears the primary responsibility for protecting the public from unqualified practitioners. See *Hsuan-Yeh Chang* v. *Kappos,* 890 F. Supp. 2d 110, 116–17 (D.D.C. 2012) (''Title 35 vests the [Director of the USPTO], not the courts, with the responsibility to protect [US]PTO proceedings from unqualified practitioners.'') (quoting *Premysler* v. *Lehman,* 71 F.3d 387, 389 (Fed. Cir. 1995)), aff'd sub nom., *Hsuan-Yeh Chang* v. *Rea,* 530 F. App'x 958 (Fed. Cir. 2013).

Pursuant to that authority and responsibility, the USPTO has promulgated regulations, administered by the Office of Enrollment and Discipline (OED), that provide that registration to practice before the USPTO in patent matters or design patent matters requires a practitioner to demonstrate possession of ''the legal, scientific, and technical qualifications necessary for him or her to render applicants valuable service.'' 37 CFR 11.7(a)(2)(ii).[1] The USPTO determines whether an applicant possesses the legal qualification by administering a registration examination, which applicants must pass before being admitted to practice. See 37 CFR 11.7(b)(ii). The USPTO sets forth guidance for establishing possession of scientific and technical qualifications in the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases before the United States Patent and Trademark Office (GRB). The GRB is available at *www.uspto.gov/sites/default/files/documents/OED_GRB.pdf.* The GRB also contains the ''Application for Registration to Practice before the United States Patent and Trademark Office.''

The rules that currently govern practice before the PTAB in AIA proceedings differ somewhat from the rules that govern other types of USPTO proceedings. In an AIA proceeding, 37 CFR 42.10(a) requires that each represented party designate a lead counsel and at least one back-up counsel. The regulation requires that the lead counsel be a registered practitioner. The regulation allows non-registered practitioners to be back-up counsel, but only ''where the lead counsel is a registered practitioner,'' and when ''a motion to appear *pro hac vice* by counsel who is not a registered practitioner [is] granted upon showing that counsel is an experienced litigating attorney and has an established familiarity with the subject matter at issue in the proceeding.'' *Id.*

The Board typically requires that *pro hac vice* motions be filed in accordance with the ''Order Authorizing Motion for *Pro Hac Vice* Admission'' in *Unified Patents, Inc.* v. *Parallel Iron, LLC,* IPR2013–00639, Paper 7 (PTAB Oct. 15, 2013) (the *Unified Patents* Order). The *Unified Patents* Order requires that a motion for *pro hac vice* admission must:

a. Contain a statement of facts showing there is good cause for the Board to recognize counsel *pro hac vice* during the proceeding [; and]

b. Be accompanied by an affidavit or declaration of the individual seeking to appear attesting to the following:

i. Membership in good standing of the Bar of at least one State or the District of Columbia;

ii. No suspensions or disbarments from practice before any court or administrative body;

iii. No application for admission to practice before any court or administrative body ever denied;

iv. No sanctions or contempt citations imposed by any court or administrative body;

v. The individual seeking to appear has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules of Practice for Trials set forth in part 42 of 37 CFR;

vi. The individual will be subject to the USPTO Rules of Professional Conduct set forth in 37 CFR 11.101 *et. seq.* and disciplinary jurisdiction under 37 CFR 11.19(a);

vii. All other proceedings before the Office for which the individual has applied to appear pro hac vice in the last three years; and

viii. Familiarity with the subject matter at issue in the proceeding.

Id. at 3. If the affiant or declarant is unable to provide any of the information requested above or make any of the required statements or representations under oath, the *Unified Patents* Order requires that the individual provide a full explanation of the circumstances as part of the affidavit or declaration. *Id.* at 4.

Proposed Changes

On October 18, 2022, the USPTO published a Request for Comments in which the USPTO requested comments on potential ways to expand opportunities for non-registered practitioners to appear before the Patent Trial and Appeal Board. 87 FR 63047. The request asked several questions, including: (1) whether the USPTO should permit non-registered practitioners to appear as lead counsel in AIA proceedings, and if so, whether they should need to be accompanied by a registered practitioner as back-up counsel; (2) whether the USPTO should establish a new procedure by which non-registered practitioners could be admitted to practice before the PTAB; (3) what impact various proposals would have on the cost of representation; and (4) whether any changes should be implemented initially as a pilot program. The Office received nine comments in response to the request. Five comments were in favor of retaining existing limits on non-registered practitioners, while four comments generally supported expanding the ways in which non-registered practitioners can participate in AIA proceedings. During the comment period, the Office received several comments in favor of expanding

[1] Legal representation before Federal agencies is generally governed by the provisions of 5 U.S.C. 500. However, that statute provides a specific exception for representation in patent matters before the USPTO. 5 U.S.C. 500(e). *See* 35 U.S.C. 2(b)(2)(D) (formerly 35 U.S.C. 31).

the ways in which non-registered practitioners can participate in PTAB AIA proceedings, and several comments opposing such changes.

The comments were split on the issue of whether non-registered practitioners should be permitted to appear as lead counsel. Some of the comments, however, suggested that any potential issues with allowing non-registered practitioners to serve as lead counsel could be ameliorated by requiring that they be accompanied by a registered practitioner as back-up counsel. Most of the comments indicated that the Office should continue to require non-registered practitioners to meet fitness-to-practice standards, but several comments agreed that it might be more efficient and less costly to the parties to establish a separate registry or certification procedure that would permit non-registered practitioners to avoid filing separate *pro hac vice* motions in each individual case. Several commentators indicated that the rule requiring that parties retain both lead and back-up counsel might increase cost, but their comments were split, with some arguing that the additional costs were justified in order to maintain the Office's high standards of representation, and others arguing that the additional costs might adversely impact certain parties. Most of the comments expressed no opinion on whether any changes should be addressed as a pilot program. Of the three commentators that addressed this issue, one favored implementing any changes as a pilot program, one indicated that a pilot program would be unnecessary, and one indicated a pilot program would be unnecessary if we were to permit non-registered practitioners to appear as lead counsel with a registered practitioner as back-up without making other substantive changes to admissions standards.

Therefore, to advance its goal of expanding access to practice before the USPTO while continuing to protect the public from unqualified practitioners, and based on the input from stakeholders and commenters, this proposed rule would retain the requirement that parties be represented by a registered practitioner, but would permit parties to designate a non-registered practitioner as lead counsel and the registered practitioner as back-up counsel. This proposed change would better the chances that teams doing work before the PTAB have the requisite qualifications to engage in all matters before the PTAB, including in quasi-prosecution work such as claim amendments. For instance, the proposed change would help ensure that counsel have the qualifications to advise their clients of all available options before the Office, including the ability of patent owners to amend claims in an issued patent through a reissue application or a request for reexamination before, during, or after an AIA proceeding at the PTAB.[2]

In order to support individuals, smaller entities and others who may be under-resourced, this proposed rule would permit parties to file a motion to be excused from the requirement of retaining both lead and back-up counsel for good cause including in the event that it lacked the financial resources to retain two counsel.

In order to increase efficiency and reduce unnecessary expenses, this proposed rule would also establish a streamlined procedure for counsel who were previously recognized *pro hac vice* in a PTAB proceeding, minimizing the burden of expense of seeking *pro hac vice* admission in subsequent cases, while still ensuring compliance with fitness-to-practice standards.

All who appear before the Board, including those recognized *pro hac vice,* have a duty of candor and good faith to the Office pursuant to 37 CFR 42.11. In order to provide more specific guidance regarding the obligations of those recognized *pro hac vice,* this proposed rule would clarify that such persons must inform the Board of subsequent developments that render materially incomplete or incorrect information that was provided in connection with a request for *pro hac vice* recognition. For example, notification would be required if a non-registered practitioner admitted *pro hac vice* in a proceeding was subsequently sanctioned, cited for contempt, suspended, disbarred, or denied admission by any court or administrative agency, or if the non-registered practitioner were to no longer qualify as a member in good standing of the Bar of at least one State or the District of Columbia.

The Office intends to proceed with rulemaking, rather than a pilot program, because the Office, based on its experience in conducting AIA proceedings, and having considered the comments received, agrees that a pilot program is not necessary for the successful implementation of the desired change.

The USPTO promulgated a final rule effective January 2, 2024, which advised that ''[f]or avoidance of doubt, the USPTO clarifies that the term ''registered practitioner,'' as used in parts 41 and 42, and the term ''USPTO patent practitioner,'' as used in § 42.57, encompasses ''design patent practitioners,'' as defined in § 11.1.'' 88 FR 78649. For clarity, the USPTO reminds the public that § 11.5(b)(2) authorizes design patent practitioners to ''draft[ ] a communication for an interference, derivation, and/or reexamination proceeding, a petition, an appeal to or any other design patent proceeding before the Patent Trial and Appeal Board, or any other design patent proceeding.'' *Id.*

[2] *See* 84 FR 16654, Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding (April 2019).

Discussion of Proposed Rule Changes

The USPTO proposes to amend § 42.10(a) to provide that upon a showing of good cause, the Board may permit a party to proceed without separate back-up counsel so long as lead counsel is a registered practitioner.

The USPTO proposes to amend § 42.10(c) to provide that a non-registered practitioner admitted *pro hac vice* may serve as either lead or back-up counsel for a party so long as a registered practitioner is also counsel of record for that party, and to provide that a non-registered practitioner who was previously recognized *pro hac vice* in an AIA proceeding and not subsequently denied recognition *pro hac vice* shall be considered a PTAB-recognized practitioner, and shall be eligible for automatic *pro hac vice* admission in subsequent proceedings via a simplified and expedited process that does not require payment of a fee. The amendment would also provide that those recognized *pro hac vice* have a duty to inform the Office of any developments that occur during the course of a proceeding that that might have materially impacted the grant of *pro hac vice* admission had the information been presented at the time of grant.

Rulemaking Requirements

A. Administrative Procedure Act: The changes proposed by this rulemaking involve rules of agency practice and procedure, and/or interpretive rules, and do not require notice-and-comment rulemaking. See *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97, 101 (2015) (explaining that interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'' and do not require notice and comment when issued or amended); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements

of policy, or rules of agency organization, procedure, or practice''); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits'').

Nevertheless, the USPTO is publishing this proposed rule for comment to seek the benefit of the public's views on the Office's proposed regulatory changes.

B. Regulatory Flexibility Act: For the reasons set forth in this rulemaking, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO, has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes proposed in this rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

This proposed rule would permit non-registered practitioners to serve as lead counsel in Board proceedings; permit parties to proceed without back-up counsel upon a showing of good cause; create a new streamlined procedure for admitting counsel *pro hac vice* that is available for counsel who have previously been admitted *pro hac vice* in a different Board proceeding; and clarify that those recognized *pro hac vice* have a duty to inform the Board if the information presented in a request for *pro hac vice* recognition is no longer accurate or complete. These changes would not limit or restrict counsel who meet current eligibility criteria to practice before the Board and would not limit or restrict the ability of parties to designate counsel of their choosing. The USPTO does not collect or maintain statistics on the size status of impacted entities, which would be required to determine the number of small entities that would be affected by the rule. However, the changes in this rule are not expected to have any material impact on otherwise regulated entities because the changes to the regulations are procedural in nature, do not impose any significant new burdens or requirements on parties or counsel, and are designed to reduce the cost and complexity of Board proceedings. Although this proposal includes a new requirement to inform the Board if information submitted in a request for *pro hac vice* recognition is no longer accurate or complete, the number of impacted entities is expected to be very small and any additional cost burden is expected to be minimal. Accordingly, the changes proposed in this rule are expected to be of minimal additional burden to those practicing before the Office.

For the reasons discussed above, this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of E.O. 12866 (Sept. 30, 1993), as amended by E.O. 14094 (Apr. 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, and as discussed above, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking pertains strictly to federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under E.O. 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden, as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The proposed changes in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq*.

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under OMB control numbers 0651–0069 (Patent Review and Derivation Proceedings). Updates to this information collection that result from the Final Rule will be submitted to the OMB as non-substantive change requests.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, the USPTO proposes to amend 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Amend § 42.10 by revising paragraphs (a) and (c) to read as follows:

§ 42.10 Counsel.

(a) If a party is represented by counsel, the party must designate a lead counsel and at least one back-up counsel who can conduct business on behalf of the lead counsel, unless good cause is shown. The Board may permit a party to proceed without back-up counsel upon a showing of good cause, subject to the condition that lead counsel be a registered practitioner. A party may show good cause by demonstrating that it lacks the financial resources to retain both lead and back-up counsel.

* * * * *

(c)(1) *Pro hac vice recognition of non-registered practitioners.* The Board may recognize counsel who is not a registered practitioner *pro hac vice* during a proceeding, as either lead or back-up counsel, upon a showing of good cause, subject to the condition that at least one other counsel designated to appear on behalf of the party is a registered practitioner, and to any other conditions as the Board may impose. For example, a motion to permit counsel who is not a registered practitioner to appear *pro hac vice* in a proceeding may be granted upon a showing that counsel is an experienced litigating attorney and that back-up counsel will be a registered practitioner.

(2) *Pro hac vice recognition of PTAB-recognized practitioners.* (i) A non-registered practitioner who has been previously recognized *pro hac vice* in a Board proceeding, and who has not subsequently been denied permission to appear *pro hac vice* in a Board proceeding, shall be considered a PTAB-recognized practitioner. PTAB-recognized practitioners shall be eligible for automatic *pro hac vice* admission in subsequent proceedings, as either lead or back-up counsel, subject to the following conditions.

(ii) If a party seeks to be represented in a proceeding by a PTAB-recognized practitioner, that party may file a notice of intent to designate a PTAB-recognized practitioner as either lead or back-up counsel. No fee is required for such a notice. The notice shall:

(A) Identify a registered practitioner who will serve as co-counsel, and

(B) Be accompanied by a certification in the form of a declaration or affidavit, in which the PTAB-recognized practitioner attests to satisfying all requirements set forth by the Board for *pro hac vice* recognition of a PTAB-recognized practitioner, and agrees to be subject to the USPTO Rules of Professional Conduct set forth in §§ 11.101 *et seq.* of this chapter and disciplinary jurisdiction under § 11.19(a) of this chapter.

(iii) Any objection shall be filed within five business days after the filing of the notice. If an objection is not filed within five business days, the PTAB-recognized practitioner shall be deemed admitted *pro hac vice* in that proceeding upon filing of updated mandatory notices identifying that practitioner as counsel of record. If an objection is filed within five business days, unless the Board orders otherwise within ten business days after the objection is filed, the PTAB-recognized practitioner shall be deemed admitted *pro hac vice* after updated mandatory notices identifying that practitioner as counsel of record are then filed.

(iv) If a PTAB-recognized practitioner is unable to satisfy any of the requirements set forth by the Board, or is unable to make any of the required attestations under oath, this procedure is not available, and *pro hac vice* recognition must instead be sought under the process set forth in paragraph (c)(1) of this section.

(3) *Continuing duty of non-registered practitioners recognized pro hac vice.* For the entire duration of any proceeding in which a non-registered practitioner is recognized *pro hac vice* pursuant to paragraph (c)(1) or (2) of this section, the non-registered practitioner has a continuing duty to notify the Board in writing within five business days if:

(i) The non-registered practitioner is sanctioned, cited for contempt, suspended, disbarred, or denied admission by any court or administrative agency;

(ii) The non-registered practitioner no longer qualifies as a member in good standing of the Bar of at least one State or the District of Columbia; or

(iii) Any other event occurs that renders materially inaccurate or incomplete any representation that was made to the Board in connection with the request for *pro hac vice* recognition, provided, however, that non-registered practitioner is not required to inform the Board of subsequent applications for *pro hac vice* recognition unless such an application is denied.

* * * * *

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–03523 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0047; FRL–9920–01–R3]

Air Plan Disapproval; Pennsylvania; Reasonably Available Control Technology Case-by-Case Permits for Keystone, Conemaugh and Homer City Generating Facilities for the 1997 and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove state implementation plan (SIP) revisions submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Commonwealth of Pennsylvania (Pennsylvania). PADEP submitted SIP revisions for the Keystone, Conemaugh and Homer City electric generating facilities on May 26, 2022 to address certain reasonably available control technique (RACT) requirements for the 1997 and 2008 ozone national ambient air quality standards (NAAQS). EPA is proposing to disapprove the May 26, 2022 SIP revisions for these facilities as the SIPs contain problematic provisions and fail to justify the selection of permit limits as RACT consistent with applicable requirements and case law. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 22, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2024–0047 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.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*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, 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.*

FOR FURTHER INFORMATION CONTACT: Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5511. Mr. Silverman can also be reached via electronic mail at *silverman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The RACT requirements in CAA section 182(b)(2) apply to all ozone nonattainment areas classified as Moderate or higher (*i.e.* Serious, Severe, or Extreme). Section 184(b)(1)(B) of the CAA also applies RACT to all areas located within ozone transport regions. The entire Commonwealth of Pennsylvania is part of the Ozone Transport Region (OTR) established by section 184 of the CAA and therefore subject statewide to RACT requirements.

On May 16, 2016, Pennsylvania submitted a SIP revision intended to satisfy CAA sections 182(b)(2)(C), 182(f), and 184 for the 1997 and 2008 8-hour ozone NAAQS for all major sources of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) in Pennsylvania not subject to control techniques guidelines (CTGs), with a few exceptions not relevant to this action. On May 9, 2019, EPA published a final action fully approving certain provisions and conditionally approving other portions of Pennsylvania's May 16, 2016, SIP submission to implement RACT for the 1997 and 2008 Ozone NAAQS (hereafter the ''RACT II rule''). 84 FR 20274 (May 9, 2019). Specifically, EPA's action fully approved sections 121.1, 129.96, 129.97, and 129.100 of Title 25 of the Pennsylvania Code (25 Pa. Code) as meeting certain aspects of major stationary source RACT in CAA sections 172, 182, and 184 for the 1997 and 2008 ozone NAAQS, and conditionally approved 25 Pa. Code sections 129.98 and 129.99 following a commitment provided by Pennsylvania to submit additional SIP revisions to address the deficiencies identified by EPA in the May 16, 2016 SIP revision. Id. at 20290.

On August 27, 2020, the Third Circuit held unlawful and vacated EPA's approval of certain SIP provisions challenged by the Sierra Club. *Sierra Club* v. *EPA,* 972 F.3d 290 (3rd Cir. 2020) (''*Sierra Club*''). The case related to EPA's approval of only that portion of the RACT II rule applicable to coal-fired electricity generating units (EGUs) equipped with selective catalytic reduction (SCR) for control of NO_X. Specifically at issue was EPA's approval of the presumptive RACT NO_X limit for these EGUs of 0.12 pounds of NO_X per Million British Thermal Units (MMBtu) of heat input (lbs/MMBtu) when the inlet temperature to the SCR was 600 degrees Fahrenheit or above, found at 25 Pa. Code 129.97(g)(1)(viii); the application of the less stringent NO_X limits of 25 Pa Code 129.97(g)(1)(vi) to EGUs with SCR when the inlet temperature to the SCR was below 600 degrees Fahrenheit; and the failure of the RACT II rule at 25 Pa. Code 129.100(d) to specifically require these EGUs to keep temperature data for the inlet temperature to the SCRs and report that data to PADEP.

The Court explained that, while RACT does not require the lowest achievable emissions limit, Pennsylvania's adoption of a limit derived from the average historical NO_X emissions of the units at these EGUs, without more, was insufficient. The record showed that certain units within Pennsylvania were capable of achieving significantly lower rates of NO_X emissions. The Court found that EPA did not sufficiently explain why a lower standard was infeasible. *Sierra Club,* 972 F.3d at 299–303. Second, the Court held that Pennsylvania's standard acted as a loophole because it permitted unlimited operations without the use of SCR controls if exhaust gas temperature was kept below what the Court considered an arbitrary temperature threshold of 600 degrees Fahrenheit. Id. at 303–07. Third, the Court held that Pennsylvania's reporting requirements were not enforceable. Id. at 307–09.

Consequently, the Court vacated EPA's approval of this portion of the 2016 SIP and ordered EPA either to approve a revised, compliant SIP or promulgate a FIP within two years (*i.e.,* by August 27, 2022). *Sierra Club* at 309. The Court stated that the new standard—SIP or FIP—''must be technology forcing, in accord with [EPA's] RACT standard, and lack the gaping loophole found in the [2016 SIP's] enforcement regime.'' Id. On August 16, 2022, EPA took final action

to disapprove the vacated portions of the May 19, 2020 approval. 87 FR 50257. EPA published its proposed FIP on May 25, 2022. 87 FR 31798. EPA issued a FIP on August 31, 2022. 87 FR 53381.

Following the Court's decision, PADEP required that by April 1, 2021, each source within a facility which had been subject to the presumptive 0.12 lb/MMBtu limit submit a permit application in accordance with 25 Pa. Code 129.99 setting forth a RACT analysis for each unit at the facility.[1] On or about April 1, 2021, Conemaugh, Homer City, Keystone, and Montour submitted permit applications to PADEP with RACT analyses.[2] PADEP found the permit applications to be technically deficient and therefore issued technical deficiency letters to each of these sources seeking additional information. Although the sources submitted additional information, PADEP decided that it would do its own case-by-case RACT analysis for each EGU at each facility and propose new RACT limits for each EGU in amended title V permits. Once these permits became final, PADEP intended to submit each permit to EPA as a SIP revision to meet the RACT requirement for each source. EPA also continued to regularly discuss with PADEP their efforts to develop case-by-case RACT/title V permits for these sources.

From September 11, 2021, through November 6, 2021, PADEP serially issued draft RACT/title V permits for four sources, while Allegheny County issued a draft RACT/title V permit for Cheswick in December 2021.[3] EPA submitted timely comments on each draft permit. Many of the concerns and issues identified in EPA's first set of comments (which was on the Keystone permit) appeared again in the draft permits for the other sources. EPA's comments raised significant concerns over the approvability of each permit because each remained inconsistent with the court's decision, and PADEP did not address those concerns with each subsequent draft permit it published for comment. On May 26, 2022, PADEP submitted case-by-case RACT determinations to EPA as a revision to the Pennsylvania SIP which still contained the approvability issues EPA had flagged in its comments, for Keystone, Conemaugh, and Homer City. PADEP submitted a case-by-case RACT determination for Montour as a revision to the Pennsylvania SIP on June 9, 2022, but subsequently formally withdrew it.[4] In addition, the Cheswick facility permanently ceased operations and surrendered all of its air permits to the Allegheny County Health Department.[5] The Homer City facility also ceased all coal-burning operations on July 1, 2023.[6] Prior to July 1st, only Unit 3 at Homer City was operating. However, because Homer City has not formally surrendered its CAA permits, which would demonstrate that the shutdown is permanent, and because PADEP has not withdrawn the SIP submission with regard to Homer City, EPA will continue to consider the approvability of the RACT NO_X limits for Homer City.

EPA notes that the May 2022 permits for Keystone and Conemaugh also contain case-by-case RACT limits for certain gas or oil-fired auxiliary boilers at these facilities. However, EPA is not taking action at this time on the case-by-case RACT limits in these permits for two auxiliary boilers at Keystone (Source IDs 037 and 038) and the two at Conemaugh (Source IDs 039 and 041). These auxiliary boilers were not subject to the presumptive RACT limit in 25 Pa. Code 129.97(g)(1)(viii) for which EPA issued a final disapproval in August 2022.

II. Summary of the Case-by-Case Permit SIP Revisions

EPA notes that the RACT limits in PADEP's May 2022 SIP submittal addressed RACT limits for the large Electric Generating Units (EGUs) at Conemaugh, Keystone, and Homer City for only the 1997 and 2008 ozone NAAQS. These source-specific limits were established pursuant to 25 Pa. Code 129.99, which was conditionally approved by EPA in March 2019. Section 129.99 of 25 Pa. Code allows a source to apply for an alternative RACT limit (a.k.a. ''case-by-case'' RACT limit) to the otherwise default (a.k.a. ''presumptive'') RACT limits where appropriate. In response to comments,[7] PADEP affirmed that the RACT limits for the EGUs at these three sources do not address the 2015 ozone NAAQS.[8]

Summary of Pennsylvania's Process for Setting Limits

PADEP developed the NO_X limits for each of the EGUs at each facility using a similar methodology, which included using similar years of data. Table 1 in this document summarizes the three NO_X emission rates applicable to each unit at each facility as proposed by Pennsylvania for public comment, and the final limits in the permits submitted by PADEP for approval as SIP revisions.

TABLE 1—PROPOSED RATES AND FINAL RATES IN 2022 PA SIP SUBMISSION

Facility	Unit	Capacity	Proposed limits			Submitted as SIP revision (final)		
			SCR on lb/MMBtu daily avg.	All conditions lb/MMBtu daily avg.	All conditions lb/hr 30-day avg.	SCR on lb/MMBtu daily avg.	All conditions lb/MMBtu daily avg.	All conditions lb/hr 30-day avg.
Conemaugh	1	8,280	0.070	0.27	700	0.070	0.27	700
	2	8,280	0.070	0.27	700	0.070	0.27	700
Keystone	1	8,717	0.080	0.30	800	0.080	0.30	770
	2	8,717	0.080	0.30	800	0.080	0.30	770
Homer City	1	6,792	0.080	0.45	550	0.080	0.45	600
	2	6,792	0.080	0.45	550	0.080	0.45	600
	3	7,260	0.070	0.27	510	0.070	0.27	560

[1] See ''Conemaugh RACT II Review Memo'' p. 2, ''Homer City RACT II Review Memo'' p. 3 and ''Keystone RACT II Review Memo'' p. 2, available in the docket of this action.

[2] The Bruce Mansfield EGUs ceased all operations prior to April 1, 2021 and therefore did not submit a RACT permit application.

[3] See 51 Pa.B. 5834, September 11, 2021 (Keystone); 51 Pa.B. 6259, October 2, 2021 (Conemaugh); 51 Pa.B. 6558, October 16, 2021 (Homer City); 51 Pa.B. 6930, November 6, 2021 (Montour); Allegheny County Health Department Public Notices, December 2, 2021 (Cheswick).

[4] See document dated October 26, 2022 from EPA Region III to Acting Secretary Ramez Ziadeh of PADEP available in the docket of this action.

[5] See document dated April 15, 2022 from Allegheny County to Lee Bahl of GenOn Holdings LLC available in the docket of this action.

[6] See *https://www.pjm.com/planning/service-requests/gen-deactivations.*

[7] All three Response to Comments (RTC) documents are in the docket for this matter. The Conemaugh Response to Comments (Con RTC) and Keystone Response to Comments (Key RTC) are both dated May 12, 2022. The Homer City Response to Comments (HC RTC) in the official SIP submission is marked ''Draft'' and does not contain a date.

[8] See, *e.g.,* Conemaugh Response to Comments, p. 2: ''incorporates the provisions and requirements contained in the amended RACT II approval for the facility, which are intended to satisfy the [CAA] RACT requirements for the 1997 and 2008 . . . ozone [NAAQS].''

A technical evaluation memo (TEM) accompanying each draft permit issued for public comment provided an initial explanation for PADEP's methodology for determining the proposed RACT level of controls for each facility.[9] For each unit at each facility, PADEP states that it followed a ''top-down'' approach to determine NO_X emissions limits, which included searching for and identifying the ''best methodology, technique, technology, or other means for reducing NO_X while factoring environmental, energy and economic considerations into the analysis.'' Con TEM, p. 2; Key TEM, p. 2; HC TEM, p. 2. This included identifying the controls installed on coal-fired units in some other states. PADEP then used the EPA Control Cost Manual (sixth edition), June 12, 2019, and sometimes vendor's quotes, to determine whether control options PADEP identified as technically feasible were also cost effective. Con TEM, pp. 2–3; Key TEM, p. 2; HC TEM, p. 3. PADEP performed some type of analysis for multiple NO_X control technologies [10] for each facility before ''determin[ing] that no additional controls are cost effective.'' Con TEM at 3. See, *e.g.,* Con TEM pp. 3–19. In lieu of new controls, PADEP determined that for each of the three facilities, changes to the way the facilities operated their SCRs and changes to how they ''tuned'' the boilers were the only technically available and cost-effective controls for reducing NO_X emissions. Con TEM, pp. 2–3; Key TEM, pp. 2–3; HC TEM, pp. 2–3. This approach resulted in PADEP adopting three separate but related limits for each EGU at each of the three facilities. The proposed and final rates are in Table 1 of this document. The method that PADEP used to arrive at each of the three rates is summarized below.

Selection of SCR-on lb/MMBtu Daily Average Rates

To determine the ''SCR-on'' limit representing RACT for when the SCRs are operating, PADEP ''analyzed daily NO_X emissions rates from EPA's Clean Air Markets Division (CAMD) database at varying operating load conditions'' for most of the units at each facility. Con TEM, p. 3; HC TEM pp. 4–13; Key TEM p. 3. PADEP examined data for each facility ranging from 2016 to 2020, depending on the facility.[11] For certain months within the 2016–2020 time frame, PADEP states that it analyzed the percentage of daily heat input and corresponding percentage of daily reagent injection for a unit or units at each facility to ascertain how heat input and reagent input affected daily NO_X emissions, and to determine the lowest emission limit each unit could technically and economically achieve with the SCRs. PADEP's analysis included examining the percentage of maximum heat rate input for the unit for each day of certain months and the corresponding percentage of maximum ammonia (the reagent used) input observed per day for the same month. Con TEM, p. 4; Key TEM, pp. 3–8; HC TEM pp. 4–13. From this data, PADEP identified a ''load'' or heat input level at which it seemed that Conemaugh stopped injecting ammonia into the flue gas stream, see Con. TEM, p. 6, but did not identify loads or heat inputs at which Homer City's or Keystone's units stopped injecting ammonia. See HC TEM pp. 4–13, Key TEM pp. 3–8. PADEP also presented NO_X emission rate data for certain months for each source during various ozone seasons, and for some periods outside of ozone seasons.[12] For each facility, PADEP found that the automated controls that run the SCRs seemed to be set at an emissions ''set point,'' expressed as pounds of NO_X per million Btus of heat input (lb NO_X/MMBtu), and that these set points varied over time.[13] For Conemaugh, PADEP concluded that ''additional emission reductions would be achieved if the operator operated the SCR with a lower emissions setpoint while the SCR is running.'' Con. TEM, p. 6. For Keystone, PADEP stated ''[b]oth units at Keystone seem to be able to achieve a NO_X rate of 0.060 lb/MMBtu on a daily average basis,'' but cited ''varying load conditions and other factors'' as affecting SCR performance and therefore proposed (and finalized) a daily average SCR-on rate of 0.08 lb/MMBtu for both. Key TEM, p. 6. PADEP does not provide further information on what these other factors are or what impact they and load conditions would have that lead to the selection of the 0.08 lb/MMBtu limit. For Homer City units 1 and 2, PADEP's analysis concluded that the facility seemed to be targeting a NO_X emission rate of 0.10 lb/MMBtu when the SCRs were operating, but identified ''rare'' periods where the units achieved rates below 0.05 lb/MMBtu. HC TEM, p. 5. However, PADEP concluded that ''[d]espite the fact that emissions under 0.10 lb/MMBtu are possible under at least some operating conditions, accounting for other operating condition requires a limit above the minimum achievable.'' HC TEM, p. 8. PADEP therefore proposed (and finalized) a 0.080 lb/MMBtu daily average operating rate for Units 1 and 2 when the SCR is operating. For Unit 3, PADEP found that it was also targeting a NO_X emission rate of 0.10 lb/MMBtu, but during July 2019 was able to consistently achieve NO_X rates between 0.08 and 0.09 lb/MMBtu despite daily load swings. HC TEM, p. 9–10. PADEP identified two other instances where Unit 3 was capable of achieving NO_X rates lower than 0.08, but did not identify the lowest achievable SCR-on rate before determining that other factors require a limit above the lowest achievable NO_X rate.[14] Without identifying the lowest achievable NO_X emission rate or explaining how the other factors affect that rate, PADEP proposed (and finalized) a rate of 0.07 lb/MMBtu when the SCR is operating. HC TEM, pp. 12–13.

Certain changes made to PADEP's proposed rates for each source in response to comments received are discussed in EPA's analysis of the final rates.

[9] All three technical evaluation memos (TEMs) are in the docket for this matter. The Homer City technical evaluation memo (HC TEM) is dated October 14, 2021. The Conemaugh technical evaluation memo (Con TEM) is dated September 28, 2021. The Keystone technical evaluation memo (Key TEM) is dated August 25, 2021.

[10] Potential controls evaluated included: Precombustion Controls (Switching to Natural Gas, Switching from high to low emitting or zero emitting units), Combustion Controls (Partial or full oxy firing, Oxygen enhanced combustion, LNB installation, LNB Optimization, LNB Upgrade, Flue Gas Recirculation (FGR), Separated overfired air, Rotating opposed fire air) Post Combustion Controls (Additional SCR, SCR Optimization, Economizer Bypass during low load, startup, and shutdown to allow SCR operation, V-temp economizer during low load, startup, and shutdown to allow SCR operation, Flue gas reheat during low load, startup, and shutdown to allow SCR operation, Dry sorbent injection prior to SCR during low load conditions to allow SCR operation, addition of Selective Non-Catalytic Reduction (SNCR), SNCR Optimization, Return of partially operating SCR and SNCR systems to full operation) Station Wide Improvements (Installation/improvement of digital process controls on equipment to minimize NO_X emissions and detect equipment in need to maintenance, Improved/increased equipment cleaning and maintenance practices). See Con TEM p. 4–19; Key TEM, pp 3–17; HC TEM pp. 3–21.

[11] Note that Key TEM p. 3, Con TEM p. 3 and HC TEM p. 4, state that the years reviewed are 2017–2020, but Key RTC p. 8, Con RTC p. 9 and HC RTC p. 7 state years reviewed were 2016–2020.

[12] For Keystone, the months examined were May 2017 and April 2018. Key TEM pp. 3–6. For Homer City, the months were June 2019 (unit 1), July of 2019 and 2020 (unit 2), and December 2017, July 2019, September 16, 2019 and Dec. 4, 2019 (unit 3). HC TEM, pp. 4–14. For Conemaugh, dates examined included May 2017, September 5, 2019, and April 4, 2020. Con TEM pp. 3–8.

[13] Con TEM, pp. 3–8; Key TEM, pp. 3–7; HC TEM, pp. 4–13.

[14] The other factors PADEP cites are varying loads, operating load, catalyst condition, exhaust temperature and velocity, moisture level, initial NO_X levels in the exhaust, and other unnamed factors. HC TEM, p. 13.

Selection of All Conditions lb/MMBtu Daily Average Rate

The lb/MMBtu limits in the ''All Conditions lb/MMBtu Daily Average'' columns of Table 1 in this document, represent the daily average NO_X limits that PADEP determined each unit at each facility could achieve solely through the operation of its existing low-NO_X burners with overfire air, so long as the sources ''tuned'' their boilers to optimize the reduction of NO_X rather than to obtain the highest heat output. PADEP describes boiler tuning as making a number of adjustments to the boiler operating parameters that affect the generation of NO_X in the boiler fire box, including excess air levels, secondary air biasing, fuel/auxiliary air damper adjustments, burner tilt, fuel flow biasing, and changes to primary air flows. See, *e.g.,* Con. TEM, pp. 14–15. As stated in the technical evaluation memo for Conemaugh, ''[g]enerally boiler's regular inspection, preventive maintenance, tuning, practicing during shutdown and upset conditions to prevent excess emissions, inspections and testing of Over Fire Air (OFA) components, and adjusted of burner angle to minimize NO_X emissions results in lowering NO_X emissions by 5–15% or at an average of 10. %. [sic]'' Con. TEM, p. 15. For each of the EGU boilers (units) at each of the facilities, PADEP determined that the boiler burners had not been tuned to minimize NO_X emissions, but rather had been tuned to maximize output. Key TEM, p. 13; HC TEM, p. 15; Con TEM, pp. 14–15. For each facility, PADEP concluded that tuning the boilers to minimize NO_X emissions could result in lowering NO_X emissions by 5% to 15%, so PADEP elected to apply an average NO_X reduction of 10% when setting the ''All Conditions lb/MMBtu Daily Average'' rate. Id.

Selection of All Conditions 30-Day Rolling Average lb/hr Rate

Regarding the 30-day rolling average pounds of NO_X/hour limits in the column in Table 1 labeled ''All Conditions lb/hr 30-day Average,'' there is some ambiguity in how PADEP arrived at the final rates for Keystone and Conemaugh. In the Keystone RTC, PADEP states the 30-day lb/hr limit was ''derived from the emission level at 0.08 lb/MMBTU at full load . . . with an additional small margin to account for the fact that it is impossible to completely avoid all periods of operation when complying with the 0.080 lb/MMBtu is technically infeasible.'' Key RTC, p. 10. Similar language stating that the 30-day lb/hr rate was derived from the daily SCR-on rates is also in Con RTC p. 11 and HC RTC p. 9. PADEP's explanation for how the 30-day lb/hr limits were derived in the Technical Evaluation Memos is more ambiguous and does not explicitly state the 30-day lb/hr rate is derived from the daily SCR-on lb/MMBtu rate. A description of what PADEP did in the Technical Evaluation Memos is outlined below.

PADEP seems to have generally performed a similar analysis of similar years of data for all three facilities, but used a different method to set the 30-day lb/hr rates for Conemaugh and Homer City than for Keystone. For each source at each facility, PADEP says it analyzed ''mass-based NO_X emission rate in pounds per hour on a 30 operational day rolling average basis using EPA's CAMD database at all operating conditions for [the units] from 2017–2020. Mass based emission rate on a 30 operational day rolling average basis is dependent on number of hours a unit is operated, on average, at high load vs low load for the past 30-days [sic].'' [15] Con TEM p. 15; see also Key TEM pp. 13–14, HC TEM pp. 17–19.

Following this analysis for each facility, for Conemaugh and Homer City PADEP used the SCR-on lb/MMBtu rate for each unit at each facility, then multiplied that SCR-on rate by each unit's maximum MMBtu per hour rating to arrive at the number of pounds per hour that each unit would emit if they ran at their full heat input rating while complying with that unit's SCR-on lb/MMBtu rate. For example, the technical review memo for Conemaugh explains that:

> ''Each of Conemaugh's units emits about 580 lb NO_X per hour assuming an emission level of .070 lb/MMBtu and 100% load. The impact to the environment should never exceed this level on a long-term basis. The Department is proposing a limit of 700 lb/hr limit on a 30 operational day rolling basis which accounts for all operating scenarios including situations during which the SCR is not able to operate. The compliance buffer also accounts for the fact that both units at Conemaugh operate as much as 10% over their rated capacity.'' (Con TEM, p.15).

For Conemaugh, PADEP concluded that Units 1 and 2 were operating between 55% and 100% load during this time and both were able to achieve at or below 625 lb/hr on a 30-operating day basis. PADEP found that during this time period both units operated at around a 0.075 lb/MMBtu NO_X emissions rate, with occasional higher spikes in rate. Based on this data, PADEP concluded:

> ''Given that the Department believes that NO_X rates below .07 are readily achievable with the SCR in operation, and the fact that both units were able to achieve a 30-day rolling NO_X rate of under 625 lb/hr despite operating at a rate between .075 and .1, DEP believes that Conemaugh Generating Station can achieve a NO_X rate of 700 lb/hr on a 30-day rolling basis. Even if the facility were to operate at low load for a significant time during a 30-day averaging period—generating significantly more mass emissions than operation at higher loads with SCR, emission rates at high load should be significantly below 700 lb/hr allowing the facility to ''make up'' for higher emissions during times of low load, assuming the facility operates to the NO_X rate of .045–.05 lb/MMBtu it is usually capable of meeting when the SCR is operating.'' Con TEM, pp. 16–17.

Thus, for Conemaugh, PADEP proposed and finalized an all conditions 30-day rolling average lb/hr limit of 700 lb/hr.

For Homer City, PADEP used the proposed SCR-on daily average NO_X limit of 0.08 lb/MMBtu for Units 1 and 2, multiplied by the maximum MMBtu per hour for each of these units, to arrive at a 30-day rolling average limit of 550 lb of NO_X per hour for each unit. For Unit 3, PADEP used the proposed SCR-on lb/hr daily average limit of 0.07 lb/MMBtu multiplied by the maximum heat input for Unit 3 to arrive at a rolling 30-day average limit of 510 lbs of NO_X per hour. HC TEM, p. 17. In response to a comment from Homer City, PADEP raised the 30-day rolling average lb/hr limits to 600 lb/hr for Units 1 and 2 and 560 lb/hr for unit 3.

For Keystone, PADEP appears to have arrived at its proposed and final 30-day rolling average lb/hr limit through a different method. PADEP's TEM states that PADEP analyzed the mass-based NO_X emission rate pounds per hour on a 30-day rolling average at all operating conditions for Units 1 and 2 from 2017–2020. Key TEM, p. 13. The TEM then provides Figure 5, which graphs the 30-day rolling NO_X rates for Units 1 and 2, but only for the 2017 ozone season. Key TEM. P. 14. From Figure 5, the TEM concludes that both units were able to achieve at or below 800 lbs/hr on a 30-day rolling average basis, continuously. Key TEM, p.14. The TEM then asserts that based on the CAMD data, ''DEP believes that by managing combination of hours of operations when a unit is operating at loads supporting SCR and at lower loads with [low NO_X burners], Unit 1 and Unit 2 can achieve 800 lbs/hr on a 30-day operating day rolling average basis despite the changes in utilization of the boiler.'' Id. From this,

[15] The Conemaugh TEM does not show the results of the full analysis of the 2017–2020 data. For example, Figure 6 in the Con TEM shows only ozone season operating load versus 30-day rolling average NO_X emissions on a lb/hr basis for the 2017 ozone season. Con TEM, p. 6.

PADEP concluded that the 800 lb/hr 30-day rolling average limit under all operating conditions is RACT. Id. However, in response to comments, this limit was changed to 770 lbs/hr for both units. Key RTC pp. 6.

In the response to comments document for Conemaugh, PADEP explained that the 30-day rolling average lbs/hr all conditions rate ''. . . is the glue that holds the three emission limits together and ensures that the emission reductions from the two Conemaugh Generating Station units are maximized . . . This emission limit applies at all times and in all circumstances, without exception.'' Con RTC, p. 6.[16] PADEP further asserts that the SCR-on lb/MMBtu daily average rate minimizes the emissions that occur when operating with the SCR, while also claiming that the 30-day rolling average lb/hr all conditions rate minimizes ''both the amount of time that the units can be operated when the SCR is technically unavailable, as well as forces the load (and therefore mass emission rate) to the lowest rate possible when it is not being operated due to technical unavailability.'' See, *e.g.* Con RTC, p. 6. The RTC further explains that ''[a]t any load above approximately 30%–40%, operation without control by the SCR results in emissions greater than 700 lbs/hr. As the load climbs, the emissions per hour climb proportionately.'' Id. PADEP asserts that the 700 lb/hr rolling 30-day average limit ''ensures that the operator will maximize operating hours with the SCR and minimize heat input (and total mass emissions) when operation of the SCR is technically infeasible.'' Id.

III. EPA's Evaluation of the RACT Permit Limits in the SIP Submittals

EPA's review of the RACT permit limits in each of the three case-by-case RACT permits submitted as SIP revisions by PADEP has identified several issues appearing in each permit which preclude approval of the SIP submissions as satisfying RACT requirements. In summary, EPA has determined that there are issues regarding the enforceability of the SCR-on permit limits, Director's discretion issues related to the SCR-on limits, and an inadequate justification for why the SCR-on limits meet the definition of RACT for each source. Moreover, because some of the 30-day rolling hourly average pound per hour mass limits appear to be derived from the daily lb/MMBtu SCR-on limits, the failure of the SCR-on limit to meet the criteria for RACT calls into question whether the 30-day limits are RACT.[17] Also, EPA cannot verify from PADEP's submitted SIPs whether these 30-day rolling average pound per hour mass limits actually act as a constraint on operation of the EGUs without operation of the SCRs in a way that represents RACT. In addition, PADEP has added a ''compliance margin'' buffer to the 30-day rolling average pound per hour limits without an adequate explanation of why that buffer is necessary to make the limits technologically or economically feasible. Each of these issues is discussed below. As a result, EPA is proposing to disapprove this SIP revision.

Lack of Enforceability of the ''SCR-On'' Limits for Each EGU at Each Facility

Neither the permits nor the background information submitted with the SIP set forth clear, objective criteria for determining when emissions from each EGU are subject to the SCR-on lb/MMBtu daily average limit(s). As such, it is not possible in all circumstances for EPA or the public to determine whether this limit applies, and therefore whether the sources are in noncompliance with that limit. As a result, EPA is proposing to disapprove the PADEP SIP revision on this basis.

Each permit includes language stating the NO_X emissions are limited at a certain level, but that certain emissions are excluded when evaluating whether the limitations are met. Specifically, the permits contain exclusions for:

''. . . emissions during start-up, and shut-down; operation pursuant to emergency generation required by PJM, including any necessary testing for such emergency operations; and during periods in which compliance with this emission limit would require operation of any equipment in a manner inconsistent with technological limitations, good engineering and maintenance practices, and/or good air pollution control practices for minimizing emissions.'' See, *e.g.,* Conemaugh final permit, Section E, Restrictions, #001, p. 176. Keystone Final Permit, p. 169, and Homer City Final Permit p. 134.[18]

EPA has determined that the exclusion during ''Operation pursuant to emergency generation required by PJM'' is problematic. This condition is not defined in the permit for Homer City but is defined in the final permits for Conemaugh (p. 176) and Keystone (p.169), stating that ''the emissions limit remains in effect unless the permittee demonstrates that compliance with the [applicable emission limitation] is technically infeasible.'' There are no bounds or explanation in the permit regarding what would equate to technical infeasibility, nor is there information on whom the permittee would demonstrate this infeasibility to or how EPA or the public could determine whether such an adequate demonstration was made. In response to comments, PADEP stated:

''the Conemaugh Station permit includes a process where emissions can be requested for exclusion from calculation of the 0.070 lb/MMBtu emission limit if the owner/operator makes a demonstration of technical infeasibility to the Department's satisfaction. The general factors that may lead to technical infeasibility are included in the Conemaugh Station permit, and mirror SIP-approved RACT regulations in neighboring states. In fact, the list of general factors in Conemaugh's permit is more limited than the factors listed in regulations promulgated by one commentator. See COMAR 26.11.38.04 section 4.''[19] Con RTC, p. 3.

EPA did not find the suggested list of ''general factors'' which may lead to a determination of technical infeasibility.

EPA also notes that this type of post-hoc determination allowing the director to grant exemptions from a SIP-approved emission limit during periods of startup, shutdown or other periods is the type of director's discretion prohibited by the CAA, for the reasons set forth in EPA's 2015 startup, shutdown and malfunction (SSM) SIP Action. 80 FR at 33840, 33917 (June 12, 2015). As stated in the 2015 SSM SIP Action, ''SIP provisions cannot contain director's discretion to alter SIP requirements, including those that allow for variances or outright exemptions for emissions during SSM events.'' 80 FR at 33917. In the case of the permits submitted as part of Pennsylvania's 2022 SIP revision, each contains language that allows the director to decide whether or not emissions from a source during any hour should be counted towards the more stringent SCR-on emission limits of 0.07–0.08 lb/MMBTU or to the less stringent emission limits of 0.27–0.45 lb/MMBTU. Although the rates would not change, the director would be making a

[16] Nearly identical statements are in Key RTC p. 6 and HC RTC p. 6.

[17] In Key RTC p. 10 PADEP states the 30-day lb/hr limit was ''derived from the emission level at 0.08 lb/MMBTU at full load . . . with an additional small margin . . .'' Similar language stating that the 30-day lb/hr rate was derived from the daily SCR-on rates is also in Con RTC p. 11 and HC RTC p. 9. PADEP's explanation for how the 30-day lb/hr limits were derived in Key TEM pp. 13–14, Con TEMP pp. 15–17 and HC TEM pp. 17–19 is more ambiguous and doesn't explicitly state the 30-day lb/hr rate is derived from the daily SCR-on lb/MMBtu rate as noted under the ''Selection of All Conditions 30-day Rolling Average lbs/hr Rate'' heading in section II.

[18] PJM is the Pennsylvania-New Jersey-Maryland Interconnection, a regional transmission organization operating in the midatlantic states.

[19] COMAR is the Code of Maryland Regulations.

decision as to whether certain emissions should be exempted from the more stringent SCR-on lb/MMBtu 24-hour average rate. This is the type of unilateral, ad hoc (or post hoc) decision by the director which could negate the possibility of enforcement of an otherwise enforceable SIP emission limit by EPA or the public and which is barred by EPA as first established in the 1999 SSM Guidance. 1999 SSM SIP guidance at 3, 80 FR 33840 at 33917.

In addition, pursuant to EPA's responsibilities under sections 110(k)(3), 110(l) and 193 of the CAA, the Agency cannot approve a SIP provision that automatically preauthorizes the state to unilaterally revise the SIP emission limit (in this case by making determinations that it did not apply at certain times) without meeting the applicable procedural and substantive statutory requirements for SIP revisions. 80 FR at 33918. As stated in EPA's 2015 SSM SIP Action, ''[i]t is a fundamental tenet of the CAA that states cannot unilaterally change SIP provisions, including the emission limitations within SIP provisions, without the EPA's approval of the change through the appropriate process.'' Id.

In the quoted response to comments on this issue, PADEP claims that the list of general factors in the permits (which EPA could not locate) are more limited than factors listed in Maryland's regulations. EPA notes that it has not approved the cited Maryland regulation, COMAR 26.11.38.04, as RACT for EGUs, so the cited example does not carry any weight in EPA's analysis of this SIP revision.[20] PADEP claims that the list of general factors (which again, EPA could not locate) ''mirror SIP-approved RACT regulations in neighboring states,'' but PADEP does not identify these other SIP-approved RACT regulations and EPA is not aware of what PADEP may be referencing. Without knowing which SIP-approved RACT regulations PADEP is referring to, EPA cannot judge the relevance of this argument.

The exclusion for ''periods in which compliance with this emission limit would require operation of any equipment in a manner inconsistent with technological limitations, good engineering practices, and/or good air pollution control practices . . .'' is also problematic. No permit provides additional definitions or instruction on how this provision should be interpreted or applied. Similar to other provisions at issue here, this lack of definition makes this exemption provision difficult or impossible to enforce.

Although the permits require that the sources keep certain data and submit a monthly report to PADEP, it is in the sources' discretion to identify in these monthly reports ''whether or not they believe they are subject to the [SCR-on] lb NO_X/MMBtu limit'' and ''clearly document how [they] determined whether or not they believe they are subject to the [SCR-on] lb NO_X/MMBtu hourly limit.'' [21] But this does not explain how PADEP will determine whether certain hours of NO_X emissions from the sources should be counted towards the SCR-on daily average lb/MMBtu limits for each source, or the circumstances under which these emissions would be excluded from the limit. It is even more difficult to understand how EPA or the public would discern which hours of emissions should be counted towards the SCR-on limit. If it is unknown which hours of emissions count, it is impossible to determine whether a source complied with the SCR-on limit. In other words, without clear and objective criteria for excluding these emissions, neither EPA nor the public could determine whether the sources were complying with the SCR-on limit at each source. Although this situation is somewhat different than the situation faced by the Third Circuit in the *Sierra Club* appeal (lack of adequate recordkeeping), the lack of objective criteria for determining compliance in this situation leads to the same problem identified by that court, which is that there is no way for interested members of the public or EPA to conduct oversight. *Sierra Club* at 307.

Pennsylvania's Inadequate Justification of Certain Limits as RACT

EPA understands the PADEP's submission to argue that RACT for these facilities is comprised of: (1) a low daily SCR-on lb/MMBtu limit with exclusions as outlined in the prior section; (2) a much higher all conditions daily lb/MMBtu limit that provides a permissible emissions level under all operating conditions including when the SCR is not operating; and (3) the 30-day rolling average all conditions lb/hr limit, which is intended to provide some restriction on the extent to which the source could claim exclusions from the SCR-on rate. EPA has identified issues with each of these limits as discussed in the subsections below. EPA does allow for the possibility that different or alternative emissions limits (AELs) can apply during different modes of operation in the manner that PADEP has done here for the three different limits described.[22] However, EPA has stated that those AELs ''must be clearly stated components of the emission limitation, must meet the applicable level of control required for the type of SIP provision (*e.g.,* be RACT for sources located in nonattainment areas) and must be legally and practicably enforceable.'' [23] Accordingly, here EPA must evaluate whether this combination of limits satisfies the OTR RACT requirement. PADEP did not provide any justification for why these limits appropriately function as alternative emission limits. In the 2015 SSM SIP Action, EPA recommended states consider seven criteria when developing alternative emission limits.[24] These recommended criteria assure the alternative emission limitations meet basic CAA requirements. PADEP did not explain why the alternative emission limitations included in this SIP revision meet CAA requirements, including RACT, and EPA cannot approve alternative emission limitations without such a showing.

Further, PADEP developed the emissions limits for the Keystone, Conemaugh and Homer City Facilities by reviewing only operating data and emissions rates from a limited number of years.[25] PADEP claims that using emissions and operating data from a limited set of relatively recent years is justified because these years reflect what is currently possible due to aging

[20] See the final document at 82 FR 24546 (May 30, 2017) approving the NO_X limits for Maryland's EGUs as SIP strengthening measures, and the final document at 84 FR 5004 (February 20, 2019) approving Maryland's RACT regulations for controlling VOC major sources for the 2008 ozone NAAQS, which notes that Maryland will address major sources of NO_X in another SIP. None of the VOC regulations approved included the language in COMAR 26.11.38.04.

[21] Conemaugh final permit, p. 177. The final unredacted permits for all three facilities also state that the monthly reports should include the hourly load levels, heat input, ammonia injection rates, NO_X rates, total NO_X emissions, the SCR emission set point, SCR inlet and outlet temperature, and clearly indicate any days which the SCR-on lb/MMBtu emission limit is exceeded. For days exceeding the SCR-on lb/MMBtu limit, the above information must be provided on an hourly basis and the permittee must give a detailed explanation for why they exceeded their emission limit. Conemaugh permit, p. 176, Keystone permit pp. 170–171, Homer City permit p. 137.

[22] ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction'' 80 FR 33840, section XI.D.

[23] *Ibid. P 33913.*

[24] *Ibid. p. 33914.*

[25] EPA also notes an inconsistency in how PADEP discusses the data that was considered in developing the limits at issue in this SIP revision. In the RTCs, PADEP references data from 2016–2020. (Key RTC p. 8, Con RTC p. 9, and HC RTC p. 7). However, in the TEMs, PADEP references data from 2017–2020.

equipment and changes in operating patterns, including the impact of changes made to the catalyst in the SCR system in order to meet the requirements of the 2011 Mercury Air Toxics Standard (MATS) (Key RTC p. 8, Con RTC p. 9, and HC RTC p. 7).

However, PADEP presented no data or analysis showing that aging equipment, particularly the SCR control systems, have deteriorated such that data from earlier years are unreliable. PADEP's submittals have also not justified a rate selection methodology that relies on a limited set of years, nor have they explained why the selected years represent the lowest rate that can now be achieved when accounting for such changes. Stated differently, the RACT limits (regardless of averaging time) must reflect levels that represent periods of good emissions control, not business as usual (*e.g.,* a 5-year average of past results) or higher-emitting periods.

Selection of the SCR-On lb/MMBtu Daily Average Emission Rates

PADEP's own data and analysis calls into question whether the final SCR-on daily average lb/MMBtu rates for Conemaugh (0.070 lb/MMBtu), Keystone (0.080 lb/MMBtu) and Homer City (0.080 lb/MMBtu for Units 1 and 2, and 0.070 lb/MMBtu for Unit 3) are RACT. Based on PADEP's SIP submission, EPA cannot determine whether the SCR-on rates for any of the three facilities are the lowest rates that can be achieved considering technological and economic feasibility. Although PADEP makes a general determination that optimization of the existing SCRs at each facility is RACT, the data PADEP provided in its SIP submission do not support a claim that these rates are the lowest achievable rates that can reasonably be obtained at each unit when the SCRs are operating, considering technological and economic feasibility. In addition, PADEP then applies an upward adjustment to these rates to account for factors, such as lag time, changes in boiler operating patterns, and aging of equipment, that PADEP states it has already accounted for by using data from 2017 to 2020 in their analyses for setting the RACT limits. As such, there should be no needed upward adjustment to account for these factors. Also, PADEP consistently applies a compliance margin to its rates without explaining what the margin is, in many cases, or why such a margin is needed to make the selected limit technologically or economically feasible.

Conemaugh

For Conemaugh, PADEP asserts that it examined CAMD emissions and other data for Units 1 and 2 for the years 2017–2020, but because both units are similar, assumed that data from unit 1 applied to unit 2 and therefore only discussed unit 1 data.[26] Con TEM, pp. 3–4. Figure 1 in the TEM is a graph showing percentage of heat input, NO_X emission rates and percentage of ammonia injection rates during May 2017. From this graph, PADEP determined that Conemaugh Unit 1 maintained a NO_X emission rate of 0.045 lb/MMBtu from May 5th through May 18th, which PADEP attributed to an ammonia injection control system operating at a set point of 0.045 lb/MMBtu. Con TEM, p. 4. From May 19th through the end of May 2017, PADEP observed that the ''relative difference between the ammonia injection rates and heat input rates have increased,'' leading to a steady NO_X emission rate around 0.08 lb/MMBtu. Id. PADEP then notes that following May 2017, unit 1 only operated with varying set points between 0.065 and 0.08 lb/MMBtu throughout the 2017 and 2018 ozone seasons. Con TEM, p. 5. PADEP further observed that NO_X rates increased significantly in 2019 and provided a graph (Figure 2) which PADEP asserts shows that during this month, Conemaugh ceased injecting ammonia for NO_X control at around 50% heat input, and even when operating at 100% of heat input, the NO_X emission rates stayed around 0.1 lb/MMBtu. PADEP concluded that ''this strongly suggests that additional emission reductions would be achieved if the operator operated the SCR with a lower emission set point while the SCR is running.'' Con TEM, p. 6. In addition, PADEP identified an April 2020 example when the SCR was not operating despite the boiler operating at loads ''clearly supporting'' SCR operation, with NO_X emissions close to 0.3 lb/MMBtu during this time. Con TEM, p. 7. From this PADEP concluded that ''[s]imply choosing not to operate the SCR is not indicative of the control level achievable by the system.'' Id. Based on this data, PADEP then selected an SCR-on rate of 0.07 lb/MMBtu for Conemaugh. Id. The only explanation given for this specific rate is that it ''includes a factor to provide an appropriate compliance margin, fluctuations in load, any lag in the control system as well as to account for other factors in the facility's future operations.'' Con TEM, p. 8.

The response to comments (RTC) document for Conemaugh adds discussion of a 2017 study performed on unit 1 in May 2017 that suggested that running the SCR with a set point of 0.04 lb/MMBtu caused a spike in mercury emissions, and also discusses a 2016 study at the end of ozone season on unit 2 that suggested running the SCR at a 0.050 lb/MMBtu set point also caused an increase in mercury emissions. RTC, pp. 6–8. Based on further analysis, PADEP concluded that ''a setpoint of 0.06 lb NO_X/MMBtu . . . is achievable by [Conemaugh].'' RTC p. 8. However, the RTC states, without explanation, that PADEP is choosing to keep the 0.07 lb NO_X/MMBtu daily average emission rate. RTC p. 8.

EPA finds that PADEP's explanation of why this limit meets the definition of RACT is inadequate. Having concluded in the RTC that a 0.06 setpoint is achievable at Conemaugh, PADEP provides no explanation as to why it selected 0.07 lb/MMBtu as the daily average SCR-on rate. Nor is there any explanation of why a compliance margin is necessary, what compliance margin was applied in this instance, how fluctuations in load or lag in the control system affect the lowest achievable emissions rate, and how or why the rate must be adjusted to account for future operations. In the absence of an explanation of how PADEP selected the specific 0.07 lb/MMBtu rate and how any of these other factors affect the technical and economic feasibility of the lowest rate identified, EPA cannot support PADEP's conclusion that the 0.07 lb/MMBtu daily average rate is RACT for when Conemaugh's SCRs are operating.

Keystone

Like Conemaugh, PADEP's analysis for Keystone's SCR-on daily average rate of 0.08 lb/MMBtu does not adequately explain why this rate represents the lowest emission limit that Keystone's two units are capable of meeting based on technological and economic feasibility. In the TEM for Keystone, PADEP explains that it analyzed EPA's CAMD data for Keystone Units 1 and 2 from 2017–2020. Key TEM, p. 3. The TEM then includes a graph (Figure 1) showing certain daily operating statistics for unit 2 for the month of May 2017, from which PADEP concludes that unit 2 was able to maintain a NO_X emission rate below 0.06 while the SCR was operating. TEM, p. 4. The TEM then shows a graph (Figure 2) plotting certain

[26] In response to a comment submitted on Conemaugh, PADEP replied that during the 2018 ozone season, with a few exceptions, Conemaugh's unit 2 was consistently able to achieve daily emission levels in the .055–.07 lb NO_X/MMBtu range. Con. RTC, p. 7.

daily operating parameters for unit 1 during May 2017. TEM, p. 5. From Figure 2, PADEP concludes that unit 1 was able to achieve a 0.05 lb/MMBtu rate for ten days, but this rate increased to 0.09 lb/MMBtu for the rest of the month because the operator elected to inject less ammonia into the SCR system even though the heat input remained almost constant at levels supporting SCR operation. Key TEM, p. 5. From this and other data, PADEP concludes that both Keystone units can achieve an SCR-on rate of 0.06 lb/MMBtu on a daily average basis.

The Keystone response to comments contains a long discussion of a study Keystone submitted at some point in time purporting to show the effects of trying to operate the SCRs at a NOx emission rate setpoint of 0.05 to 0.06 lb/MMBtu during May 2017. Keystone RTC, p. 26. The RTC notes that when Unit 2 attempted to operate at 0.055 lb/MMBtu for two months in 2017, pressure drop across the air preheater increased to a level requiring measures—in this case raising the SCR setpoint to 0.08 lb/MMBtu—to reduce the pressure drop. Id. at 27. The same study found that operating unit 1's SCR at a 0.05 lb/MMBtu setpoint for only 15 days resulted in SCR catalyst fouling which prevented the SCR from operating under 0.08 to 0.09 lb/MMBtu rates for the rest of the test period. Id. The Keystone RTC then discusses at length the meaning of the study and information submitted by another source and the effect of different SCR set points on pressure drop, catalyst fouling, and the ability to meet certain NO_X emission rates. Key RTC, pp. 27–30. PADEP concluded from these studies that Keystone should conduct a future setpoint study to determine that optimal emission levels from the SCR are achieved, but that based on the current evidence, the SCR controls setpoint should be changed from 0.06 to 0.07 lb NO_X/MMBtu.[27] Key RTC, p. 32. However, PADEP set a NO_X emission rate of 0.08 lb/MMBtu because ''varying load conditions and other factors can and do affect SCR performance and resulting NO_X emission rates.'' TEM, p. 6.

EPA acknowledges that catalyst fouling and other similar factors may affect the feasibility of SCR to achieve low rates. However, similar to EPA's review of the Conemaugh limit, in the absence of an explanation of how any of these other factors affect the technical and economic feasibility of the lowest rate identified, EPA cannot support PADEP's conclusion that the 0.08 lb/MMBtu daily average rate represents RACT.

Homer City

Similar to EPA's assessment of the rates for Conemaugh and Keystone, PADEP does not provide adequate justification for Homer City's final SCR-on daily average rates of 0.08 lb/MMBtu for units 1 and 2 and 0.07 lb/MMBtu for unit 3 are the lowest emission limit that these sources can meet based on technological and economic feasibility. The TEM for Homer City explains that PADEP evaluated data from 2017–2020 for all three units. PADEP notes that the unit 1 and 2 SCRs were upgraded in 2018, and ''NO_X emission rates significantly improved,'' TEM, p. 6, but fails to explain why, in light of this, PADEP thought consideration of 2017 data was appropriate. For units 1 and 2, PADEP notes that during 2019 and 2020 the SCRs were operated to generally keep NO_X emission rates at 0.10 lb/MMBtu, but also identified periods of time when the NO_X emission rate for unit 2 went as low as 0.05 lb/MMBtu because more ammonia was being injected. TEM, p. 5. The TEM states that other instances of between 0.05 and 0.10 lb/MMBtu were identified. TEM, p. 5. Looking at additional data following the upgrade, PADEP suggested that ''had July of 2020's ammonia injection rates matched that of July 2019, significantly [sic] emissions reductions could have been achieved during that timeframe.'' TEM p. 6. The TEM then states that ''[d]espite the evidence presented,'' other factors such as load, exhaust temperature, etc., and other unspecified factors ''can and do affect SCR performance'' and require an operating limit above the never specified achievable minimum. TEM, p. 8. PADEP then selected an SCR-on rate of 0.08 lb/MMBtu as a daily average for units 1 and 2 but provided no analysis or explanation why 0.08 lb/MMBtu is the lowest rate that these units could meet based on technological and economic feasibility. See TEM, pp. 4–9. The TEM also states that the rate includes an unspecified factor to include a compliance margin, account for load fluctuations, control system lags, and projected future changes in operations. TEM, p. 9. In the RTC, PADEP seems to apply the ''findings'' from Keystone's attempt to operate the SCRs with a low 0.05 lb/MMBtu setpoint that such a setting leads to fouling of the air preheater, high pressure drops, and SCR catalyst fouling before determining that an emission rate of 0.08 lb/MMBtu will not cause these problems at Homer City. RTC, p. 11.

For unit 3, the TEM states that there is evidence that unit 3 can meet a NO_X emission rate between 0.08 and 0.09 lb/MMBtu, but limited evidence that it can meet a lower limit under certain circumstances. TEM, p.10. Citing the same factors affecting SCR performance as it cited for units 1 and 2, PADEP then concludes a value above the minimum SCR rate is needed, but without explanation sets the SCR-on daily average rate at 0.07 lb/MMBtu. TEM, p. 13. In their response to comments document, PADEP seems to rely upon Keystone's study of operating the SCRs at a low set point to support their selection of the SCR-on limits for all the units. However, there is no discussion of why the Keystone study can be applied to Homer City, particularly given that Homer City seems to use an economizer bypass to keep the SCRs operating at lower temperatures than might be possible at Keystone.

Selection of the All Conditions 30-Day Rolling Average lb/hr Rate

The PADEP permits allow significant emissions to be excluded from the daily lb/MMBtu SCR-on rate under a variety of conditions, and it is necessary to evaluate whether the alternative emissions limits applicable during these excluded conditions constitute RACT. Although the PADEP permits contain a daily lb/MMBtu no-SCR rate, PADEP suggests that the 30-day rolling average lb/hr rate is ''the glue'' that holds the emissions limits together, and EPA acknowledges that it is a critical component to the RACT justification because it establishes the practical limitation on the extent to which the source can operate without SCRs over an extended period of time. Accordingly, EPA must evaluate whether PADEP's 30-day rolling average limit satisfies the RACT requirement. EPA's assessment is that PADEP fails to clearly demonstrate that the All Conditions 30-day rolling average lb/hr rate necessitates that these facilities operate their SCRs to achieve the lowest emission rate that is technologically and economically feasible, which is required to meet the definitions of RACT.

PADEP asserts that the 30-day rate represents RACT because ''[a]t any load above approximately 30%–40%, operation without control by the SCR results in emissions greater than 700 lbs/hr.'' See, *e.g.,* Con RTC p. 6. This suggests that the SCR would be

[27] The final unredacted permit does not mention this setpoint study. Instead, Section E, Source Group Restrictions, subsection VI, Work Practice Requirements, condition #012 requires that Keystone submit a technical evaluation to PADEP on the possibility of heating the flue gas prior to the SCR inlet to allow SCR operation at low load levels. Keystone final permit, p. 172. This condition does not appear in the redacted final permit submitted for inclusion into the SIP.

necessary at higher loads, but it does not address the question of whether it meets the RACT requirements when the facilities could run at 30–40% without using SCR. The EPA believes that it is possible that the sources could operate at low loads while simultaneously meeting the daily All Conditions lb/MMBtu rate and the 30-day lb/hr rate, thereby creating a permissible way to avoid operating the SCR for long periods of time. This resembles the 600-degree temperature SCR ''loophole,'' which the Third Circuit was highly critical of, that allowed facilities to operate just below the temperature threshold at night when demand was low and to avoid running the SCR. *Sierra Club,* 306. The 30-day lb/hr all conditions rate does not appear to resolve this issue.

Furthermore, PADEP's justification for the All Conditions 30-day lb/hr rates leave many specifics about the justification of the selected rates unanswered. Each of PADEP's technical evaluation memos have similar language stating ''[PADEP] evaluated and analyzed mass-based NO_X emission rate in pounds per hour on a 30-day rolling average basis from EPA's Clean Air Markets Division (CAMD) database at all operating conditions . . . from 2017–2020.'' PADEP then presents a set of graphs for each unit depicting the 30-day average rolling NO_X emissions (lb/hr) overlaid with percentage of maximum heat input (MMBtu). The time frames explored in these graphs is summarized in table 2 of this document.

TABLE 2—TIME FRAMES FOR 30-DAY AVERAGE DATA PROVIDED BY PADEP

Location in technical evaluation memo	Facility	Unit	Time frame
pg. 16, figure 6	Conemaugh	1	May 2017–September 2017.
pg. 16, figure 6	Conemaugh	2	May 2017–September 2017.
pg. 14, figure 5	Keystone	1	May 2017–September 2017.
pg. 14, figure 5	Keystone	2	May 2017–September 2017.
pg 18, Figure 11	Homer City	1	January 2019–December 2021.
pg 18, Figure 11	Homer City	2	January 2019–December 2021.
pg 18, Figure 11	Homer City	3	January 2019–September 2020 (approximate).

None of these graphs displays data for the full 2017–2020 timeframe PADEP evaluated and analyzed. Only the graphs from Homer City units display data for more than a single year. PADEP's analysis then consists of a qualitative description of the 30-day lbs/hr average the units were able to achieve in the time frames in table 2 of this document, but lacks data or description of what 30-day lb/hr all conditions rates were observed outside of those time frames. Without additional information about the 30-day average lb/hr rates achieved during the four years PADEP analyzed, EPA cannot determine whether the lb/hr limit selected for each unit represent an average of these years of data, which the *Sierra Club* court found problematic, or the lowest emissions in lb/hr which these sources achieved in this time frame, considering technological and economic feasibility.

PADEP may or may not have reviewed a complete set of data from 2017–2020, but the analysis of this was not included in the technical evaluation memos or the response to comment documents. As such, EPA could not determine whether or this 30-day all conditions lb/hr rate ''. . . ensures that the operator will maximize operating hours with the SCR and minimize heat input (and total mass emissions) when operation of the SCR is technically infeasible.''

Additionally, the compliance buffer added to the 30-day lb/hr all conditions rate does not appear to be sufficiently justified. PADEP states in its Technical Evaluation Memo for Conemaugh ''[e]ach of Conemaugh's units emits about 580 lb NO_X per hour assuming an emission level of .070 lb/MMBtu and 100% load. The impact to the environment should never exceed this level on a long-term basis.'' Con TEM p. 15. It would appear PADEP arrived at this number simply by multiplying the daily SCR-on (lb/MMBtu) Rate by each boiler's rated capacity (MMBtu/hr). Similar statements were made in the memos for Keystone and Homer City. See table 3 of this document, for this calculation for each boiler at Keystone, Conemaugh and Homer City. The table also compares this to the permit limits contained in PADEP's 2022 SIP Submission, as well as a simple calculation of the percent increase in those limits (a compliance buffer added by PADEP). However, no explanation is given for why compliance buffers of 10–21% are needed, or why certain units should receive more than double the buffer of others.

TABLE 3—COMPLIANCE BUFFERS FOR PADEP'S 30-DAY ALL CONDITIONS lb/hr RATES

Facility	Unit	Rated capacity (MMBtu/hr)	Permit limit daily SCR-on (lb/MMBtu)	Calculated at capacity (lb/hr)	Permit limit 30-day avg. (lb/hr)	Compliance buffer (%)
Conemaugh	1	8,280	0.070	580	700	21
	2	8,280	0.070	580	700	21
Keystone	1	8,717	0.080	697	770	10
	2	8,717	0.080	697	770	10
Homer City	1	6,792	0.080	543	600	10
	2	6,792	0.080	543	600	10
	3	7,260	0.070	508	560	10

EPA Approval Would Not Be Consistent With CAA Section 110(l)

Section 110(l) of the CAA prohibits the Administrator from approving any SIP revision ''. . . if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.'' For over 15 years, EPA has interpreted section 110(l) as permitting approval of a SIP revision as long as ''emissions in the air are not increased,'' thereby preserving ''status quo air quality.'' *Ky. Res. Council, Inc.* v. *EPA,* 467 F.3d 986, 991 (6th Cir. 2006); see also *Indiana* v. *EPA,* 796 F.3d 803, 806 (7th Cir. 2015); *Ala. Env't Council* v. *EPA,* 711 F.3d 1277, 1292–93 (11th Cir. 2013); *Galveston-Houston Ass'n for Smog Prevention* v. *EPA,* 289 F. App'x 745, 754 (5th Cir. 2008). This turns on EPA's interpreting ''interfere'' as meaning ''to hinder or make worse.'' *Ky. Res. Council,* 467 F. 3d at 995. The court in a recent Third Circuit decision confirmed that a 110(l) analysis is not a one-size-fits-all provision and the variables that must be analyzed depend on the particular interference the SIP revision poses. *Center for Biological Diversity* v. *EPA,* 75 F.4th 174, 181 (3rd Cir. 2023). Here, with the information available to EPA, EPA could not determine that approval of the SIP revisions at issue would not result in interference. Therefore, EPA approval of these SIP revisions would not be consistent with section 110(l).

IV. Proposed Action

EPA's review of these materials indicates that Pennsylvania's May 2016 SIP Submittals for Keystone, Conemaugh and Homer City Generating facilities: (1) do not adequately support Pennsylvania's justification for the selection of RACT limits for the large EGU boilers; (2) lack enforceable objective clear criteria for determining when emissions from each EGU are subject to the SCR-on 24-hour average limit; and (3) contain unbounded director's discretion provisions. For these, and other reasons described above, EPA is proposing to disapprove Pennsylvania's May 26, 2022 SIP revisions. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is not a ''significant regulatory action'' as defined by Executive Order 12866 and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This proposed action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

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

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

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

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

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

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

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

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 review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action disapproves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

The air agency did not evaluate environmental justice considerations as

part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples. This action merely proposes to disapprove a SIP submission as not meeting the CAA.

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–03528 Filed 2–20–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 89, No. 35
Wednesday, February 21, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

[OMB Control No. 0412–0609]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: U.S. Agency for International Development

ACTION: Notice of information collection; request for comment.

SUMMARY: The U.S. Agency for International Development as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. 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, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Submit comments identified by Information Collection 0412–0609, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), by any of the following methods:

- *Federal eRulemaking portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments to *https://www.regulations.gov,* will be posted to the docket unchanged.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 0412–0609, A–11 Section 280 Improving Customer Experience.

Instructions: Please submit comments only and cite Information Collection 0412–0609, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), in all correspondence related to this collection. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Allana Welch, USAID Digital Strategy Lead, Bureau for Inclusive Growth, Partnerships, and Innovation; Innovation, Technology, and Research Hub; Technology Division (IPI/ITR/T) via email to *alwelch@usaid.gov* or by phone to 202–712–4120.

SUPPLEMENTARY INFORMATION:

A. Purpose

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. ''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 for the Agency. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, USAID is publishing notice of the proposed collection of information set forth in this document.

Whether seeking a loan, Social Security benefits, veteran's benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. USAID will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection: USAID will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. USAID may also utilize observational techniques to collect this information.

Data:

Form Number(s): None.

Type of Review: New.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or Tribal governments; Federal Government; and Universities.

Estimated Number of Respondents: 1,000,775.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 1.5 hours to participate in an interview.

Estimated Total Annual Burden Hours: 50,563.

Estimated Total Annual Cost to Public: $0.

C. Public Comments

USAID invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 15, 2024.

Allana Welch,

USAID Digital Strategy Lead, IPI/ITR/T.

[FR Doc. 2024–03505 Filed 2–20–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 22, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Nutrition Assistance Program (SNAP)-Waiver Requests to Offer Incentives to SNAP Recipients at SNAP Authorized Stores.

OMB Control Number: 0584–NEW.

Summary of Collection: SNAP equal treatment provisions at 7 CFR 278.2(b) and 7 CFR 274.7(f) require that SNAP recipients receive treatment equal to that received by other customers at all stores authorized to participate in SNAP with the exception that sales tax may not be charged on eligible foods purchased with SNAP benefits. This equal treatment provision prohibits both negative treatment (such as discriminatory practices) as well as preferential treatment (such as incentive programs). Pursuant to Section 4008 of the Agriculture Improvement Act of 2018, Public Law 115–334 (2018 Farm Bill), individual SNAP authorized retailers (or private organizations or governmental entities, which partner with authorized stores) may request that FNS waive the SNAP equal treatment provisions in order to be allowed to implement an incentive program the meets the requirements under 7 U.S.C. 2018(j) to encourage SNAP recipients to purchase healthier foods. Most SNAP authorized stores that offer incentives to SNAP recipients are either farmers' markets or part of a federally funded grant program that is authorized by statute, including the Gus Schumacher Nutrition Incentive Program (GusNIP) administered by the USDA's National Institute of Food and Agriculture (NIFA), and the Healthy Fluid Milk Incentive (HFMI) project administered by the Food and Nutrition Service.

Need and Use of the Information: Farmers markets are authorized to provide incentives to SNAP recipients under a blanket FNS waiver of the SNAP equal treatment provision, specifically for farmers' markets. Only incentive projects that are funded outside of a Federal grant, other than projects funded by farmers' markets, are required to have a waiver from FNS to provide incentives to SNAP households at authorized SNAP retailer locations. FNS provided incentive waivers to SNAP retailers prior to passage of the 2018 Farm Bill under FNS' regular waiver process and has been providing the waivers under a streamlined approach since 2020. Over the past 3 years, FNS has received an average of nine incentive waiver requests that generally cover multiple retailer locations, and we expect those numbers to increase over the next 5 years. With this new streamlined process, the Department estimates that out of 254,350 authorized retailers that participate in our program, approximately 730 different retailers would be covered under 15 different incentive waiver requests annually.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 15.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 30.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–03485 Filed 2–20–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Reinstatement

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and reinstatement 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 and other forms of information technology.

Comments regarding this information collection received by March 22, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Conservation Effects Assessment Project (CEAP) Survey.

OMB Control Number: 0535–0245.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code title 7, section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The goal of this information collection is to obtain land management information that will assist the Natural Resources Conservation Service in assessing environmental benefits associated with implementation and installation of associated conservation practices of various conservation programs such as the Environmental Quality Incentives Program, the Conservation Reserve Program, the Wetland Reserve Program, and other conservation programs.

Need and Use of the Information: The survey will utilize personal interviews to administer a questionnaire that is designed to obtain from farm operators field-specific data associated with selected National Resources Inventory sub-sample units in the contiguous 48 States. Data collected in this survey will be used in conjunction with previously collected data on soils, climate, and cropping history to model impacts of conservation practices on the larger environment. USDA needs updated scientifically credible data on residue and tillage management, nutrient management, and conservation practices in order to quantify and assess current impacts of farming practices and to document changes.

Description of Respondents: Farms and Ranches.

Number of Respondents: 20,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 17,173.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2024–03487 Filed 2–20–24; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket Number: RUS–23–Telecom–0022]

Notice of Funding Opportunity for the Rural eConnectivity Program for Fiscal Year 2024

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding opportunity.

SUMMARY: The Rural Utilities Service (RUS, Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announces acceptance of applications under the Rural eConnectivity (ReConnect) program for fiscal year (FY) 2024. These loan and grant funds will be awarded to qualified applicants to fund the costs of construction, improvement, or acquisition of facilities and equipment needed to provide broadband service.

DATES: Beginning on March 22, 2024, applications can be submitted through the RUS on-line application portal until 11:59 a.m. Eastern on April 22, 2024. Late or incomplete applications will not be accepted.

ADDRESSES: Applications must be submitted electronically through the RUS Application Intake System located at *usda.gov/reconnect.* A synopsis of this notice of funding opportunity (NOFO) 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 *usda.gov/reconnect/contact-us.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Utilities Service.

Funding Opportunity Title: Rural eConnectivity (ReConnect) Program.

Announcement Type: Notice of Funding Opportunity (NOFO).

Funding Opportunity Number: RUS–REC–2024–1.

Assistance Listing: 10.752.

Dates: Beginning on March 22, 2024, applications can be submitted through the RUS on-line application portal until 11:59 a.m. Eastern on April 22, 2024.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *rd.usda.gov/priority-points*):

- Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of

climate change through economic support to rural communities.

A. Program Description

1. *Purpose of the Program.* 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 and Regulatory Authority.* The ReConnect program is authorized under the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), which directs the program to be conducted under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.).* The ReConnect program is implemented by the ReConnect Regulations at 7 CFR part 1740. Applicants should carefully review those rules in conjunction with this notice.

3. *Definitions.* The definitions applicable to this NOFO are published at 7 CFR 1740.2 and as provided below.

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) and (j).

Enforceable commitment means a legally enforceable obligation by any federal, state, or local agency, utilizing Federal Funds, to provide broadband service with speeds of at least 100 megabits per second (Mbps) downstream and 20 (Mbps) upstream. Enforceable commitments do not negate the Agency's intention to coordinate and communicate with federal partners before extending an offer to ensure awards made under this round do not duplicate awards made by other federal and state partners. USDA will coordinate with the National Telecommunications and Information Administration (NTIA), states, and grantees to ensure that ReConnect and the Broadband Equity, Access, and Deployment (BEAD) Program complement one another. To that end, RUS will notify NTIA and the state at least 30 days in advance of any award in that state and request that the state notify RUS of an objection based on any pending subgrantees. In such cases, if the objection is not resolved, it may result in the rejection of the ReConnect application to avoid duplication of funding. USDA is committed to work with ReConnect applicants and its federal and state partners to ensure awards can still be made as part of this coordinated effort, and expects that ReConnect funds will largely be directed to those states and territories in which there is the greatest need.

Federal Funds means any federally appropriated funds, and subsidies and fees managed by the Federal Communications Commission (FCC), to promote universal access and any Federal Broadband Support Program, as defined by the ACCESS BROADBAND Act.

Local government means the administration of a particular town, county, or district, with representatives elected by those who live there.

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-year average, or any territory or possession of the United States.

Premises, as defined in the ReConnect Regulation at 7 CFR 1740.2(a), means households, farms, and businesses.

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 notice, Puerto Rico, Guam, American 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 Geographic Information System (GIS) layer identifying the Socially Vulnerable Communities can be found at *usda.gov/reconnect.*

Sufficient access to broadband means any rural area in which households have wired or licensed terrestrial fixed wireless broadband service defined as 25 Mbps downstream and 3 Mbps upstream.

System requirements. Facilities proposed to be constructed with ReConnect award funds must be capable of delivering 100 Mbps symmetrical service to every premises at the same time in the Proposed Funded Service Area (PFSA).

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.

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 *usda.gov/reconnect.*

4. *Application of Awards.* The Agency will review and evaluate applications received in response to this notice based on the program regulations at 7 CFR 1740. Grant and combination loan/grant applications will be scored and awarded on a competitive basis using the criteria in section E.1 of this notice. Awards in the 100 percent loan category will be made on a first-come, first-served basis after the application window closes. The Agency advises all interested parties that each applicant bears the full burden of preparing and submitting an application in response to this notice.

B. Federal Award Information

1. *Type of Award.* Loan, grant, or loan/grant combination.

2. *Fiscal Year Funds.* Funding includes carryover funds from previous Fiscal Years and any additional funds received during Fiscal Year 2024.

3. *Available Funds.*

a. 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.

b. 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 FY 2023 (Round 4). 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.

c. *100 Percent Loan.* Up to $200,000,000 is available for loans.

d. *50 Percent Loan/50 Percent Grant Combination.* Up to $100,000,000 is available for loans and up to $100,000,000 is available for grants. Loan and grant amounts will always be equal.

e. *100 Percent Grant.* Up to $150,000,000 is available for grants.

f. *100 Percent Grant for Alaska Native Corporations, Tribal Governments, Colonias, Persistent Poverty Areas and Socially Vulnerable Communities.* Up to $150,000,000 is available for grants.

4. *Funding categories, interest rates and terms.* Funding parameters are outlined in 7 CFR 1740.3. Funding categories and any required match are outlined below.

a. *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.

b. *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 for the ReConnect program can be found under U.S. government securities, available at *federalreserve.gov/releases/h15/.* RUS also provides the latest information on interest rates at *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 available in the applicant's operating accounts at the closing of the award.

c. *100 Percent Grant.* Applicants must provide a matching contribution of cash 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 the match is provided from the applicant's operating accounts. All matching funds must be deposited into the applicant's operating accounts.

i. RUS has agreed to modify the grant agreement to permit awardees to deposit the required matching and other required funds into the Pledged Deposit Account (PDA) on a rolling basis as needed.

ii. 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 as needed to support the deposit of funds into the PDA. 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 funds must be transferred into the applicant's accounts by the closing of the award.

iii. The matching contribution can be used only for eligible purposes.

d. *100 Percent Grant for Alaska Native Corporations, Tribal Governments, Colonias, Persistent Poverty Areas and Socially Vulnerable Communities.* For any application submitted under this funding category that meet one of the following criteria, no matching funds will be required:

i. Alaska Native Corporations may submit applications to provide service on land owned by the corporation.

ii. Tribal Governments may submit applications to provide service on: Tribal Lands as defined in section A(3)(j) of this notice; 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.

iii. 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 *reconnect.usda.gov.*

iv. Projects where 75 percent of the applicant's PFSA(s) is located in persistent poverty counties.

v. Projects where 75 percent of the area of an applicant's PFSA(s) consists of Socially Vulnerable Communities identified on the GIS layer (Socially Vulnerable Communities) included in the RUS mapping tool located at *reconnect.usda.gov.*

5. *Award Amounts.* Maximum and minimum funding amounts are provided below for each funding category.

a. *Minimum Award Amount.* The minimum amount that can be requested in any funding category is $100,000.

b. *100 Percent Loan.* The maximum amount that can be requested in an application is $50,000,000.

c. *50 Percent Loan/50 Percent Grant Combination.* The maximum amount that can be requested in an application is $25,000,000 for the loan and $25,000,000 for the grant. Amounts requested for loans and grants must always be equal.

d. *100 Percent Grant.* The maximum amount of grant funds that can be requested in an application is $25,000,000.

e. *100 Percent Grant for Alaska Native Corporations, Tribal Governments, Colonias, Persistent Poverty Areas and Socially Vulnerable Communities.* The maximum amount of grant funds that can be requested in an application is $25,000,000.

6. *Anticipated Award Date.* By the end of the 2024 fiscal year.

7. *Performance Period.* The activity financed by a ReConnect award must be fully completed within five years of the date the funds are released for advance.

8. *Renewal or Supplemental Awards.* None.

9. *Type of Assistance Instrument.* Direct loan, grant, or combination loan/grant.

C. Eligibility Information

1. *Eligible Applicants.* Eligible applicants must meet the requirements of 7 CFR 1740.9.

2. *Other.*

a. Eligibility requirements for the ReConnect Program not addressed in this notice are found at 7 CFR 1740 subpart B.

b. *Eligible service areas.* Eligible service areas requirements are addressed in 7 CFR 1740.11(a) and below:

i. For a PFSA to be eligible for funding under this notice, at least 90 percent of the households in the PFSA must lack sufficient access to broadband as defined in this notice. In addition to identifying areas that lack sufficient access to broadband, applicants must submit evidence that sufficient access to broadband does not exist for 90 percent of the households in the PFSA, identify all existing providers in the PFSA, and indicate what level of service is being provided. Applicants are required to use the FCC's Broadband Funding Map as part of this process. If these areas are found to have sufficient service beyond the threshold, the application may be rejected.

ii. Areas that have an Enforceable Commitment at the time of publication of this notice are ineligible for ReConnect funds. However, if an applicant submits evidence that the entity that received the Enforceable Commitment has not deployed broadband service as required by the awarding Agency's regulations or award documents, the Agency may consider such area eligible for funding after consultation with the awarding agency. Areas with Enforceable Commitments are identified in a GIS layer located in the RUS mapping tool and on the FCC's National Broadband Funding Map.

iii. Areas with current broadband service from only satellite or unlicensed wireless facilities, or which have an enforceable commitment associated with only satellite or unlicensed wireless facilities, are eligible for funding under this notice.

c. Awardees that receive both other Federal or State funds and ReConnect funding must submit a statement certifying that the funds requested from ReConnect have not been and will not be reimbursed by another Federal or State award, nor used to reimburse another Federal or State 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.

d. C*ybersecurity 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, a concerted 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 *cisa.gov/control-systems-goals-and-objectives.*

e. Applicants that are receiving Enhanced Alternative Connect America Cost Model (E–ACAM) funding are only eligible for a ReConnect 100 percent loan but not grant funding. RUS will determine the eligibility of applicants that are recipients of other FCC Universal Service Fund High-Cost support programs on a case-by-case basis in accordance with the applicable High-Cost support program rules.

f. RUS, at its sole discretion, may require adjusting the PFSA and the amount requested in funding if the Agency determines that the service area, or a portion of thereof, has sufficient access to broadband or an enforceable commitment in place, consistent with Section C(2)(b)(iii) of this notice, which was not identified on the application mapping tool or on the FCC's National Broadband Funding Map at the time the application was submitted or if relevant information regarding the service area is provided to RUS by a federal, FCC, state, or Tribal entity.

D. Application and Submission Information

1. *Address to Request Application Package.* The ReConnect Program Guide, copies of necessary forms and samples, the RUS Application Intake System User Guide, and the ReConnect program regulation are available at *usda.gov/reconnect.*

2. *Content and Form of Application Submission.*

a. An application must contain all required elements outlined in 7 CFR 1740.60 and below. The ReConnect Program Guide provides in-depth information on the required elements. The Application Intake System User Guide provides comprehensive information on how to assemble and provide all required elements of a complete application. Carefully review this notice, the regulations, and the guides.

b. Tribal entities proposing broadband service on Tribal Lands may self-certify that sufficient access to broadband does not exist on the Tribal Lands covered under the PFSA; however, the RUS will still perform a service area validation to determine whether sufficient access to broadband exists, as required by the ReConnect authorizing statute.

c. For this notice only, Tribal entities applying for 100 percent grants that are willing to guarantee that the proposed project will be constructed do not have to submit the five-year pro forma financial projections or maps of any Non Funded Service Areas (NFSA). However, Tribal entities must submit audited financials that demonstrate the Tribe's ability to financially guarantee the completion of the project. Tribal entities that propose a guarantee will not be required to provide an irrevocable letter of credit (ILOC); however an ILOC remains an option for Tribal entities that cannot provide the required lien on grant assets.

d. For this notice only, entities applying for a 100 percent grant that can demonstrate that their last rating from either Fitch, Standard and Poor's or Moody's from the date the application is a AAA bond rating do not have to submit the five-year pro forma projections or information on NFSAs. Evidence of the bond rating must be included in the application. The date the rating is issued must be within one year from the date the application is submitted. Please note that audited financial statements are still required to be submitted with the application and as required for the award.

e. For this notice only, applicants that can demonstrate a current ratio of 2 or higher, a times interest earned ratio (TIER) of 2 or higher, a debt service coverage ratio of 2 or higher, and a Net Worth of 45% or more for the previous two years from the date the application is submitted do not have to submit the 5-year pro forma projections or information on NFSAs. Audited financial statements submitted with the application must support the necessary current ratio, TIER, debt service coverage ratios, and the Net Worth percentage. If an applicant has no outstanding debt, then only the current ratio and Net Worth requirements apply.

f. Each grant and loan/grant combination application must address the scoring criteria presented in section E(1) of this notice.

g. *Tribal Government Resolution of Consent.* Pursuant to 7 CFR 1740.60(c)(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. Resolutions of Tribal Consent will be required where Tribal lands are identified in the ReConnect mapping tool. Resolutions of Tribal Consent are not required when a Federally Recognized Tribe is the applicant on its own Tribal Land. Any non-Tribal applicant that fails to provide a certification to provide service on the Tribal Lands identified in the PFSA will not be considered for funding. The intent of the Tribal Consent is to ensure upfront that Federally Recognized Tribes being served by a non-tribal applicant authorize the application in a legally-binding manner AND the construction of broadband infrastructure on their lands if an award is made. It is not intended to limit participation of Tribes in other Federal broadband programs that complement a USDA funded project. However, all environmental, permitting and rights of way requirements must still be completed, and adhered to, by applicants prior to initiating construction on Tribal Lands. Therefore, ongoing communication and collaboration will be required to ensure the timely, and mutually agreeable, build out of the funded infrastructure. As appropriate, during the application review process, USDA staff may contact applicants and Tribes to confirm Tribal consent. Applicants and Tribes that have questions regarding this process are encouraged to contact Telecom Program staff, USDA Rural Development's Tribal Relations Team or USDA's Office of Tribal Relations.

3. *System for Award Management and Unique Entity Identifier.*

a. At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *sam.gov/content/entity-registration.*

b. Applicants must maintain an active SAM registration, with current, accurate and complete information at all times during which they have an active Federal award, or an application under consideration by a Federal awarding agency.

c. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

d. Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

e. The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.*

a. Beginning on March 22, 2024, applications can be submitted through the RUS on-line application portal until 11:59 a.m. Eastern on April 22, 2024.

b. If the submission deadline falls on Saturday, Sunday, or a federal holiday, the application is due the next business day. Late or incomplete applications will not be accepted.

c. The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. However, RUS reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. *Intergovernmental Review.* Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your state has not established a SPOC, you may submit your application directly to the Agency. Applications from Federally recognized Indian Tribes are not subject to this requirement. The Agency will ensure compliance with the Executive Order 14112 ''Reforming Federal Funding and Support for Tribal Nations to Better Embrace our Trust Responsibility and Promote the Next Era of Tribal Self-Determination''.

6. *Funding Requirements.*

a. Eligible cost requirements are outlined in 7 CFR 1740.12. Additionally, award funds may be used for the following purposes:

i. To fund reasonable preapplication expenses in an amount not to exceed five percent of the award. 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. If an applicant applied for funding in ReConnect Round Four, preapplication expenses may be eligible for reimbursement if these expenses support the application in response to this notice, such as engineering design, market survey, and subscriber projections. Note, however, that RUS, in its sole discretion, reserves the right to accept or reject expenses associated with round four. Otherwise, preapplication expenses may only be reimbursed if they are incurred after the publication date of this notice and are properly documented. Preapplication expenses must be included in the first request for award funds and will be funded with either grant or loan funds. If the funding category applied for has a grant component, then grant funds will be used for this purpose.

ii. To fund up to three percent of the requested amount for post-award monitoring expenses that may be required to mitigate the environmental effects of the project, as long as such costs are capitalized as part of the project. These costs must be specified in the Professional Services section of Capital Investment Workbook included as part of the application system.

iii. To fund pole attachment fees associated with the construction of the project throughout the five-year construction period. In addition, if the pole owner requires that a pole be replaced to support the broadband facilities, such costs shall be eligible.

b. Use of funds for this program shall comply with requirements outlined in the Secure and Trusted Communications Networks Act of 2019, Public Law 116–124. Listed equipment and services covered by Section 2 of The Secure and Trusted Communications Networks Act are prohibited. See *fcc.gov/supplychain/coveredlist* for details.

c. Ineligible cost requirements are outlined in 7 CFR 1740.12. Additionally, award funds may not be used for the following purposes:

i. To fund projects proposing to use unlicensed wireless facilities.

ii. To fund grant costs of a vendor that has both designed and is to construct the proposed project. If the project has already been designed, then only such costs will be eligible for that vendor and the applicant must procure construction from another entity not related to the vendor. If an applicant is applying for a 100% loan and wishes to use the same vendor for design and construction, supporting documentation must be provided that demonstrates that this arrangement is the most economical way to get the broadband facilities constructed. Note, however, that the agency reserves the right not to accept such documentation, and as a result, the applicant must procure construction from another entity not related to the vendor. An applicant applying for a loan, grant, or a combination loan-grant, can use qualified in-house staff for both the design and construction of the broadband facilities.

3. *Other Submission Requirements.*

a. Applications must be submitted through the Agency's online application system located on the ReConnect web page, *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.

b. Applicants can submit only one application. Applicants may start multiple applications in the system but only one can be submitted.

c. A parent company that has subsidiaries applying for funding based on the parent's audited financials can only guarantee one application for funding under this notice. If multiple subsidiaries apply based on the same parent audited financial statement, at the agency's discretion, only one application can be funded.

d. Applications and supporting documents will not be accepted through mail or courier delivery, in-person delivery, fax, or electronic mail.

e. Applicants who believe that non-rural areas within their proposed service territory are ''rural in character'' must follow 7 U.S.C. 1991(a)(13)(D) in order for such areas to be considered eligible. Note that such a determination takes time, so applicants are encouraged to start this process immediately.

f. For this notice only, applicants are not required to submit a legal opinion as part of the application. Applicants that receive an award must still provide the legal opinion as part of closing the award.

g. Applicants that use alternative household data in the online mapping tool must provide supporting documentation to justify the use of such data, so that the number of households within the PFSA can be verified by USDA.

h. For corporations and limited liability entities, awards with a loan component must be secured by all assets of the Awardee. As a result, applicants must submit a certification that their existing lender or lienholder on any of its asset has already agreed to sign the RUS' standard intercreditor agreement or co-mortgage found on the Agency's web page at *usda.gov/reconnect.*

E. Application Review Information

1. Evaluation Criteria

a. *Application for a 100 percent loan.* One hundred (100) percent loan applications are not scored or ranked competitively. 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.

b. *Application for 100 percent grants and loan/grant Combinations.* One hundred (100) percent grant applications and combination loan/grant applications 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. *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. Tribal applicants can request alternative scoring consideration by submitting more granular Tribal specific census data using the *census.gov/tribal tool.* 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 *usda.gov/reconnect.*

iii. *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.

iv. *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:

(1) 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;

(2) 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

(3) 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 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.

(4) 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.

v. *Tribal areas (15 Points).* For applicants that are Tribal Governments or 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

[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'').

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 *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 *usda.gov/reconnect.*

vi. *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.

vii. *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 notice, 15 points will be awarded.

viii. *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.

ix. *Most Unserved Locations Per Square Mile (up to 10 points).* In order to ensure the Agency prioritizes funding to States with the highest concentrations of Unserved Broadband Serviceable Locations (UBSLs) (by percentage and area), projects located in states that meet these criteria will receive 5 or 10 points. For this notice only, UBSLs are Broadband Serviceable Locations contained in the FCC's Broadband Serviceable Location Fabric that do not have access to a wired or licensed terrestrial fixed wireless broadband service at speeds of at least 25 Mbps downstream and 3 Mbps upstream. The states eligible for these points were determined by ranking states based upon the following criteria:

(1) The state percentage of UBSLs.

(2) The average area per UBSL in each state in square miles.

Projects in which at least 75% of the PFSA is located in states ranked 1 through 5 will receive 10 points. Those states are Alaska, Idaho, Montana, New Mexico, and Wyoming. Projects in which at least 75% of the PFSA is located in states ranked 6 thru 10 will receive 5 points. Those states are Arkansas, Mississippi, Nevada, South Dakota, and West Virginia. For projects in which 75% of the PFSA is located in more than one of these states, the application will receive the points associated with the highest scoring state.

2. Review Process

The Agency may contact service providers that submit a Public Notice Response (PNR) to validate their submission. Service providers should be prepared to: (1) Provide additional information supporting that the area in question has sufficient access to broadband service; (2) have a technician on site during the field validation by RUS staff; (3) run on-site tests with RUS personnel being present, if requested; and (4) provide copies of any test results that have been conducted in the last six months.

F. Federal Award Administration Information

1. *Federal Award Notices.*

a. *General.* RUS will notify applicants whose projects are selected for awards by sending out an award letter. The Agency reserves the right to offer applicants less than the funding requested. After an applicant accepts the offer, the Agency will send appropriate award documents (agreement and security document, note and mortgage for a loan) that contains all the terms and conditions for the award. An applicant must execute and return the award documents within the number of days specified in the award letter. The standard agreement documents are available on the ReConnect website Forms and Resources page: *usda.gov/reconnect/forms-and-resources.*

b. *Advance of funds.* For this notice, the advance of funds for a 50/50 loan/grant combination will be as follows: funds substituted for the loan component, if any, will be advanced first; loan funds will be advanced second; and grant funds will be advanced third. The advance of funds for 100 percent grants with a matching component will require the expenditure of a prorated amount of matching funds with respect to the amount of the advance request. As an example, a request for ten (10) percent of the grant funds will require evidence of the expenditure of ten (10) percent of the matching requirement.

c. *Affordable Connectivity Program.* To ensure that all Americans can access reliable, high-speed internet, this vital service must also be affordable. The FCC's Affordable Connectivity Program (ACP) 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 if additional funding is appropriated by Congress to continue the program, or any successor program. This requirement will also apply to any successor program to the ACP.

2. Administrative and National Policy Requirements. In addition to USDA's standard administrative and policy requirements outlined in the standard award agreements, mortgages, and notes for ReConnect awards, the following applies to awards under this notice:

a. *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, a concerted 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 *cisa.gov/control-systems-goals-and-objectives.*

b. *Reporting.*

i. All applications are subject to the requirements contained in 7 CFR 1740 subpart F.

ii. If the awardee is a non-Federal entity as defined in 2 CFR 200.1, the awardee shall provide an audit in accordance with 2 CFR 200 subpart F.

iii. If the awardee is a for-profit entity, an electric or telecommunications cooperative, or any other entity not covered by the definition of non-Federal entity in 2 CFR 200.1, the awardee shall provide an independent audit report in accordance with Agency guidelines and the award agreement.

iv. Awardees must report their broadband availability data to the FCC's Broadband Data Collection once the awarded project begins to offer service.

G. Federal Awarding Agency Contact(s)

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.

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 (BABAA) within Public Law 117–58. Section 70914 of BABAA requires all federal agencies, including USDA, to ensure that none of the funds provided under this program may be used for a project for infrastructure unless the iron and steel, manufactured products, and construction materials used in that infrastructure are produced in the United States. For more information on these requirements, see *USDA Implementation of the BABA Act.*

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 1787.

I. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with the ReConnect Program, as covered in this notice, 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. *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970.

3. *Civil Rights Act.* All awards made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A and Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

4. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office or the 711 Relay Service. To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

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

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2024–03484 Filed 2–20–24; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Georgia Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Georgia Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public meeting via Zoom. The purpose of the meeting is to discuss the post-report activities of the Committee's recent civil rights project on civil asset forfeiture in Georgia.

DATES: Tuesday, March 19, 2024, from 12 p.m.–1 p.m. Eastern Time.

ADDRESSES: The meeting will be held via Zoom.

Registration Link (Audio/Visual): https://bit.ly/3SDmAid.

Join by Phone (Audio Only): 1–833–435–1820 USA Toll-Free; Webinar ID: 160 234 0393#.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer (DFO), at *mwojnaroski@usccr.gov* or 1–202–618–4158.

SUPPLEMENTARY INFORMATION: This Committee meeting is available to the public through the registration link above. Any interested member of the public may attend this meeting. An open comment period will be provided to allow members of the public to make oral statements as time allows. Pursuant the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over

wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning is available by selecting ''CC'' in the meeting platform. To request additional accommodations, please email *svillanueva@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the scheduled meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at 1–434–515–0204.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Georgia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *svillanueva@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Announcements and Updates
IV. Discussion: Post-Report Activities
V. Next Steps
VI. Public Comment
VII. Adjournment

Dated: February 15, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–03524 Filed 2–20–24; 8:45 am]

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DEPARTMENT OF COMMERCE

Census Bureau

Census Scientific Advisory Committee

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of public virtual meeting.

SUMMARY: The Census Bureau is giving notice of a virtual meeting of the Census Scientific Advisory Committee (CSAC or Committee). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including decennial, economic, field operations, information technology, and statistics. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: The virtual meeting will be held on:

- Thursday, March 14, 2024, from 8:30 a.m. to 5:00 p.m. EDT, and
- Friday, March 15, 2024, from 8:30 a.m. to 2:30 p.m. EDT.

ADDRESSES: Please visit the Census Advisory Committee website at *https://www.census.gov/about/cac/sac/meetings/2024-03-meeting.html,* for the CSAC meeting information, including the agenda, and how to join the meeting.

FOR FURTHER INFORMATION CONTACT: Shana Banks, Advisory Committee Branch Chief, Office of Program, Performance and Stakeholder Integration (PPSI), *shana.j.banks@census.gov,* Department of Commerce, Census Bureau, telephone 301–763–3815. For TTY callers, please use the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Committee provides scientific and technical expertise to address Census Bureau program needs and objectives. The members of the CSAC are appointed by the Director of the Census Bureau. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, App).

All meetings are open to the public. Public comments will be accepted in writing only to *shana.j.banks@census.gov* (subject line ''2024 CSAC Spring Virtual Meeting Public Comment''). A brief period will be set aside during the meeting to read public comments received in advance of 12:00 p.m. EDT, March 14, 2024. Any public comments received after the deadline will be posted to the website listed in the **ADDRESSES** section.

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: February 13, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–03475 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–165; C–552–840]

Certain Paper Plates From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable February 14, 2024.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg (Socialist Republic of Vietnam (Vietnam)) and Eliza DeLong (People's Republic of China (China)), AD/CVD Operations, Offices I and V, respectively, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785 or (202) 482–3878, respectively.

SUPPLEMENTARY INFORMATION:

The Petitions

On January 25, 2024, the U.S. Department of Commerce (Commerce) received countervailing duty (CVD) petitions concerning imports of certain paper plates (paper plates) from China and Vietnam filed in proper form on behalf of the American Paper Plate Coalition (the petitioner).[1] The CVD petitions were accompanied by antidumping duty (AD) petitions concerning imports of paper plates from China, Thailand, and Vietnam.[2]

Between January 29 and February 6, 2024, Commerce requested supplemental information pertaining to certain aspects of the Petitions in separate supplemental questionnaires.[3]

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Paper Plates from the People's Republic of China, The Kingdom of Thailand, and the Socialist Republic of Vietnam,'' dated January 25, 2024 (Petitions). The members of the American Paper Plate Coalition are AJM Packaging Corporation, Aspen Products, Inc., Dart Container Corporation, Hoffmaster Group, Inc., Huhtamaki Americas, Inc., and Unique Industries, Inc.

[2] *Id.*

[3] *See* Commerce's Letters, ''Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Supplemental Questions,'' dated January 29, 2024 (General Issues Questionnaire); *see also* ''Petition for the Imposition of Countervailing Duties on Imports of Certain Paper Plates from Socialist Republic of Vietnam: Supplemental Questions,'' dated January 29, 2024; ''Petition for the Imposition of Countervailing Duties on Imports of Certain Paper Plates from the People's Republic of China: Supplemental Questions,'' dated January 30, 2024; and

Continued

The petitioner filed responses to the supplemental questionnaires between January 31 and February 8, 2024.[4]

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) and the Government of Vietnam (GOV) (collectively, Governments) are providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of paper plates from China and Vietnam, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing paper plates in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating CVD investigations, the Petitions were accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petitions on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(F) of the Act.[5] Commerce also finds that the petitioner demonstrated sufficient industry support for the initiation of the requested CVD investigations.[6]

Period of Investigation

Because the Petitions were filed on January 25, 2024, the period of investigation (POI) for China and Vietnam is January 1, 2023, through December 31, 2023.[7]

Scope of the Investigations

The merchandise covered by these investigations is paper plates from China and Vietnam. For a full description of the scope of these investigations, *see* the appendix to this notice.

Comments on the Scope of the Investigations

On January 29 and February 6, 2024, Commerce requested information and clarification from the petitioner regarding the proposed scope to ensure that the scope language in the Petitions is an accurate reflection of the products for which the domestic industry is seeking relief.[8] On February 2 and 8, 2024, the petitioner provided clarifications and revised the scope.[9] The description of merchandise covered by these investigations, as described in the appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.,* scope).[10] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determinations. If scope comments include factual information, all such factual information should be limited to public information.[11] To facilitate preparation of its questionnaires, Commerce requests that scope comments be submitted by 5:00 p.m. Eastern Time (ET) on March 5, 2024, which is 20 calendar days from the signature date of this notice.[12] Any rebuttal comments, which may include factual information, must be filed by 5 p.m. ET on March 15, 2024, which is 10 calendar days from the initial comment deadline.

Commerce requests that any factual information that parties consider relevant to the scope of these investigations be submitted during that period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party must contact Commerce and request permission to submit the additional information. All scope comments must be filed simultaneously on the records of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS), unless an exception applies.[13] An electronically-filed document must be received successfully in its entirety by the time and date it is due.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the Governments of the receipt of the Petitions and provided an opportunity for consultations with respect to the Petitions.[14] Commerce held consultations with the GOV on February 8, 2024.[15] The GOC did not request consultations.[16]

Determination of Industry Support for the Petitions

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Memorandum, ''Phone Call,'' dated February 6, 2024 (February 6 Memorandum).

[4] *See* Petitioner's Letters, ''Certain Paper Plates from the People's Republic of China: Response to Supplemental Questionnaire for Volume III of the Petition,'' dated January 31, 2024; *see also* ''Certain Paper Plates from the Socialist Republic of Vietnam: Response to Supplemental Questionnaire for Volume V of the Petition,'' dated February 1, 2024; ''Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Petitioner's Responses to Supplemental Questions—General Issues,'' dated February 2, 2024 (First General Issues Supplement); ''Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam: Petitioner's Responses to Supplemental Questions—General Issues,'' dated February 8, 2024 (Second General Issues Supplement).

[5] The members of the American Paper Plate Coalition are interested parties as defined under section 771(9)(C) of the Act.

[6] *See* ''Determination of Industry Support for the Petitions'' section, *infra.*

[7] *See* 19 CFR 351.204(b)(2).

[8] *See* General Issues Questionnaire; *see also* February 6 Memorandum.

[9] *See* First General Issues Supplement at 5–11; *see also* Second General Issues Supplement at 3–6.

[10] *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*); *see also* 19 CFR 351.312.

[11] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[12] *See* 19 CFR 351.303(b)(1).

[13] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook_on_Electronic_Filing_Procedures.pdf.*

[14] *See* Commerce's Letters, ''Countervailing Duty Petition on Certain Paper Plates from the People's Republic of China,'' dated January 26, 2024; and ''Countervailing Duty Petition on Certain Paper Plates from the Socialist Republic of Vietnam,'' dated January 29, 2024.

[15] *See* Memorandum, ''Paper Plates from Vietnam: Consultations with Socialist Republic of Vietnam,'' dated February 8, 2024.

[16] In lieu of consultations, the GOC submitted comments regarding the initiation. *See* GOC's Letter, ''China-USA Consultations with Respect to the Possible Initiation of Countervailing Investigation against Imports of Certain Paper Plates from China,'' dated February 6, 2024.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC apply the same statutory definition regarding the domestic like product,[17] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[18]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic-like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations.[19] Based on our analysis of the information submitted on the record, we have determined that paper plates, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[20]

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in the appendix to this notice. To establish industry support, the petitioner provided its own shipments of the domestic like product in 2023 and compared this to the estimated total 2023 shipments of the domestic like product for the entire domestic industry.[21] Because total industry production data for the domestic like product for 2023 are not reasonably available to the petitioner, and the petitioner has established that shipments are a reasonable proxy for production data,[22] we have relied on the data provided by the petitioner for purposes of measuring industry support.[23]

Our review of the data provided in the Petitions, the First General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petitions.[24] First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[25] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.[26] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[27] Accordingly, Commerce determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.[28]

Injury Test

Because China and Vietnam are ''Subsidies Agreement Countries'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to these investigations. Accordingly, the ITC must determine whether imports of the subject merchandise from China and/or Vietnam materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports from China and Vietnam exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[29]

The petitioner contends that the industry's injured condition is illustrated by the significant volume of subject imports; underselling and price depression and/or suppression; loss of market share; decrease in production volume and capacity utilization; and lost sales and revenues.[30] We assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[31]

Initiation of CVD Investigations

Based upon the examination of the Petitions and supplemental responses,

[17] *See* section 771(10) of the Act.

[18] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd Algoma Steel Corp., Ltd.* v. *United States,* 865 F.2d 240 (Fed. Cir. 1989)).

[19] *See* Petitions at Volume I (pages 11–13); *see also* First General Issues Supplement at 17–18.

[20] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklists: Certain Paper Plates from the People's Republic of China and the Socialist Republic of Vietnam (Country-Specific CVD Initiation Checklists) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam (Attachment II). These checklists are dated concurrently with this notice and on file electronically via ACCESS.

[21] *See* First General Issues Supplement at 12–14, 16, and Attachments 2–4; *see also* Second General Issues Supplement at 7–8 and Attachment 1.

[22] *See* Petitions at Volume I (page 4 and Exhibit I–2); *see also* First General Issues Supplement at 12 and 14.

[23] *See* Petitions at Volume I (pages 3–4); *see also* First General Issues Supplement at 11–16 and Attachments 2–4; and Second General Issues Supplement at 7–8 and Attachment 1.

[24] *See* Petitions at Volume I (pages 3–4); *see also* First General Issues Supplement at 11–16 and Attachments 2–4; and Second General Issues Supplement at 6–8 and Attachments 1–3. For further discussion, *see* Attachment II of the Country-Specific CVD Initiation Checklists.

[25] *See* Attachment II of the Country-Specific CVD Initiation Checklists; *see also* section 702(c)(4)(D) of the Act.

[26] *See* Attachment II of the Country-Specific CVD Initiation Checklists.

[27] *Id.*

[28] *Id.*

[29] *See* Petitions at Volume I (pages 15–16 and Exhibit I–8).

[30] *Id.* at 15–39 and Exhibits I–2, I–3, I–7 through I–35; *see also* First General Issues Supplement at 18–19.

[31] *See* Country-Specific CVD Initiation Checklists at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Paper Plates from the People's Republic of China, Thailand, and the Socialist Republic of Vietnam.

we find that they meet the requirements of section 702 of the Act. Therefore, we are initiating CVD investigations to determine whether imports of paper plates from China and Vietnam benefit from countervailable subsidies conferred by the GOC and the GOV. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 65 days after the date of these initiations.

China

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all of the 19 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Vietnam

Based on our review of the Petitions, we find that there is sufficient information to initiate a CVD investigation on all of the 22 programs alleged by the petitioner. For a full discussion of the basis for our decision to initiate on each program, *see* the Vietnam CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS.

Respondent Selection

The petitioner identified 149 companies in China and nine companies in Vietnam as producers and/or exporters of paper plates.[32] Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in these investigations. In the event that Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, Commerce intends to select mandatory respondents as discussed below.

Commerce normally selects mandatory respondents in CVD investigations using U.S. Customs and Border Protection (CBP) entry data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigations.[33] However, for these investigations, because the HTSUS subheading listed in the scope is a basket category, we cannot rely on CBP entry data in selecting respondents. Therefore, Commerce will rely on quantity and value (Q&V) questionnaires for respondent selection.

Further, due to the large number of producers and/or exporters identified in the Petition for China, Commerce has determined to limit the number of Q&V questionnaires that it will issue to exporters and producers based on CBP data for paper plates from China during the POI under the appropriate HTSUS subheadings listed in the ''Scope of the Investigations,'' in the appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is complete address information on the record. With respect to Vietnam, Commerce intends to send Q&V questionnaires to all producers and exporters that are identified in the Petition for which there is complete address information on the record.

Commerce will post the Q&V questionnaires along with filing instructions on Commerce's website at *https://www.trade.gov/ec-adcvd-caseannouncements.* Exporters/producers of paper plates from China and Vietnam that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain the Q&V questionnaire from Enforcement and Compliance's website. Responses to the Q&V questionnaire must be submitted by the relevant producers/exporters no later than 5:00 p.m. ET on February 28, 2024, which is two weeks from the signature date of this notice. All Q&V questionnaire responses must be filed electronically via ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the deadline noted above.

Commerce intends to finalize its decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 702(b)(4)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petitions has been provided to the GOC and the GOV via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of paper plates from China and/or Vietnam are materially injuring, or threatening material injury to, a U.S. industry.[34] A negative ITC determination for either country will result in the investigation being terminated with respect to that country.[35] Otherwise, these CVD investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Section 351.301(b) of Commerce's regulations requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted [36] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[37] Time limits for the

[32] *See* First General Issues Supplement at 3–4 and Attachment 1.

[33] On February 9, 2024, Commerce released CBP data on U.S. imports of paper plates from China and Vietnam under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data and/or respondent selection must do so within three business days after the publication date of the notice of initiation of these investigations. *See* Memoranda, ''Certain Paper Plates from the People's Republic of China Countervailing Duty Petition: Release of U.S. Customs and Border Protection Entry Data,'' dated February 9, 2024; ''Certain Paper Plates from the Socialist Republic of Vietnam Countervailing Duty Petition: Release of U.S. Customs and Border Protection Entry Data,'' dated February 9, 2024. Commerce will not accept rebuttal comments regarding the CBP data or respondent selection.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on Commerce's website at *https://www.trade.gov/administrative-protective-orders.*

[34] *See* section 703(a)(1) of the Act.

[35] *Id.*

[36] *See* 19 CFR 351.301(b).

[37] *See* 19 CFR 351.301(b)(2).

submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by Commerce. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301, or as otherwise specified by Commerce.[38] For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances we will grant untimely filed requests for the extension of time limits. Parties should review Commerce's regulations concerning the extension of time limits and the *Time Limits Final Rule* prior to submitting factual information in these investigations.[39]

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[40] Parties must use the certification formats provided in 19 CFR 351.303(g).[41] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Parties wishing to participate in these investigations should ensure that they meet the requirements of 19 CFR 351.103(d) (*e.g.,* by filing the required letters of appearance). Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information and has made additional clarifications and corrections to its AD/CVD regulations.[42]

This notice is issued and published pursuant to sections 702 and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: February 14, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Investigations

The merchandise subject to these investigations is certain paper plates. Paper plates subject to these investigations may be cut from rolls, sheets, or other pieces of paper and/or paper board. Paper plates subject to these investigations have a depth up to and including two (2.0) inches, as measured vertically from the base to the top of the lip, or the edge if the plate has no lip. Paper plates subject to these investigations may be uncolored, white, colored, or printed. Printed paper plates subject to these investigations may have any type of surface finish, and may be printed by any means with images, text and/or colors on one or both surfaces. Colored paper plates subject to this investigation may be colored by any method, including but not limited to printing, beater-dyeing, and dip-dyeing. Paper plates subject to these investigations may be produced from paper of any type (including, but not limited to, bamboo, straws, bagasse, hemp, kenaf, jute, sisal, abaca, cotton inters and reeds, or from non-plant sources, such as synthetic resin (petroleum)-based resins), may have any caliper or basis weight, may have any shape or size, may have one or more than one section, may be embossed, may have foil or other substances adhered to their surface, and/or may be uncoated or coated with any type of coating.

The paper plates subject to these investigations remain covered by the scope of these investigations whether imported alone, or in any combination of subject and non-subject merchandise. When paper plates subject to these investigations are imported in combination with non-subject merchandise, only the paper plates subject to these investigations are subject merchandise.

The paper plates subject to these investigations include paper plates matching the above description that have been finished, packaged, or otherwise processed in a third country by performing finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the paper plates. Examples of finishing, packaging, or other processing in a third country that would not otherwise remove the merchandise from the scope of the investigations if performed in the country of manufacture of the paper plates include, but are not limited to, printing, application of other surface treatments such as coatings, repackaging, embossing, and application of foil surface treatments.

Excluded from the scope of these investigations are paper plates molded or pressed directly from paper pulp (including but not limited to unfelted pulp), which are currently classifiable under subheading 4823.70.0020 of the Harmonized Tariff Schedule of the United States (HTSUS).

Also excluded from the scope of these investigations are articles that otherwise would be covered but which exhibit the following two physical characteristics: (a) depth (measured vertically from the base to the top of the lip, or edge if no lip) equal to or greater than 1.25 inches but less than two (2.0) inches, and (b) a base not exceeding five (5.0) inches in diameter if round, or not exceeding 20 square inches in area if any other shape.

Also excluded from the scope of these investigations are paper bowls, paper buckets, and paper food containers with closeable lids.

Paper plates subject to these investigations are currently classifiable under HTSUS subheading 4823.69.0040. Paper plates subject to these investigations also may be classified under HTSUS subheading 4823.61.0040. If packaged with other articles, the paper plates subject to these investigations also may be classified under HTSUS subheadings 9505.90.4000 and 9505.90.6000. While the HTSUS subheading(s) are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

[FR Doc. 2024–03527 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–DS–P

[38] *See* 19 CFR 351.302.

[39] *See* 19 CFR 351.301; *see also Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013) (*Time Limits Final Rule*), available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm.*

[40] *See* section 782(b) of the Act.

[41] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Additional information regarding the *Final Rule* is available at *https://access.trade.gov/Resources/filing/index.html.*

[42] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069 (September 29, 2023).

DEPARTMENT OF COMMERCE

International Trade Administration

Environmental Technologies Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting of a Federal Advisory Committee.

SUMMARY: The Environmental Technologies Trade Advisory

Committee (ETTAC) will hold a hybrid meeting, accessible in-person and online, on Tuesday March 12, 2024 at the U.S. Department of Commerce in Washington, DC The meeting is open to the public with registration instructions provided below. This notice sets forth the schedule and proposed topics for the meeting.

DATES: The meeting is scheduled for Tuesday, March 12, 2024 from 9:30 a.m. to 3:30 p.m. Eastern Standard Time (EST). The deadline for members of the public to register to participate, including requests to make comments during the meeting and for auxiliary aids, or to submit written comments for dissemination prior to the meeting, is 5 p.m. EST on Wednesday, March 6, 2024.

ADDRESSES: The meeting will be held virtually as well as in-person in the Commerce Research Library at the U.S. Department of Commerce Herbert Clark Hoover Building, 1401 Constitution Avenue NW, Washington, DC 20230. Requests to register to participate in-person or virtually (including to speak or for auxiliary aids) and any written comments should be submitted via email to Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration, at *Megan.Hyndman@trade.gov.* This meeting has a limited number of spaces for members of the public to attend in-person. Requests to participate in-person will be considered on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Ms. Megan Hyndman, Office of Energy & Environmental Industries, International Trade Administration (Phone: 202–823–1839; email: *Megan.Hyndman@trade.gov*).

SUPPLEMENTARY INFORMATION: The ETTAC is mandated by Section 2313(c) of the Export Enhancement Act of 1988, as amended, 15 U.S.C. 4728(c), to advise the Environmental Trade Working Group of the Trade Promotion Coordinating Committee, through the Secretary of Commerce, on the development and administration of programs to expand U.S. exports of environmental technologies, goods, services, and products. The ETTAC was most recently re-chartered through August 16, 2024.

On Tuesday, March 12, 2024 from 9:30 a.m. to 3:30 p.m. EST, the ETTAC will hold the seventh meeting of its current charter term. During the meeting, committee members will participate in breakout discussions to discuss issues of interest to specific environmental technology sectors and to deliberate on potential recommendation topics. The committee will also hear briefings on U.S. government resources and programs to support U.S. environmental technology exporters, including the International Trade Administration's efforts to strengthen U.S. supply chains and U.S. Export-Import Bank tools for U.S. exporters. An agenda will be made available one week prior to the meeting upon request to Megan Hyndman.

The meeting will be open to the public and time will be permitted for public comment before the close of the meeting. Members of the public seeking to attend the meeting are required to register by Wednesday, March 6, at 5:00 p.m. EST, via the contact information provided above. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OEEI at *Megan.Hyndman@trade.gov* or (202) 823–1839 no less than one week prior to the meeting. Requests received after this date will be accepted, but it may not be possible to accommodate them.

Written comments concerning ETTAC affairs are welcome any time before or after the meeting. To be considered during the meeting, written comments must be received by Wednesday, March 6, 2024, at 5 p.m. EST to ensure transmission to the members before the meeting. Draft minutes will be available within 30 days of this meeting.

Dated: February 14, 2024.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2024–03440 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Artificial Intelligence Advisory Committee

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open briefing session.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will hold a public briefing session virtually via web conference on March 5, 2024, from 10 a.m.–1 p.m. eastern time. The primary purpose of this meeting is for the Committee to examine the concept of ''AI safety'' through the testimony of a group of experts, followed by questions and discussion.

DATES: The meeting will be held on Tuesday, March 5, 2024, from 10 a.m.—1 p.m. eastern time.

ADDRESSES: The meeting will be held virtually via web conference. Registration is required to view this virtual session. The public should register in accordance with the guidance provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Cheryl Gendron, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 8900, Gaithersburg, MD 20899, *cheryl.gendron@nist.gov,* 301–975–2785. Please direct any inquiries to the committee at *naiac@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the NAIAC will meet as set forth in the **DATES** section of this notice. The meeting will be open to the public and will be held virtually. Additional information, including a final agenda and link to register, will be available online athttps://*www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.*

The NAIAC is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283, in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. 1001 *et seq.* The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at *https://ai.gov/naiac/.*

Comments: Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to submit comments in advance of the conference. Approximately twenty minutes will be reserved for public comments, which will be read on a first-come, first-served basis. Please note that all comments submitted via email will be treated as public documents and will be made available for public inspection. All comments must be submitted via email with the subject line ''March 5, 2024, NAIAC Public Briefing: AI Safety Comments'' to *naiac@nist.gov* by 5 p.m. eastern time, Monday, March 4, 2024. NIST will not accept comments accompanied by a request that part or all of the comment be treated confidentially because of its

business proprietary nature or for any other reason. Therefore, do not submit confidential business information or otherwise sensitive, protected, or personal information, such as account numbers, Social Security numbers, or names of other individuals.

Virtual Meeting Registration Instructions: The meeting will be broadcast virtually via web conference. Registration is required to view the web conference. Instructions to register will be made available at *https://www.nist.gov/itl/national-artificial-intelligence-advisory-committee-naiac.* Registration will remain open until the conclusion of the meeting.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2024–03481 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–13–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; Alaska Mariculture Economic Benchmark Survey

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 April 22, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* 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 Russel A. Dame, Industry Economist, NOAA, 7600 Sand Point Way NE, Bldg. 4, Seattle, WA 98115–6349, (206) 526–4432, *russel.a.dame@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for a new collection of information. Alaska was recently named an Aquaculture Opportunity Area (AOA) under NOAA Fisheries to determine geographic areas that are environmentally, socially, and economically suitable to support commercial aquaculture operations. The purpose of this data collection is to gather economic data from current growers that hold an Aquatic Farming permit under the Alaska Department of Fish & Game to establish a benchmark economic report that presents economic measures (profitability, breakeven price, etc.) and operations (average stocking density, kelp line depth and separation, etc.) spatially.

The data collected from this survey will be used by NOAA economists to generate a benchmark report that states spatial economic information, internal reports on the spatial economic suitability of an Alaskan mariculture operation, and external publications on the financial and environmental risks. These reports will be published on NOAA's website and be publicly accessible for stakeholders, researchers, and other members of the public.

Stakeholders (current and prospective growers) are requesting economic information to help secure small business loans to establish new growing operations and expand current production and describe the economics of opening and operating a mariculture farm in Alaska. Additionally, the economic data provided from this collection will help determine the spatial economic suitability requested from the AOA project. NOAA will use the information provided in the survey to generate a bio economic model that can be simulated under various financial and environmental scenarios. Examples of financial and environmental scenarios include the impact to profitability from subsidies for reductions in seed costs, price floors, and reduced transportation costs from a new production facility and impact to growth and mortality rates from increasing surface water temperatures, dissolved oxygen (DO), and other water parameters and other environmental events such as harmful algae blooms (HAB) or severe storms.

II. Method of Collection

This survey will be distributed via mail. Many Alaskan mariculture growers live in remote areas with limited internet access. To ensure that the survey reaches the full population, NOAA will use the mailing address associated with their Aquatic Farming permit to deliver each paper survey.

III. Data

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Review: Regular submission. This is a new information collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 80.

Estimated Time Per Response: 45 minutes

Estimated Total Annual Burden Hours: 60.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

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 Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–03513 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–C–2023–0056]

National Medal of Technology and Innovation Nomination Evaluation Committee Charter Renewal

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce has renewed the charter for the National Medal of Technology and Innovation Nomination Evaluation Committee (NMTI Committee) for an additional two-year period, as it is a necessary committee that is in the public interest. The charter is renewed until February 8, 2026.

FOR FURTHER INFORMATION CONTACT: Linda Hosler, Program Manager, NMTI Program, United States Patent and Trademark Office, 600 Dulany Street, Alexandria, VA 22314; 571–272–8514; or *nmti@uspto.gov.* Information is also available at *www.uspto.gov/nmti.*

SUPPLEMENTARY INFORMATION: The NMTI Committee was established in accordance with 15 U.S.C. 1512 and the provisions of the Federal Advisory Committee Act, 5 U.S.C. 1001 *et seq.* The NMTI Committee members are distinguished experts from the private and public sectors, with experience in and an understanding of technology and technological innovation. The NMTI Committee provides recommendations of nominees for the NMTI. The duties of the NMTI Committee are solely advisory in nature. Nominations for the NMTI are solicited through an open, competitive, and nationwide call, and the NMTI Committee members are responsible for reviewing the nominations received. The NMTI Committee forwards its recommendations, through the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, to the President.

On December 22, 2023, the Secretary of Commerce approved the continuance of the NMTI Committee. On February 7, 2024, the Deputy Assistant Secretary for Administration, Performing the non-exclusive functions and duties of the Chief Financial Officer and Assistant Secretary for Administration, signed the charter for the NMTI Committee. This charter will terminate two years from the date of its filing with the standing committees of the United States Senate and the House of Representatives having legislative jurisdiction over the United States Patent and Trademark Office unless earlier terminated or renewed by proper authority. The charter was filed on February 8, 2024, and it expires on February 8, 2026.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–03526 Filed 2–20–24; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for SpaceX Starship-Super Heavy Operations at Cape Canaveral Space Force Station

AGENCY: Department of the Air Force, Department of Defense; Federal Aviation Administration; National Aeronautics and Space Administration; and United States Coast Guard.

ACTION: Notice of intent.

SUMMARY: The Department of the Air Force is the lead agency for this notice. The Federal Aviation Administration is a cooperating agency and the National Aeronautics and Space Administration and U.S. Coast Guard were invited to be cooperating agencies for this action. The Department of the Air Force (DAF) is issuing this Notice of Intent (NOI) to prepare an environmental impact statement (EIS) to evaluate the potential environmental impacts associated with (1) the execution of a real property agreement between the United States Space Force (USSF) and Space Exploration Technologies Corp. (SpaceX), which would enable SpaceX to develop a launch site to support Starship-Super Heavy operations, including launch and landing at Cape Canaveral Space Force Station (CCSFS), and (2) the Federal Aviation Administration's (FAA) issuance of a vehicle operator license at the selected launch site and approval of related airspace closures.

DATES: A public scoping period will take place starting from the date of this NOI publication in the **Federal Register** and will last for 30 days. Comments will be accepted at any time during the environmental impact analysis process; however, to ensure the DAF has sufficient time to consider public scoping comments during preparation of the Draft EIS, please submit comments within the 30-day scoping period.

The DAF invites the public, stakeholders, and other interested parties to attend one or more of the three in-person public scoping meetings or the virtual public scoping meeting. In-person meetings will be held March 5 at Catherine Schweinsberg Rood Central Library, 308 Forrest Ave., Cocoa, FL 32922; March 6 at Titusville Civic Center, 4220 S Hopkins Ave., Titusville, FL 32780; and March 7 at Radisson Resort At The Port, 8701 Astronaut Blvd., Cape Canaveral, FL 32920. Each in-person scoping meeting will take place from 4 to 7 p.m. A virtual meeting is scheduled for March 12 at 6 p.m. Information on how to attend the virtual meeting is available on the project website (*SpaceForceStarshipEIS.com*). The meetings will provide an opportunity for attendees to learn more about the Proposed Action and Alternatives and provide an early and open process to assist the DAF and its Cooperating Agencies in determining the scope of issues for analysis in the EIS, including identifying significant environmental issues and eliminating from further study non-significant issues. Scope consists of the range of actions, alternatives, and impacts to be considered in the EIS. Project team members will be available to answer questions and there will also be an opportunity to provide oral and written comments. Scoping meeting materials will be provided in English and Spanish.

The Notice of Availability (NOA) of the Draft EIS is anticipated in December 2024 and the NOA for the Final EIS is anticipated in September 2025. A decision could be made no earlier than 30 days after the Final EIS.

ADDRESSES: The project website (*SpaceForceStarshipEIS.com*) provides information related to the EIS, such as environmental documents, schedule, and project details, as well as a comment form. Comments may be submitted via the website comment form, emailed to *ContactUs@SpaceForceStarshipEIS.com,* or mailed to CCSFS Starship EIS c/o Jacobs, 5401 W Kennedy Blvd., Suite 300, Tampa, Florida 33609. Members of the public who want to receive future mailings informing them of the availability of the Draft EIS and Final EIS are encouraged to submit a comment that includes their name and email or postal mailing

address. For other inquiries, please contact Ms. Molly Thrash, NEPA Project Manager at *ContactUs@SpaceForceStarshipEIS.com* or 1–813–954–5608.

SUPPLEMENTARY INFORMATION: The purpose for the DAF's Proposed Action is to advance U.S. space capabilities and provide launch and landing infrastructure in furtherance of U.S. policy to ensure capabilities necessary to launch and insert national security payloads into space (United States Code [U.S.C.] Title 10, Section 2273, ''Policy regarding assured access to space: national security payloads'').

The need for the DAF's Proposed Action is to ensure National Security Space Launch Assured Access to Space without compromising current launch capabilities and fulfill (in part) U.S. Congress's grant of authority to the Secretary of Defense, pursuant to 10 U.S.C. 2276(a), ''Commercial space launch cooperation,'' that the Secretary of Defense is permitted to take action to maximize the use of the capacity of the space transportation infrastructure of the Department of Defense (DOD) by the private sector in the U.S.; maximize the effectiveness and efficiency of the space transportation infrastructure of the DOD; reduce the cost of services provided by the DOD related to space transportation infrastructure at launch support facilities and space recovery support facilities; encourage commercial space activities by enabling investment by covered entities in the space transportation infrastructure of the DOD; and foster cooperation between DOD and covered entities.

The DAF has identified a Proposed Action alternative, one reasonable action alternative (Alternative 1), and the No Action Alternative to be carried forward for analysis in the EIS. Under the Proposed Action, SpaceX would modify, reuse, or demolish the existing Space Launch Complex (SLC)-37 infrastructure at CCSFS to support Starship-Super Heavy launch and landing operations. Under Alternative 1, leasing SLC–50 at CCSFS, SpaceX would construct infrastructure to support Starship-Super Heavy launch and landing operations on a site that is currently undeveloped. Under the No Action Alternative, USSF would not enter into a real property agreement with SpaceX, SpaceX would not develop a launch and landing site in support of Starship-Super Heavy launches, and SpaceX would not apply for an FAA vehicle operator license for Starship-Super Heavy launches at either of the alternative SLCs under consideration.

Potential impacts may include noise, air quality, and hazardous material effects associated with operations and construction, as well as effects on biological and cultural resources because of ground disturbance and operational noise and vibrations. Implementation of the Proposed Action would potentially impact wetlands and/or floodplains, therefore this NOI initiates early public review as required per Executive Order 11988 ''Floodplain Management.'' and Executive Order 11990 ''Protection of Wetlands.''

A Federal Coastal Zone Management Act determination will be conducted and coordinated with the Florida State Clearinghouse to determine consistency of the action with the Florida Coastal Management Program. SpaceX would be required to obtain an FAA Vehicle Operator License for the Starship-Super Heavy launch vehicle at CCSFS, which could include launch, reentry, or both. A Clean Air Act Title V operating permit may be required, as well as a Clean Water Act Section 404 permit and National Pollutant Discharge Elimination System permit.

Scoping and Agency Coordination: Consultation will include, but not necessarily be limited to, consultation under Section 7 of the Endangered Species Act and consultation under Section 106 of the NHPA, to include consultation with federally recognized Native American Tribes. Regulatory agencies with special expertise in wetlands and floodplains, such as the U.S. Army Corps of Engineers, will be contacted and asked to comment. The DAF and Cooperating Agencies will determine the scope of the analysis by soliciting comments from interested local, state, and federally elected officials and agencies, federally recognized Native American tribes, as well as interested members of the public. Comments are requested on identification of potential alternatives, information, and analyses relevant to the Proposed Action.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2024–03554 Filed 2–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of Department of Defense Federal Advisory Committees—Defense Innovation Board

AGENCY: Office of the Under Secretary of Defense for Research and Engineering, Department of Defense (DoD).

ACTION: Meeting of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Innovation Board (DIB) will take place.

DATES: Open to the public Tuesday, March 5, 2024, from 4:00 p.m. to 4:45 p.m.

ADDRESSES: The open meeting will take place virtually, via the Defense Visual Information Distribution Service (DVIDS).

FOR FURTHER INFORMATION CONTACT: Dr. Marina Theodotou, the Designated Federal Officer (DFO) at (571) 372–7344 (voice) or *osd.innovation@mail.mil.* Mailing address is Defense Innovation Board, 4800 Mark Center Drive, Suite 15D08, Alexandria, VA 22350–3600. Website: *https://innovation.defense.gov.* The most up-to-date changes to the meeting agenda and link to the virtual meeting can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Defense Innovation Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its March 5, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA'') and 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Purpose of Meeting: The mission of the DIB is to provide the Secretary of Defense, the Deputy Secretary of Defense, and the Under Secretary of Defense for Research and Engineering (USD(R&E)) independent advice and strategic insights on emerging and disruptive technologies and their impact on national security, adoption of commercial sector innovation best practices, and ways to leverage the U.S.

innovation ecosystem to align structures, processes, and human capital practices to accelerate and scale innovation adoption, foster a culture of innovation and an experimentation mindset, and enable the DoD to build enduring advantages. The DIB focuses on innovation-related issues and topics raised by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(R&E). The objective of this DIB meeting is to gather information from guest speakers and discuss relevant issues related to its current research in preparation for the upcoming Spring 2024 Public Meeting scheduled on April 17, 2024.

Agenda: The DIB's open meeting will take place on March 5, 2024, from 4:00 p.m. to 4:45 p.m. During this time, the DIB will meet with the following guest speakers from the Defense Entrepreneurs Forum (DEF) Board: Ian Eishen, Evanna Hu, Jesse Levin, Michael Madrid, Megan Metzger, and Jen Sovada, to gather information and discuss specific issues regarding talent management, partnerships and collaboration, responsible AI, internal barriers, risk taking, and tech adoption in preparation for the DIB's upcoming Spring 2024 Public Meeting scheduled on April 17, 2024, to ensure proposed recommendations are practical and actionable to drive and scale innovation across the DoD.

Meeting Accessibility: Pursuant to Federal statutes and regulations (the FACA and 41 CFR 102–3.140 and 102–3.150), the open meeting will be accessible to the public virtually on March 5, 2024, from 4:00 p.m. to 4:45 p.m. Members of the public wishing to attend the meeting virtually will be able to access a link published on the DIB website the morning of the meeting.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 1009(a)(3) of the FACA, the public or interested organizations may submit written comments or statements to the DIB in response to the stated agenda of the meeting or regarding the DIB's mission in general. Written comments or statements should be submitted to Dr. Marina Theodotou, the DFO, via email to *osd.innovation@mail.mil.* Comments or statements must include the author's name, title or affiliation, address, and daytime phone number. The DFO must receive written comments or statements being submitted in response to the agenda set forth in this notice by 12:00 p.m. on March 2, 2024, to be considered by the DIB. The DFO will review all timely submitted written comments or statements with the DIB Chair and ensure the comments are provided to all members before the meeting. Written comments or statements received after this date may not be provided to the DIB until its next scheduled meeting. Please note that all submitted comments and statements will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the DIB's website.

Dated: February 14, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–03461 Filed 2–20–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0195]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Connecting Adults to Success: Career Navigator Training Study (CATS Study)

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 22, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Melanie Ali, (202) 245–8345.

SUPPLEMENTARY INFORMATION: 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: Connecting Adults to Success: Career Navigator Training Study (CATS Study).

OMB Control Number: 1850–0973.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: Individuals or households *Total Estimated Number of Annual Responses:* 30,823.

Total Estimated Number of Annual Burden Hours: 2,340.

Abstract: The Institute of Education Sciences within the U.S. Department of Education requests clearance for a revision to the Connecting Adults to Success: Evaluation of Career Navigator Training (1850–0973, approved on July 18, 2022). This demonstration study examines the impact of training for career navigators—local adult education provider staff who provide services to address the challenges that learners face navigating the transition to the workforce and to further education and training. The study compares the education and employment outcomes of learners enrolled in adult education sites whose career navigators are assigned by lottery to receive the study's training (the treatment group) with the outcomes of learners enrolled in the business-as-usual sites who are assigned by lottery to receive the study's training after the study period (the comparison group). Approximately 64 adult education sites nationally are participating in the study. Impacts on learners' education and employment outcomes will be examined after 18 and 30 months. The revision is for the purpose of shifting one component of the approved data collection plan—frequent adult education career navigator-completed logs—to add a single follow-up survey to ensure the study can still examine whether the training leads to changes in these practices. The survey is now needed because of concerns about low response rates and data quality from early rounds of those logs.

Dated: February 15, 2024.

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. 2024–03499 Filed 2–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0206]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Comprehensive Transition Program (CTP) for Disbursing Title IV Aid to Students With Intellectual Disabilities Expenditure Report

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 22, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

SUPPLEMENTARY INFORMATION: 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: Comprehensive Transition Program (CTP) for Disbursing Title IV Aid to Students with Intellectual Disabilities Expenditure Report.

OMB Control Number: 1845–0113.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 163.

Total Estimated Number of Annual Burden Hours: 326.

Abstract: This is a request for an extension of the current information collection 1845–0113 Financial Assistance for Students with Intellectual Disabilities Expenditure Report. There have been no changes to the regulatory requirements for this collection.

The Higher Education Opportunity Act, Public Law 110–315, added provisions to the Higher Education Act, as amended (HEA) in sections 760 and 766 that enable eligible students with intellectual disabilities to receive Federal Pell Grant (Pell), Supplemental Educational Opportunity Grant (FSEOG), and Federal Work Study (FWS) funds if they are enrolled in an approved program. This collection provides the method for institutions to report the number of Pell Grant, SEOG and FWS funds used for such a purpose.

Dated: February 15, 2024.

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. 2024–03501 Filed 2–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Personnel Development To Improve Services and Results for Children With Disabilities Program—Preservice Improvement Enhancement Grants To Support Related Service Providers To Effectively Serve Children With Disabilities and Their Families

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2024 for Personnel Development to Improve Services and Results for Children with Disabilities Program—Preservice Improvement Enhancement Grants to Support Related Service Providers to Effectively Serve Children with Disabilities and Their Families, Assistance Listing Number 84.325S. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: February 21, 2024.

Deadline for Transmittal of Applications: May 1, 2024.

Deadline for Intergovernmental Review: July 1, 2024.

Pre-Application Webinar Information: No later than February 26, 2024, the Office of Special Education and Rehabilitative Services will post pre-recorded informational webinars designed to provide technical assistance to interested applicants. The webinars may be found at *https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html.*

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/d/2022-26554.*

FOR FURTHER INFORMATION CONTACT: Yolanda Lusane, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0146. Email: *Yolanda.Lusane@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) help address State-identified needs for personnel preparation in special education, early intervention, related services, and regular education to work with children, including infants, toddlers, and youth with disabilities; and (2) ensure that those personnel have the necessary skills and knowledge, derived from practices that have been determined through scientifically based research, to be successful in serving those children.

Priority: This competition includes one absolute priority, which includes one competitive preference priority within the absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), the absolute priority is from allowable activities specified in the statute (see sections 662 and 681 of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1462 and 1481)).

Absolute Priority: For FY 2024 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Preservice Improvement Enhancement Grants to Support Related Service Providers to Effectively Serve Children with Disabilities and Their Families.

Background:

The shortages of related services personnel who work in early intervention, early childhood, and school-based settings are at critical levels, resulting in decreased numbers of personnel with the skills and qualifications needed to serve infants, toddlers, children, and youth with disabilities (children with disabilities) and their families, which may ultimately prevent children with disabilities from receiving the services they need to reach their full potential (American Speech Language Hearing Association, n.d.; IDEA Infant and Toddler Coordinators Association, 2021; National Coalition on Personnel Shortages in Special Education and Related Services, n.d.).

The shortage is impacted by the low number of graduates from related services personnel preparation programs choosing to work in early intervention and special education systems. Related services personnel are generally trained to serve individuals across the lifespan and the curriculum, courses, and clinical experiences they receive typically are based on a medical model. A medical model focuses on diagnosing a condition and providing services to address the condition in medical settings such as hospitals and clinics. Related services preparation programs vary greatly in the coursework, assignments, and clinical experiences that focus on children with disabilities and service provision in early intervention, early childhood, and school-based settings. As an example, a recent survey of pediatric faculty from 80 Doctorate of Physical Therapy programs (an earned doctorate and passing a State licensure exam is required to practice physical therapy) reported that doctoral students (students) engaged in a mean of only 18.8 hours of experiential learning with children and 12.2 hours specifically with children who have movement limitations or for whom a medical diagnosis or developmental delay impacts their participation in daily life (Wynarczuk et al., 2022).

Additionally, there is significant variation in the extent to which students' related services personnel preparation programs introduce them to content that develops competencies in providing interventions and services to children with disabilities and their families in early intervention, early childhood, and school-based settings. For example, to effectively work with children with disabilities, related services providers need competencies in actively engaging and communicating with families; collaborating with educators and other related services providers; implementing evidence-based interventions that will support children in achieving positive developmental, learning, and academic outcomes; supporting children to fully participate in inclusive settings; and understanding IDEA requirements. With limited preparation in providing services in early intervention, early childhood, and school-based settings, related services personnel may lack awareness of the type of employment opportunities available in these settings or may question whether they have the competencies needed to work with children with disabilities, especially those with significant disabilities.

To effectively support children with disabilities in gaining the skills needed to access and actively participate in their learning and educational environments, under this grant competition, the Department plans to award grants to related services personnel preparation programs. The grant awards are intended to expand or enhance curriculums, courses of study, and clinical experiences to increase the competencies of related services personnel to serve children with disabilities and their families in early intervention, early childhood, and educational settings. This priority also will advance the Secretary's Supplemental Priorities 2—Promoting Equity in Student Access to Educational Resources and Opportunities and 3—Supporting a Diverse Educator Workforce and Professional Growth to Strengthen Student Learning. See Secretary's Final Supplemental Priorities and Definitions for Discretionary Grants Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612).

Priority:

The purpose of this priority is to fund Preservice Improvement Enhancement Grants to Support Related Service Providers to Effectively Serve Children with Disabilities and Their Families to achieve, at a minimum, the following:

(a) Increased number of related services providers, including those who are multilingual and from racially and ethnically diverse backgrounds, equipped with the competencies necessary to deliver services to children with disabilities and their families in early intervention, early childhood, and school-based settings.

(b) Increased number of institutions of higher education (IHEs), including Historically Black Colleges and Universities (HBCUs),[1] Tribally Controlled Colleges and Universities (TCCUs),[2] and other Minority-Serving Institutions (MSIs),[3] with related services personnel preparation programs[4] at the associate degree, bachelor's degree, master's degree, educational specialist, or clinical doctorate degree level that include sufficient coursework, assignments, and clinical experiences in early intervention, early childhood, and

[1] For purposes of this priority, ''Historically Black Colleges and Universities'' means colleges and universities that meet the criteria set out in 34 CFR 608.2.

[2] For purposes of this priority, ''Tribally Controlled Colleges and Universities'' has the meaning ascribed to it in section 316(b)(3) of the Higher Education Act of 1965 (HEA).

[3] For purposes of this priority, ''Minority-Serving Institution'' means an institution that is eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA. For purposes of this priority, the Department will use the FY 2023 Eligibility Matrix to determine MSI eligibility (see *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html*).

[4] For the purposes of this priority, ''related services personnel preparation programs'' include those preparing speech-language pathologists, audiologists, physical therapists, occupational therapists, social workers, counselors services, including rehabilitation counselors, orientation and mobility specialists, and sign language interpreters. See 34 CFR 300.34.

school-based settings to support students in developing competencies to serve children with disabilities and their families.

(c) Increased capacity of related services faculty to design and implement enhanced degree programs at the associate degree, bachelor's degree, master's degree, educational specialist, or clinical doctorate degree level that prepare related services providers to deliver services to children with disabilities and their families in early intervention, early childhood, and school-based settings.

In addition to these programmatic requirements, to be considered for funding, applicants must meet the following application and administrative requirements in this priority:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address the need in the field to increase the number of related service providers in the proposed area, including those who are multilingual and from racially and ethnically diverse backgrounds, who are fully qualified and have the competencies to serve children with disabilities and their families in early intervention, early childhood, and school-based settings;

(2) Increase the number of related service providers, including those who are multilingual and from racially and ethnically diverse backgrounds, with competencies [5] in the proposed degree area to provide effective and equitable, evidence-based,[6] culturally and linguistically responsive interventions and services in early intervention, early childhood, and school-based settings; and

(3) Increase faculty competencies to design and deliver content that will prepare students, including those who are multilingual and from racially and ethnically diverse backgrounds, in related services personnel preparation programs to serve children with disabilities and their families.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the project will—

(1) Enhance or redesign a current related services personnel preparation degree program to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe the approach that will be used to—

(i) Develop or modify a curriculum, including courses, assignments, and clinical experiences, for the degree program to prepare related services personnel to provide effective, equitable, evidence-based, and culturally and linguistically responsive instruction, interventions, and services in early intervention and school-based settings, that improve outcomes for children with disabilities and their families, including those who are multilingual and from racially and ethnically diverse backgrounds, in early intervention, early childhood, and school-based settings. The applicant must describe—

(A) The components of the proposed or modified curriculum that show coursework, clinical experiences, and other requirements, that will build the competencies of related services personnel to provide services in early intervention, early childhood, and school-based settings;

(B) The approach that will be used to identify and incorporate current research, evidence-based practices (EBPs), and State and national professional organization personnel standards in the development and delivery of the curriculum;

(C) The knowledge and competencies students will acquire in the curriculum, including knowledge and competencies necessary to provide effective, equitable, and evidence-based interventions and services in early intervention and school-based settings for children with disabilities and their families; and

(D) How coursework and clinical experience will be designed to enable students to acquire competencies to actively engage and communicate with families; collaborate with educators and other related services providers; implement evidence-based interventions that will support children's ability to obtain positive developmental, learning, and academic outcomes; support children to fully participate in inclusive settings; and understand requirements of the IDEA; and

(ii) Develop partnerships with early intervention, early childhood, and school-based sites to prepare related services personnel to provide effective, equitable, and evidence-based interventions and services in early intervention and school-based settings to improve outcomes for children with disabilities and their families; and

(2) Provide professional development to faculty and staff to develop their capacity to develop and deliver courses and the curriculum that prepares students to provide services in early intervention, early childhood, and school-based settings.

(c) Demonstrate, in the narrative section of the application under ''Quality of the project personnel and quality of management plan,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The project director and key project personnel have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The project director and other key project personnel will manage the components of the project;

(4) The time commitments of the project director and other key project personnel are adequate to meet the objectives of the proposed project;

(5) The proposed management plan will ensure that the project will meet the proposed objectives and the degree program will be of high quality; and

(6) The proposed project will benefit from a diversity of partner perspectives, including faculty, community partners, families of children with disabilities, early intervention, and early childhood and school personnel, among others, in its development and operation.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' how—

(1) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(2) The budget is adequate for meeting the project objectives.

(e) Demonstrate, in the narrative section of the application under ''Quality of the project evaluation,'' how the applicant will—

(1) Evaluate how well the goals or objectives of the proposed project have been met. To meet this requirement the applicant must describe—

(i) The relevant outcomes to be measured for the project, particularly the faculty's and students' acquisition of required competencies; and

(ii) The evaluation methodologies, data collection methods, and data analyses that will be used; and

(2) Collect, analyze, and use data on students in the program to inform the proposed project on an ongoing basis.

[5] For the purposes of this priority, ''competencies'' means what a person knows and can do—the knowledge, skills, and dispositions necessary to effectively function in a role (National Professional Development Center on Inclusion, 2011).

[6] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1), where a key project component (as defined in 34 CFR 77.1) included in the project's logic model (as defined in 34 CFR 77.1) is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes (as defined in 34 CFR 77.1).

(f) Address the following application requirements and assurances. The applicant must—

(1) Include, in Appendix A, charts, tables, figures, graphs, screen shots and visuals that provide information directly relating to the application requirements for the narrative. Appendix A should not be used for supplementary information. Please note that charts, tables, figures, graphs, and screen shots may be single-spaced when placed in Appendix A;

(2) Include in Appendix B any letters of commitment or support. The applicant must include a letter of commitment from the chair of the department where the project will be located affirming support for the proposal;

(3) Provide an assurance that if the project maintains a website, it will be of high quality, with an easy-to-navigate design that meets or exceeds government and industry-recognized standards for accessibility;

(4) Include, in the budget, attendance at a three-day project directors' conference in Washington, DC, during each year of the project period. The project must reallocate funds for travel to the project directors' conference no later than the end of the third quarter of each budget period if the conference is conducted virtually; and

(5) Provide an assurance that the project will submit the enhanced curriculum and syllabi for courses that are included in the related services personnel preparation program.

Competitive Preference Priority:

Within this absolute priority, we give competitive preference to applications that address the following priority. Under 34 CFR 75.105(c)(2)(i), we award an additional three points to an application that meets the competitive preference priority. Applicants must indicate in the abstract if the competitive preference priority is addressed.

The competitive preference priority is:

Applications from HBCUs, TCCUs, and other MSIs, and private nonprofit organizations that have legal authority to enter into grants and cooperative agreements with the Federal government on behalf of an HBUC, TCCU, and other MSI (0 or 3 points).

References

American Speech Language Hearing Association. (n.d.). *Recruiting and retaining qualified school-based SLPs. www.asha.org/careers/recruitment/schools/.*

IDEA Infant and Toddler Coordinators Association. (2021). *Tipping points survey: Demographics, challenges, and opportunities. www.ideainfanttoddler.org/pdf/2021-Tipping-Points-Survey.pdf.*

National Coalition on Personnel Shortages in Special Education. (n.d.) *About the shortage. https://specialedshortages.org/about-the-shortage/.*

National Professional Development Center on Inclusion. (Aug. 2011). *Competencies for early childhood educators in the context of inclusion: Issues and guidance for States.* The University of North Carolina, FPG Child Development Institute. *https://npdci.fpg.unc.edu/sites/npdci.fpg.unc.edu/files/resources/NPDCI-Competencies-2011_0.pdf.*

Wynarczuk, K.D., Gagnon, K., Fiss, A.L.F., Kendall, E., Schreiber, J., & Rapport, M.J. (2022). The how and the why of including children: Experiential learning in teaching physical therapist students. *Pediatric Physical Therapy, 34*(3), 400–409. *https://doi.org/10.1097/PEP.0000000000000920.*

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1462 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 304.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $250,000,000 for the Personnel Development to Improve Services and Results for Children with Disabilities program for FY 2024, of which we intend to use an estimated $2,000,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2025 from the list of unfunded applications from this competition.

Estimated Range of Awards: $125,000 to $150,000 per year.

Estimated Average Size of Awards: $135,000 per year.

Maximum Award: We will not make an award exceeding $450,000 per project for a project period of 36 months.

Note: Applicants must describe, in their applications, the amount of funding being requested for each 12-month budget period.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs and private nonprofit organizations that have legal authority to enter into grants and cooperative agreements with the Federal government on behalf of an IHE.

Note: Applicants with an active 84.325K, 84.325M, or 84.325R grant in the discipline degree program being proposed for enhancement are not eligible to apply for this award. For the purpose of this priority, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Note: If you are a nonprofit organization, under 34 CFR 75.51, you may demonstrate your nonprofit status by providing: (1) proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code; (2) a statement from a State taxing body or the State attorney general certifying that the organization is a nonprofit organization operating within the State and that no part of its net earnings may lawfully benefit any private shareholder or individual; (3) a certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or (4) any item described above if that item applies to a State or national parent

organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *https://www2.ed.gov/about/offices/list/ocfo/intro.html.*

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and other public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at *www.federalregister.gov/d/2022-26554,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 40 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed below:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated; and

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(b) *Quality of project services (45 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice; and

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(c) *Quality of project personnel and quality of management plan (20 points).*

(1) The Secretary considers the quality of the personnel who will carry out the proposed project and the quality of the management plan for the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project; and

(iv) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(d) *Adequacy of resources (10 points).*

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(1) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization; and

(2) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the project evaluation (15 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project; and

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the

terms of any licenses or other legal restrictions on the use of pre-existing works.

Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* For the purposes of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Personnel Development to Improve Services and Results for Children with Disabilities program. These measures include (1) the percentage of preparation programs that incorporate scientifically based research or EBPs into their curricula; and (2) the percentage of scholars completing the preparation program who are knowledgeable and skilled in EBPs that improve outcomes for children with disabilities.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by the Office of Special Education Programs.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the project meet needs identified by stakeholders and may require the project to report on such alignment in its annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–03439 Filed 2–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0030]

Agency Information Collection Activities; Comment Request; Gainful Employment/Financial Value Transparency Reporting Requirements

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 22, 2024.

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–2024–SCC–0030. 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, the Department 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 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 Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, 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, 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. The Department 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: Gainful Employment/Financial Value Transparency Reporting Requirements.

OMB Control Number: 1845–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 149,800.

Total Estimated Number of Annual Burden Hours: 2,665,823.

Abstract: The regulations in § 668.408 in Subpart Q—Financial Value Transparency, that were negotiated in 2022 and the Final Rule published in 2023, establish reporting requirements for postsecondary institutions who participate in the title IV programs under the Higher Education Act of 1965, as amended, to report on their students who enroll in, complete, or withdraw from a gainful employment (GE) program or an eligible non-GE program in specified award years. The new regulations also define the timeframes for institutions to report the required information. This is a request for a new collection to allow the Department to obtain the required information and assess the burden on institutions. The average burden hours of 2,665,823 is for the average 149,860 responses for 4,518 respondents over 3 years. We divided the total 3 year burden hours of 7,997,468, and the 499,580 responses by 3 to obtain these averages.

Dated: February 15, 2024.

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. 2024–03512 Filed 2–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0029]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for the Graduate Assistance in Areas of National Need (GAANN) Program (1894–0001)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a reinstatement without change of a previously approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 22, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rebecca Ell, (202) 453–6348.

SUPPLEMENTARY INFORMATION: 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: Application package for the Graduate Assistance in Areas of National Need (GAANN) Program (1894–0001).

OMB Control Number: 1840–0604.

Type of Review: Reinstatement without change of a previously approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments *Total Estimated Number of Annual Responses:* 325.

Total Estimated Number of Annual Burden Hours: 8,954.

Abstract: This information collection provides the U.S. Department of Education with information needed to evaluate, score and rank the quality of the projects proposed by institutions of higher education applying for a Graduate Assistance in Areas of National Need grant. Title VII, Part A, Subpart 2 of the Higher Education Act of 1965, as amended, requires the collection of specific data that are necessary for applicant institutions to receive an initial competitive grant and non-competing continuation grants for the second and third years.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: February 15, 2024.

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. 2024–03465 Filed 2–20–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection Revision

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy (EERE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for a three-year extension, with changes, of a collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will provide DOE with the information necessary to meet its statutory and regulatory obligations under the National Environmental Policy Act (NEPA) of 1969 and the DOE NEPA implementing regulations, which requires EERE to perform environmental impact analyses prior to making a decision to provide Federal funding for research, development and demonstration projects funded by DOE.

DATES: Comments regarding this proposed information collection must be received on or before March 22, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4718.

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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

And to: Andrew M. Montano at U.S. Department of Energy, 15013 Denver West Parkway, Golden, CO 80401, or by email at: *EEREEQComments@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the EERE Environmental Questionnaire should be directed to Andrew M. Montano at: *EREEQComments@ee.doe.gov.* The EERE Environmental Questionnaire also is available for reviewing in the Golden Field Office Public Reading Room at: *www.energy.gov/node/2299401.* If you have difficulty accessing this document, please contact Casey Strickland at (720) 356–1575.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1910–5175; (2) *Information Collection Request Title:* Office of Energy Efficiency and Renewable Energy (EERE) Environmental Questionnaire; (3) *Type of Request: Revision* ; (4) *Purpose:* The DOE's EERE provides Federal funding through Federal assistance programs to businesses, industries, universities, and other groups for renewable energy and energy efficiency research and development and demonstration projects. The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) requires that an environmental analysis be completed for all major Federal actions significantly affecting the environment including projects entirely or partly financed by Federal agencies. To effectively perform environmental analyses for these projects, the DOE's EERE needs to collect project-specific information from Federal financial assistance awardees. DOE's EERE has developed its Environmental Questionnaire to obtain the required information and ensure that its decision-making processes are consistent with NEPA as it relates to renewable energy and energy efficiency research and development and demonstration projects. Minor changes have been made to the Environmental Questionnaire that help to clarify certain questions as related to the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), but do not change the meaning of the questions being asked. These revisions include additional fields in Section 1 to collect award, funding, and contact information and additional fields in Section 3 of the Environmental Questionnaire to collect information about project location(s). The average hours per response have increased from one hour to one- and one-half hours and the revisions made should not add any additional time needed to complete the Environmental Questionnaire; (5) *Annual Estimated Number of Total Responses:* 300; (6) *Average Hours per Response:* 1.5; and (7) *Annual Estimated Number of Burden Hours:* 443; (8) *Annual Estimated Respondent Costs:* $29,238. There is no cost associated with reporting and recordkeeping.

Statutory Authority: National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*).

Signing Authority: This document of the Department of Energy was signed on February 14, 2024, by Matthew Blevins, Director, Environment, Safety and Health Office, Golden Field Office, Office of Energy Efficiency and Renewable Energy, 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 February 15, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–03470 Filed 2–20–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE submitted an information collection request for extension as required by the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of Form DOE–417 *Electric Emergency Incident and Disturbance Report,* OMB Control Number 1901–0288. The collection will enable DOE to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the U.S. Territories). The information collected allows DOE to conduct post-incident reviews examining significant interruptions of electric power or threats to the national electric system.

DATES: Comments on this information collection must be received no later than March 22, 2024. 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: If you need additional information, contact Matthew Tarduogno, U.S. Department of Energy, telephone (202) 586–2892, or by email at *Matthew.Tarduogno@hq.doe.gov.* The forms and instructions are available

online at: *https://www.oe.netl.doe.gov/oe417.aspx.*

SUPPLEMENTARY INFORMATION: This information collection request contains

(1) *OMB No.:* 1901–0288;

(2) *Information Collection Request Title:* Electric Emergency Incident and Disturbance Report;

(3) *Type of Request:* Three-year extension with changes;

(4) *Purpose:* DOE uses Form DOE–417 *Emergency Incident and Disturbance Report* to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the U.S. Territories) and to investigate significant interruptions of electric power or threats to the electric system reliability. Form DOE–417 also enables DOE to meet the Department's national security responsibilities as the coordinating agency for Emergency Support Function (ESF) #12—Energy, under the National Response Framework, and the Sector-Specific Agency for the energy sector, pursuant to Presidential Policy Directive 21—*Critical Infrastructure Security and Resilience,* Presidential Policy Directive 41—*United States Cyber Incident Coordination,* and the Fixing Americas Surface Transportation (FAST) Act, Public Law 114–94. The information may also be shared with other non-regulatory federal agencies assisting in emergency response and recovery operations or investigating the causes of an incident or disturbance to the national electric system. Public summaries of Form DOE–417 submissions are published on the DOE–417 web page (*https://www.oe.netl.doe.gov/oe417.aspx*) on a regular basis to keep the public informed.

(4a) *Changes to Information Collection:* DOE proposes to make changes to Form DOE–417 to continue to ensure future alignment with the North American Electric Reliability Corporation (NERC) CIP–008–6 Reliability Standard, as well as the NERC EOP–004–6 Reliability Standard, and potential future changes. The continued alignment between Form DOE–417 and NERC reporting requirements helps minimize confusion among industry stakeholders about where and how to file reports and enable industry stakeholders to train personnel to report using a single form. Additional changes to Form DOE–417 clarify reporting criteria and updated types of entities that are required to submit certain criteria. A summary of these and other changes to Form DOE–417 is provided below:

- Minor edit to alert criteria 2 to add ''as defined in the NERC Glossary of Terms''
- Under ''Criteria for Filing'' section added alert criteria 27, ''Uncontrolled loss of a total of 500 MW or more from inverter-based resource(s) for greater than 30 minutes at a common point of interconnection to the bulk electric system.''
- Under ''Cause'' in the ''Type of Emergency'' section added the following subcategories to physical attack:
  - Ballistic
  - Arson
  - Explosive device
  - Other
- Under ''Cause'' in the ''Type of Emergency'' section added the following subcategories to suspicious activity:
  - Aircraft or Unmanned Aerial System (UAS)
  - Trespassing or non-destructive intrusion
  - Surveillance
  - Vandalism
  - Other
- Under ''Cause'' in the ''Type of Emergency'' combined ''(Cyber event information technology)'' and ''cyber event (operational technology)'' and added the following subcategories:
  - Information Technology
  - Operational Technology
- *Updated Instructions:* Replaced ''Office of Electricity'' with ''Office of Cybersecurity, Energy Security, and Emergency Response
- *Updated Instructions:* Replaced ''*oe417@hq.doe.gov*'' with ''*DOE417@hq.doe.gov.*''
- *Updated Instructions:* Replaced ''Assistant Secretary'' with ''Director''
- *Updated Instructions:* Appendix A. Replace ''What is Excluded'' text for generating entities with ''Entities who have 300 MW or more of generation detected to one or more end-use customers (*e.g.* retail or industrial customers), except for commercial power reactors regulated by the Nuclear Regulatory Commission and subject to the physical and cybersecurity event notification requirements of 10 CFR part 73. All items need to be addressed.''
- On Line F., Date/Time Incident Began.: Added Atlantic and Chamorro time zones
- On Line G., Date/Time Incident Ended: Added Atlantic and Chamorro time zones

(5) *Annual Estimated Number of Respondents:* 2,174;

(6) *Annual Estimated Number of Total Responses:* 400;

(7) *Annual Estimated Number of Burden Hours:* 5,025;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $438,984. DOE estimates that respondents will have no additional costs associated with the surveys other than the burden hours and the maintenance of the information during the normal course of business.

Statutory Authority: 15 U.S.C. 772(b), 764(b); 764(a); and 790a and 42 U.S.C. 7101 *et seq.* and the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2601, Pub. L. 93–275.

Signed in Washington, DC, on February 15, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods & Research, U. S. Energy Information Administration.

[FR Doc. 2024–03515 Filed 2–20–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2607–016]

Spencer Mountain Hydropower, LLC; Notice Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–2607–016.

c. *Date Filed:* June 26, 2023.

d. *Applicant:* Spencer Mountain Hydropower, LLC (SMH).

e. *Name of Project:* Spencer Mountain Hydroelectric Project (Spencer Mountain Project).

f. *Location:* On the South Fork Catawba River, near the town of Gastonia, in Gaston County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Edwards and Mrs. Amy Edwards, Spencer Mountain Hydropower, LLC, 916 Comer Rd., Stoneville, NC 27048; Phone at (336) 589–6138, or *smhydro@pht1.com.*

i. *FERC Contact:* Michael Spencer at (202) 502–6093; or *michael.spencer@ferc.gov.*

j. *Deadline for filing scoping comments:* March 15, 2024.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your

name and contact information at the end of your comments. 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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the following on the first page: Spencer Mountain Hydroelectric Project (P–2607–016).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The application is not ready for environmental analysis at this time.

l. *The existing Spencer Mountain Project consists of:* (1) a 12-foot-high, 636-foot-long masonry and rubble dam with a crest elevation of 634.7 feet mean sea level (msl); (2) a 68-acre reservoir with a storage capacity of 166 acre-feet; (3) a 58.9-foot-long canal headwork, consisting of four 6-foot-wide gates; (4) a 53.8-foot-long canal spillway connected to the downstream side of the canal headwork; (5) a 30-foot-wide, 10-foot-deep, 3,644-foot-long open earthen canal; (6) a 32-foot-wide trash rack at the powerhouse forebay with 2.5-inch clear bar-spacing; (7) a 36-inch-diameter bypass pipe; (8) a 22.5-foot-high, 49.5-foot-long, 48.75-foot-wide powerhouse containing two Francis-type generating units with a total capacity of 0.64 megawatts; (9) a concrete lined tailrace discharging flows back into the South Fork Catawba River; (10) a substation containing a 2.3/44-kilovolt (kV) transformer and interconnection to Duke Energy's 44 kV transmission line; and (11) appurtenant facilities. The project creates a 3,644-foot-long bypassed reach of the South Fork Catawba River.

The current license requires SMH to operate in a run-of-river mode with a continuous minimum flow of 76 cubic feet per second (cfs), or inflow, whichever is less, released to the bypassed reach. SMH proposes no changes to the project facilities or operations.[1] The project has an average annual generation of 4,064 megawatt-hours.

SMP proposes to continue operating the project in run-of-river mode, and to continue releasing a continuous minimum flow of 76 cfs to the bypassed reach.

m. Copies of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the project's docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

You may also register at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

n. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

o. *Scoping Process.* Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS. At this time, we do not anticipate holding an on-site scoping meeting. Instead, we are soliciting written comments and suggestions on the preliminary list of issues and alternatives to be addressed in the NEPA document, as described in scoping document 1 (SD1), issued February 13, 2024.

Copies of the SD1 outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list and the applicant's distribution list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: February 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03492 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

[1] SMH's non-capacity amendment to replace the horizontal Unit 1 turbine and generator with a vertical shaft turbine and generator of the same generating capacity was approved on June 11, 2020 (*See* 171 FERC ¶ 62,126 (2020)). The replacement of Unit 1 is pending. (*See* Exhibit A, Project Description and Operation in the FLA, filed June 26, 2023).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1231–000]

Wythe County Solar Project, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wythe County Solar Project, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic

service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03430 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 943–144]

Public Utility District No. 1 of Chelan County; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Pre-filing Process.

b. *Project No.:* 943–144.

c. *Dated Filed:* December 15, 2023.

d. *Submitted By:* Public Utility District No. 1 of Chelan County.

e. *Name of Project:* Rock Island Hydroelectric Project.

f. *Location:* On the Columbia River, in Chelan and Douglas Counties, Washington. The project occupies federal lands under the jurisdiction of the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Janel Ulrich, Hydro Licensing Manager, Public Utility District No. 1 of Chelan County, 203 Olds Station Road, Wenatchee, WA 98801.

i. *FERC Contact:* Matt Cutlip at (503) 552–2762 or email at *matt.cutlip@ferc.gov*.

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 o 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. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and National Marine Fisheries Service under section 305(b) of the Magnuson-Stevens Fishery Management and Conservation Act and implementing regulations at 50 CFR part 600.920. We are also initiating consultation with the Washington State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR part 800.2.

l. With this notice, we are designating Public Utility District No. 1 of Chelan County as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, the Magnuson-Stevens Fishery Management and Conservation Act, and section 106 of the National Historic Preservation Act.

m. Public Utility District No. 1 of Chelan County filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR part 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed on the Commission's website (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TYY, (202) 502–8659.

You may register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting

Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–943–144.

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by April 15, 2024.

p. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

q. The Commission's scoping process will help determine the required level of analysis and satisfy the National Environmental Policy Act (NEPA) scoping requirements, irrespective of whether the Commission prepares an environmental assessment or environmental impact statement.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, March 14, 2024.
Time: 9:00 a.m.–12:00 p.m. (PDT).
Location: Confluence Technology Center—Quad Room, 285 Technology Center Way, Wenatchee, WA 98801, Phone: (509) 661–3118.

Evening Scoping Meeting

Date: Wednesday, March 13, 2024.
Time: 7:00 p.m.–10:00 p.m. (PDT).
Location: Confluence Technology Center—Quad Room, 285 Technology Center Way, Wenatchee, WA 98801, Phone: (509) 661–3118.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The applicant and Commission staff will conduct an environmental site review of the project on Wednesday, March 13, 2024, starting at 11:45 a.m. (PDT).

All interested individuals, agencies, tribes, and NGOs are invited to attend. Bus transportation will be provided during the site visit for registered participants. Participants should meet at11:45 a.m. at the Former Chelan PUD Headquarters building parking lot, 321 N Wenatchee Ave., Wenatchee, WA 98801. Please contact Janel Ulrich with Chelan PUD at (609) 661–4400, or via email at *Janel.Ulrich@chelanpud.org,* on or before March 1, 2024, if you plan to attend the environmental site review.

Meeting Objectives

At the scoping meetings, staff will: (1) initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

Commission staff are moderating the scoping meetings. The meetings are recorded by an independent stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Indian tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03428 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–398–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (TMV Feb 14 2024) to be effective 2/14/2024.
Filed Date: 2/13/24.
Accession Number: 20240213–5071.
Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: RP24–399–000.
Applicants: Millennium Pipeline Company, LLC.
Description: Compliance filing: Annual Report of Operational Transactions 2024 to be effective N/A.
Filed Date: 2/13/24.
Accession Number: 20240213–5077.
Comment Date: 5 p.m. ET 2/26/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be

considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03433 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–112]

Alabama Power Company; Notice of Application for Temporary Variance of Article 407 Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Temporary Variance of Minimum Flow Requirement Pursuant to Article 407.

b. *Project No:* 2165–112.

c. *Date Filed:* January 18, 2024.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Warrior River Project.

f. *Location:* The project is located in north central Alabama on the Black Warrior River, and on the Sipsey Fork 2 in Cullman, Walker, and Winston counties; and in west central Alabama on the Black Warrior River in Tuscaloosa County. The project occupies federal lands administered by the U.S. Forest Service and by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Candace R. Meadows, Hydro Licensing Specialist, *crmeadow@southernco.com,* (205) 257–1499.

i. *FERC Contact:* Jason Krebill, (202) 502–8268, *Jason.Krebill@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting federal, state, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* March 14, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. 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: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2165–112. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* The licensee is seeking a temporary variance from license Article 407 minimum flow requirements of the Warrior River Project for a period of six months, ranging from June 1 through November 30, 2024. Article 407 requires the licensee to release a minimum flow of 50 cubic feet per second (cfs) from the Smith dam. The licensee is requesting a variance to allow for reconfiguration of the minimum flow systems on both Unit 1 and Unit 2, to correct degradation of the existing system. The licensee anticipates beginning work as early as June, however, the exact start date will depend on flow conditions. Only one unit's minimum flow system will be modified, tested, and optimized at a time. During each unit's modification, approximately 25 cfs will be released from the other unit. However, approximately 50 cfs would be released whenever both units are available. The licensee anticipates meeting state water quality standards in accordance with its 401 Water Quality Certification.

m. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's

Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03427 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–53–000]

WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on February 7, 2024, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in the above referenced docket, a prior notice request pursuant to sections 157.206 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and WBI Energy's blanket certificate issued in Docket No. CP82–487–000, for authorization to disconnect and abandon by sale a 1,478 rated-horsepower (hp) compressor unit (Unit 7) at its Landeck Compressor Station. All of the above facilities are located in Campbell County, Wyoming (Landeck Unit 7 Abandonment). The project will allow WBI Energy to minimize the need for future operating and maintenance expenditures by abandoning the Unit as there is no operational need and WBI states that it is able to meet its firm contractual commitments without the use of its Landeck Compressor Station, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*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. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to Lori Myerchin, Director, Regulatory Affairs and Transportation Services, 1250 West Century Avenue, Bismarck, North Dakota 58503, (701) 530–1563, *lori.myerchin@wbienergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. eastern time on April 15, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is April 15, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is April 15, 2024. 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

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

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 April 15, 2024. 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 CP24–53–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–53–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Debbie-Anne A. Reese, Acting 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: Lori Myerchin, Director, Regulatory Affairs and Transportation Services, 1250 West Century Avenue, Bismarck, North Dakota 58503, or by email at *lori.myerchin@wbienergy.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: February 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03489 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1220–000]

68SF 8me LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of 68SF 8me LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary.

The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03431 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Privacy Act of 1974; System of Records

AGENCY: Federal Energy Regulatory Commission (FERC), DOE.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, all agencies are required to publish in the **Federal Register** a notice of their systems of records. Notice is hereby given that the Federal Energy Regulatory Commission (FERC) is publishing a notice of modification to an existing FERC system of records previously titled ''*Critical Energy Infrastructure Information (CEII) Records (FERC–58)*''and now titled ''*Critical Energy/Electric Infrastructure Information (CEII) Records (FERC–58).*''

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by FERC, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If FERC receives public comments, FERC shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments should be submitted in writing to Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426 or electronically to *privacy@ferc.gov.* Comments should indicate that they are submitted in response to ''Critical Energy/Electric Infrastructure Information (CEII) Records (FERC–58)''.

FOR FURTHER INFORMATION CONTACT: Mittal Desai, Chief Information Officer & Senior Agency Official for Privacy, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6432.

SUPPLEMENTARY INFORMATION: In Order No. 833, the Federal Energy Regulatory Commission amended its regulations to implement provisions of the Fixing America's Surface Transportation Act (FAST Act), codified at 16 U.S.C. 824o–1, related to Critical Electric Infrastructure Information. *Regulations Implementing FAST Act Section 61003—Critical Electric Infrastructure Security and Amending Critical Energy Infrastructure Information, Availability of Certain North American Electric Reliability Corporation Databases to the Commission,* Order No. 833, 157 FERC ¶ 61,123 (2016). The amended regulations refer to Critical Energy/Electric Infrastructure Information (CEII). Accordingly, this SORN which was previously titled ''*Critical Energy Infrastructure Information (CEII) Records (FERC–58)*'' will now be titled ''*Critical Energy/Electric Infrastructure Information (CEII) Records (FERC–58).*''

Moreover, in accordance with the Privacy Act of 1974, and to comply with the Office of Management and Budget (OMB) Memorandum M–17–12, *Preparing for and Responding to a Breach of Personally Identifiable Information,* January 3, 2017, this notice has twelve (12) new routine uses, including two routine uses that will permit FERC to disclose information as necessary in response to an actual or suspected breach that pertains to a breach of its own records or to assist another agency in its efforts to respond to a breach that was previously published separately at 87 FR 35543 (June 10, 2022).

The following sections have been updated to reflect changes made since the publication of the last notice in the **Federal Register**: dates; addresses for further contact information; system location; system manager; authority for maintenance of the system; purpose of the system; categories of individuals covered by the system; categories of records in the system; record source categories; routine uses of records maintained in the system, including categories of users and the purpose of such; policies and practices for storage of records; policies and practices for retrieval of records; policies and practices for retention and disposal of records; administrative, technical, physical safeguards; records access procedures; contesting records procedures; notification procedures; and history.

SYSTEM NAME AND NUMBER:

Critical Energy/Electric Infrastructure Information (CEII) Records (FERC–58).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street NE, Washington, DC 20426.

SYSTEM MANAGER(S):

Office of External Affairs, CEII Coordinator, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 824o–1; 18 CFR 388.113.

PURPOSE(S) OF THE SYSTEM:

The purpose of the system is to determine: (1) what the type of CEII material has been requested; (2) whether an individual seeking CEII is a legitimate requester with a valid need that should be provided CEII under a non-disclosure agreement; and (3) assess whether individuals have previously asked for or been granted access to CEII.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system: members of the public and outside entities who request access to CEII from the Commission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals seeking CEII from FERC file a signed, written request for access to CEII along with an executed non-

disclosure agreement. The material in the record would contain the following: (1) requester's full name (including any other name(s) which the requester has used and the dates the requester used such name(s)), title, address, telephone number; (2) the name, address, and telephone number of the person or entity on whose behalf the information is requested; (3) the name and contact information of business references; (4) a detailed statement explaining the particular need for and intended use of the information; and (5) a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Furthermore, if it is determined by the CEII Coordinator that additional information is necessary to process the request, a requester in some instances may be asked to provide supporting information such as his or her date and place of birth.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by individuals and companies requesting information along with external comments on the requests.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, information maintained in this system may be disclosed to authorized entities outside FERC for purposes determined to be relevant and necessary as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (1) FERC suspects or has confirmed that there has been a breach of the system of records; (2) FERC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

2. To another Federal agency or Federal entity, when FERC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

4. To the Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

5. To the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or matters before the Federal Service Impasses Panel.

6. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to the judicial or administrative proceeding. In those cases where the Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge.

7. To the Department of Justice (DOJ) for its use in providing legal advice to FERC or in representing FERC in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by FERC to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest: (a) FERC; (b) any employee of FERC in his or her official capacity; (c) any employee of FERC in his or her individual capacity where DOJ has agreed to represent the employee; or (d) the United States, where FERC determines that litigation is likely to affect FERC or any of its components.

8. To non-Federal Personnel, such as contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of FERC or Federal Government and who have a need to access the information in the performance of their duties or activities.

9. To the National Archives and Records Administration in records management inspections and its role as Archivist.

10. To the Merit Systems Protection Board or the Board's Office of the Special Counsel, when relevant information is requested in connection with appeals, special studies of the civil service and other merit systems, review of OPM rules and regulations, and investigations of alleged or possible prohibited personnel practices.

11. To appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order.

12. To appropriate agencies, entities, and person(s) that are a party to a dispute, when FERC determines that information from this system of records is reasonably necessary for the recipient to assist with the resolution of the dispute; the name, address, telephone number, email address, and affiliation; of the agency, entity, and/or person(s) seeking and/or participating in dispute resolution services, where appropriate.

13. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), these records or information contained therein may specifically be disclosed as a routine use to determine who has asked for access to CEII and who has received such access.

POLICIES AND PRACTICES FOR THE STORAGE OF RECORDS:

Records are maintained in electronic format using a tracker system and saved on a shared drive with access limited to individuals whose official duties require access.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by the names of the individual requester, the name of the company, where applicable, and the reference number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained in accordance with the applicable National Archives and Records Administration schedules, General Records Schedule (GRS) 4.2: Information Access and Protection Records Item 020. Temporary. Destroy six (6) years after final agency action or three (3) years after final adjudication by the courts, whichever is later, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access is restricted to agency personnel or contractors whose responsibilities require access. Access to electronic records is controlled by the organizations Single Sign-On and Multi-Factor Authentication solution. Role based access is used to restrict electronic data access allowing only

authorized users with access (or processes acting on behalf of users) necessary to accomplish assigned tasks in accordance with organizational missions and business functions.

RECORD ACCESS PROCEDURES:

Individuals requesting access to the contents of records must submit a request through the Freedom of Information Act (FOIA) office. The FOIA website is located at: *https://www.ferc.gov/foia.* CEII requests, along with Non-Disclosure Agreements may be submitted through the following link: *https://www.ferc.gov/enforcement-legal/ceii/electronic-ceii-request-form.* Written requests for access to records should be directed to: Director, Office of External Affair, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

CONTESTING RECORD PROCEDURES:

See Records Access procedures.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, *see* Records Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Under 5 U.S.C. 552a(k)(2) this system of records is exempted from the following provisions of the Privacy Act, 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f). Furthermore, during the course of reviewing a CEII request, exempt materials from other systems of records may in turn become part of the case records. To the extent that copies of exempt records from those other systems of records are entered into this system of records, FERC hereby claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the original primary systems of records of which they are a part. FOIA lists the following exemptions, which are provided in 5 U.S.C 552(b). In addition, the FAST Act, 16 U.S.C. 824o–1(d)(1), exempts CEII from mandatory disclosure under the FOIA.

HISTORY: 79 FR 17530, MARCH 28, 2014.

Dated: February 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03491 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–108–000.
Applicants: SR Toombs, LLC.
Description: SR Toombs, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/14/24.
Accession Number: 20240214–5160.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: EG24–109–000.
Applicants: Russellville Solar LLC.
Description: Russellville Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/14/24.
Accession Number: 20240214–5161.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: EG24–110–000.
Applicants: SR Ailey, LLC.
Description: SR Ailey, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/14/24.
Accession Number: 20240214–5164.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: EG24–111–000.
Applicants: SR Toombs Lessee, LLC.
Description: SR Toombs Lessee, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/14/24.
Accession Number: 20240214–5167.
Comment Date: 5 p.m. ET 3/6/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2643–000.
Applicants: Three Corners Solar, LLC.
Description:Refund Report: Revised Refund Report to be effective N/A.
Filed Date: 2/14/24.
Accession Number: 20240214–5079.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–333–000; ER24–334–000.
Applicants: Oak Lessee, LLC, Oak Solar, LLC.
Description: Oak Solar, LLC, et al. submits Response to FERC's January 2, 2024, Deficiency Letter and Request for Additional Information.
Filed Date: 2/2/24.
Accession Number: 20240202–5005.
Comment Date: 5 p.m. ET 2/23/24.

Docket Numbers: ER24–1244–000.
Applicants: Southwest Power Pool, Inc.
Description: 205(d) Rate Filing: 4220 SWEPCO GIA to be effective 1/25/2024.
Filed Date: 2/14/24.
Accession Number: 20240214–5045.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–1245–000.
Applicants: New England Power Pool Participants Committee, ISO New England Inc.
Description: 205(d) Rate Filing: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Revisions to Forward Reserve Market Offer Cap and Data Publication Timeline to be effective 4/15/2024.
Filed Date: 2/14/24.
Accession Number: 20240214–5087.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–1246–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Original NSA, SA No. 7193; Queue No. AE2–175 to be effective 4/15/2024.
Filed Date: 2/14/24.
Accession Number: 20240214–5106.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–1247–000.
Applicants: PJM Interconnection, L.L.C.
Description: 205(d) Rate Filing: Amended ISA and ICSA, Service Agreement Nos. 6198 and 6199; AE1–104 to be effective 4/15/2024.
Filed Date: 2/14/24.
Accession Number: 20240214–5145.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–1248–000.
Applicants: Northern Indiana Public Service Company LLC.
Description: 205(d) Rate Filing: NIPSCO NEET Construction Agreement to be effective 1/24/2024.
Filed Date: 2/14/24.
Accession Number: 20240214–5185.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: ER24–1249–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 32 to be effective 4/15/2024.
Filed Date: 2/14/24
Accession Number: 20240214–5186
Comment Date: 5 p.m. ET 3/6/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number. Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date. Protests may be

considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03493 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP22–21–000; CP22–22–000	1–31–2024	FERC Staff [1]
2. CP22–21–000; CP22–22–000	1–31–2024	FERC Staff [2]
3. CP24–8–000	2–1–2024	FERC Staff [3]
Exempt:		
NONE		

[1] Emailed comments from Dimitar Dolnooryahov.
[2] Emailed comments from Aaron Oldenburg and 38 other individuals.
[3] Emailed Memorandum dated 1/23/2024–1/31/24 regarding communication with U.S. Fish and Wildlife Service.

Dated: February 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03490 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15326–000]

Kram Hydro 1, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 25, 2023, Kram Hydro 1, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project proposed to be located at the U.S. Army Corps of Engineers' (Corps) Joe Hardin Lock and Dam on Arkansas River, near the City of Grady, in Lincoln and Jefferson counties, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Joe Hardin Lock and Dam Hydroelectric Project would consist of the following: (1) a 90-foot-wide, 200–350-foot-long armored intake channel, upstream of the powerhouse; (2) a 180-foot-long, 100-foot-wide concrete powerhouse located downstream of the existing Corps dam

on the south bank, housing two identical Kaplan turbine-generator units, with a combined generating capacity of 20.0 megawatts; (3) a 200-foot-long, 100-foot wide unlined tailrace; (4) a 300-foot-long concrete retaining wall to be constructed downstream of the powerhouse; and (5) a 6-mile-long, 115 kilovolt transmission line. The proposed project would have an estimated annual generation of 127 gigawatt-hours.

Applicant Contact: Kristen Fan, Kram Hydro 1, 12333 Sowden Rd., Suite B. PMB 50808, Houston, TX 77080; phone: (772) 418–2705.

FERC Contact: Prabharanjani Madduri; phone: (202) 502–8017, or by email at *prabharanjani.madduri@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/eFiling.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. 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: Debbie-Anne Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–15326–000.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

More information about this project, including a copy of the application, can be viewed, or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15326) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03424 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 6904–043, 6903–037]

Battenkill Hydro Associates; 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 applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* Subsequent Minor License.

b. *Project Nos.:* 6904–043, 6903–037.

c. *Date filed:* January 31, 2024.

d. *Applicant:* Battenkill Hydro Associates (Battenkill Hydro).

e. *Name of Projects:* Upper and Middle Greenwich Hydroelectric Projects (Upper Greenwich Project and Middle Greenwich Project).

f. *Location:* On the Batten Kill in the Village of Greenwich in Washington County, New York.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Sherri Loon, Coordinator—Operations USA, Kruger Energy, LP, 423 Brunswick Ave., Gardiner, ME 04345; (207) 203–3026; *sherri.loon@kruger.com* or Lewis Loon, General Manager—Operations and Maintenance USA, Kruger Energy, LP, 423 Brunswick Ave., Gardiner, ME 04345; (207) 203–3027; *lewis.loon@kruger.com.*

i. *FERC Contact:* Chris Millard at (202) 502–8256, or *christopher.millard@ferc.gov.*

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 applications on their 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 applications, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: April 1, 2024.[1]

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Upper Greenwich Hydroelectric Project (P–6904–043) or Middle Greenwich Hydroelectric Project (P–6903–037).

m. The applications are not ready for environmental analysis at this time.

[1] The Commission's Rules of Practice and Procedure provide that if a filing deadline falls on a Saturday, Sunday, holiday, or other day when the Commission is closed for business, the filing deadline does not end until the close of business on the next business day. 18 CFR 385.2007(a)(2). Because the 60-day filing deadline falls on a Sunday (*i.e.,* March 31, 2024), the filing deadline is extended until the close of business on Monday, April 1, 2024.

n. *Project Descriptions:* The Upper Greenwich Project consists of the following existing facilities: (1) an 11.5-foot-high, 203-foot-long concrete gravity spillway dam topped with 2-foot-high flashboards; (2) a reservoir with a normal water surface area of 20 acres and a gross storage capacity of 70 acre-feet at a normal water surface elevation of 334 feet mean sea level (MSL); (3) two 12-foot by 7.5-foot intake gates; (4) a 200-foot-long, 40-foot-wide, and 10-foot-high earthen power canal; (5) 60-foot-wide, 11-foot-high, 1-inch clear trash racks angled at 45 degrees to the flow and toward a 3-foot-wide fish passage sluice; (6) a 53-foot-long, 14-foot-wide, concrete and steel powerhouse containing two turbine-generator units with a rated capacity of 300 kilowatts (kW) each for a total installed capacity of 600 kW; (7) a tailrace channel; (8) a 150-foot-long transmission line; and (9) appurtenant facilities.

The Middle Greenwich Project consists of the following existing facilities: (1) a 10-foot-high, 235-foot-long concrete gravity spillway dam; (2) a 9-acre reservoir with a gross storage capacity of 80 acre-feet at a normal water surface elevation of 318 feet MSL; (3) a 150-foot-long, 20-foot-wide, and 10-foot-high power canal; (4) 24-foot-wide, 11-foot-high, 1-inch clear trash racks angled at 45 degrees to the flow and toward a 2.5-foot-wide fish passage sluice; (5) a 15-foot-long by 19.5-foot-wide concrete and steel powerhouse containing one turbine-generator unit with a capacity of 300 kW; (6) a tailrace channel; (7) a 150-foot-long transmission line; and (8) appurtenant facilities.

The Upper and Middle Greenwich projects are operated in a run-of-river mode and release a minimum flow to the bypassed reach of 80 cubic feet per second (cfs) and 20 cfs, respectively, or inflow, whichever is less.[2] A 20-cfs attraction flow is conveyed through the fish passage sluice to the bypassed reach at each project. Battenkill Hydro is not proposing any new project facilities or changes to the operation of either project.

From 1999 to 2009, average annual generation at the Upper and Middle Greenwich projects was 146 kilowatt-hours (kWh) and 78 kWh, respectively.

o. A copy of the applications can 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 (P–6904 or P–6903). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

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 these or other pending projects. For assistance, contact FERC Online Support.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

p. *Procedural schedule and final amendments:* The applications will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	April 2024.
Request Additional Information	April 2024.
Issue Acceptance Letter	July 2024.
Issue Scoping Document 1 for comments	August 2024.
Issue Scoping Document 2 (if necessary)	November 2024.
Issue Notice of Ready for Environmental Analysis	November 2024.

Final amendments to the applications must be filed with the Commission no later than 30 days from the issuance date of the notice ready for environmental analysis.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03425 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL24–56–000; EL24–57–000; EL24–58–000]

Cottontail Solar 1, LLC; Cottontail Solar 2, LLC; Cottontail Solar 8, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 12, 2024, the Commission issued an order in Docket Nos. EL24–56–000, EL24–57–000, and EL24–58–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Cottontail Solar 1, LLC, Cottontail Solar 2, LLC, and Cottontail Solar 8, LLC's (collectively, Applicants), proposed Reactive Service Rate Schedules are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Cottontail Solar 1, LLC, Cottontail Solar 2, LLC, and Cottontail Solar 8, LLC,* 186 FERC ¶ 61,101 (2024).

The refund effective dates in Docket Nos. EL24–56–000, EL24–57–000, and EL24–58–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**, or the dates Applicants' Rate Schedules each become effective, whichever is later, provided, however, if the Rate Schedules do not become effective until after 5 months from the date of publication of the notice, the refund effective dates shall be 5 months from the date of publication of the notice.

Any interested person desiring to be heard in Docket Nos. EL24–56–000, EL24–57–000, and EL24–58–000 must

[2] Project operation occurred intermittently from 2009 to 2013. Both projects are currently offline and have not operated since June 2013 (*see* Battenkill Hydro's letter filed November 7, 2022).

file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03432 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1507–000.
Applicants: Duke Energy Florida, LLC, Duke Energy Progress, LLC, Duke Energy Carolinas, LLC.
Description: Order Nos. 845 and 845–A Informational Report on Interconnection Study Delays Under OATT LGIP of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC.
Filed Date: 2/13/24.
Accession Number: 20240213–5167.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: ER23–2040–003.
Applicants: New York Independent System Operator, Inc.
Description: Tariff Amendment: NYISO 2nd Deficiency Response re: DER and Aggregation Market Rule Changes to be effective 4/16/2024.
Filed Date: 2/13/24.
Accession Number: 20240213–5130.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: ER23–2333–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Filing, Original ISA, SA No. 6961 to be effective 6/6/2023.
Filed Date: 2/13/24.
Accession Number: 20240213–5132.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: ER24–731–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2024–02–13_SA 4163 IMPA–IN Solar 1 Sub Original FSA (J1234) to be effective 2/20/2024.
Filed Date: 2/13/24.
Accession Number: 20240213–5076.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: ER24–732–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2024–02–13_SA 4165 IMPA–IN Solar 1 Sub Original FSA (J1235) to be effective 2/20/2024.
Filed Date: 2/13/24.
Accession Number: 20240213–5079.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: ER24–1240–000.
Applicants: Public Service Company of New Mexico.
Description: Notice of cancellation of Transmission Service Agreements of Public Service Company of New Mexico.
Filed Date: 2/8/24.
Accession Number: 20240208–5176.
Comment Date: 5 p.m. ET 2/29/24.

Docket Numbers: ER24–1241–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3599R3 Missouri Electric Commission to be effective 2/1/2024.
Filed Date: 2/13/24.
Accession Number: 20240213–5046.
Comment Date: 5 p.m. ET 3/5/24.

Docket Numbers: ER24–1242–000.
Applicants: PJM Interconnection, L.L.C.
Description: Request for prospective waiver, shortened five-day comment period, and expedited action of PJM Interconnection, L.L.C.
Filed Date: 2/12/24.
Accession Number: 20240212–5190.
Comment Date: 5 p.m. ET 2/20/24.

Docket Numbers: ER24–1243–000.
Applicants: Honeysuckle Solar, LLC.
Description: Baseline eTariff Filing: Petition for Blanket MBR Authorization with Waivers & Expedited Treatment to be effective 3/15/2024.
Filed Date: 2/13/24.
Accession Number: 20240213–5101.
Comment Date: 5 p.m. ET 3/5/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice

communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03434 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–7954–000]

McClain, Mark; Notice of Filing

Take notice that on February 13, 2024, Mark McClain submitted for filing, application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d (b) and part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45.8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) 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.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Comment Date: 5:00 p.m. Eastern Time on March 5, 2024.

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03429 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–400–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas submits report of the penalty and daily delivery variance charge (DDVC) revenues that have been credited to shippers.

Filed Date: 2/13/24.

Accession Number: 20240213–5112.

Comment Date: 5 p.m. ET 2/26/24.

Docket Numbers: RP24–401–000.

Applicants: Fayetteville Express Pipeline LLC.

Description: 4(d) Rate Filing: Update GT&C Section 19—Quality to be effective 3/15/2024.

Filed Date: 2/14/24.

Accession Number: 20240214–5032.

Comment Date: 5 p.m. ET 2/26/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03488 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3442–029]

City of Nashua, New Hampshire; Notice of Intent To Prepare an Environmental Assessment

On July 30, 2021, City of Nashua (Nashua) filed an application for a new license for the 3-megawatt Mine Falls Hydroelectric Project No. 3442 (project).

The project is located on the Nashua River in Hillsborough County, New Hampshire.

In accordance with the Commission's regulations, on November 21, 2023, Commission staff issued a notice that the project was ready for environmental analysis (REA Notice). Based on the information in the record, including comments filed on the REA Notice, staff does not anticipate that licensing the project would constitute a major federal action significantly affecting the quality of the human environment. Therefore, staff intends to prepare an Environmental Assessment (EA) on the application to relicense the Mine Falls Project.

The EA will be issued and circulated for review by all interested parties. All comments filed on the EA will be analyzed by staff and considered in the Commission's final licensing decision.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members, and others to access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Commission issues EA	February 2025.[1]
Comments on EA	March 2025.

Any questions regarding this notice may be directed to Khatoon Melick at (202) 502–8433 or *khatoon.melick@ferc.gov.*

Dated: February 13, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03426 Filed 2–20–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–110]

Notice of Adoption of Department of Energy Categorical Exclusion Under the National Environmental Policy Act

AGENCY: Environmental Protection Agency.

ACTION: Notice of adoption of categorical exclusion.

SUMMARY: The Environmental Protection Agency (EPA) is adopting the Department of Energy's (DOE) Categorical Exclusion (CE) for Methane Gas Recovery and Utilization Systems under the National Environmental Policy Act (NEPA) to use in EPA's program and funding opportunities administered by EPA. This notice describes the categories of proposed actions for which EPA intends to use DOE's CE and describes the consultation between the agencies.

DATES: This action is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Melissa Winters, Manager, Pollution Prevention and Communities Branch, Land, Chemicals, and Redevelopment Division, EPA Region 10, by phone at 206–553–5180, or by email at *winters.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NEPA and CEs

The National Environmental Policy Act, as amended at, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impact of their actions. Congress enacted NEPA in order to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or CE. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. 42 U.S.C. 4336. If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency also can establish CEs—categories of actions that the agency has determined normally do not significantly affect the quality of the human environment—in their agency NEPA procedures. 42 U.S.C. 4336(e)(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a CE covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental effects, the agency may apply the CE to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2), 40 CFR 1501.4. If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to ''adopt'' and use another agency's CEs for a category of proposed agency actions. 42 U.S.C.

[1] The Council on Environmental Quality's (CEQ) regulations under 40 CFR 1501.10(b)(1) require that EAs be completed within 1 year of the federal action agency's decision to prepare an EA. This notice establishes the Commission's intent to prepare an EA for the Mine Falls Project. *See* National Environmental Policy Act, 42 U.S.C. 4321 *et seq., as amended by* section 107(g)(1)(B)(iii) of the Fiscal Responsibility Act of 2023, Public Law 118–5, 4336a, 137 Stat. 42.

4336(c). To use another agency's CEs under section 109, the adopting agency must identify the relevant CEs listed in another agency's (''establishing agency'') NEPA procedures that cover the adopting agency's category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the CE to a category of actions is appropriate; identify to the public the CE that the adopting agency plans to use for its proposed actions; and document adoption of the CE. *Id.*

This notice documents EPA's adoption of DOE's CE for Methane Gas Recovery and Utilization Systems under section 109 of NEPA to use in EPA's program and funding opportunities, including those administered for Congressionally directed spending for projects identified in EPA's Appropriations Acts. Types of projects funded under EPA's Appropriations Acts include activities that reduce greenhouse gas emissions and pollution in communities, including capturing methane from wastewater treatment plants and landfills.

II. Identification of the Categorical Exclusion

EPA is adopting DOE's CE for Methane Gas Recovery and Utilization Systems. DOE's CE is codified in DOE's NEPA procedures as CE B5.21 of 10 CFR part 1021, subpart D, appendix B, as follows:

B5.21 Methane Gas Recovery and Utilization Systems

The installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems installed within a previously disturbed or developed area on or contiguous to an existing landfill or wastewater treatment plant that would not have the potential to cause a significant increase in the quantity or rate of air emissions. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

''Previously disturbed or developed'' refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to nonnative species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available. 10 CFR 1021.410(g)(1).

The DOE CE also includes additional conditions referred to as integral elements (10 CFR part 1021, subpart D, appendix B). In order to apply this CE, the proposal must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of EPA [1] or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, State, or local government, federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or Federally proposed or candidate species or their habitat (Endangered Species Act); state listed or state-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands;

(iv) Areas having a special designation such as Federally- and state designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), ''Farmland Protection Policy Act: Definitions,'' or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, EPA, and the National Institutes of Health.

Proposed EPA Category of Actions

EPA intends to apply this CE to support proposals for the installation, modification, operation, and removal of commercially available methane gas recovery and utilization systems. The systems must be within a previously disturbed or developed area, and must be on or contiguous to an existing landfill or wastewater treatment plant. Activities covered by the CE may be undertaken directly by EPA or be financed in whole or in part through Federal funding opportunities, including those administered for Congressionally directed spending for projects identified in EPA's Appropriations Acts. EPA will consider each proposal for the installation, modification, operation, and removal of commercially available methane gas recovery and utilization projects to ensure that the proposal is within the scope of the CE.

III. Consideration of Extraordinary Circumstances

When applying this CE, EPA will evaluate the proposed action to ensure consideration of the integral elements

[1] Modified from 10 CFR part 1021 subpart D, app. B to reflect EPA as the adopting agency.

listed above. In considering extraordinary circumstances, EPA will consider whether the proposed action has the potential to result in significant effects as described in DOE's extraordinary circumstances listed at 10 CFR 1021.410(b)(2). DOE defines extraordinary circumstances as unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources. In addition, EPA will consider its list of extraordinary circumstances as described at 40 CFR 6.204(b).

IV. Consultation With DOE and Determination of Appropriateness

EPA and DOE consulted on the appropriateness of EPA's adoption of the CE in November 2023. EPA and DOE's consultation included a review of DOE's experience developing and applying the CE, as well as the types of actions for which EPA plans to utilize the CE. These EPA actions are very similar to the type of projects for which DOE has applied the CE and therefore the impacts of EPA projects will be very similar to the impacts of DOE projects, which are not significant, absent extraordinary circumstances. Therefore, EPA has determined that its proposed use of the methane gas recovery and utilization systems CE as described in this notice is appropriate.

V. Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document EPA's adoption of DOE's CE B5.21 for Methane Gas Recovery and Utilization Systems. This notice identifies the types of actions to which EPA will apply the CE, as well as the considerations that EPA will use in determining whether an action is within the scope of the CE.

Dated: February 14, 2024.

Timothy Hamlin,

Director, Land, Chemicals, and Redevelopment Division, EPA Region 10.

[FR Doc. 2024–03502 Filed 2–20–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEJECR–2024–0072; FRL–11749–01–OEJECR]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Environmental Justice CPS and G2G Programs: Post-Award Reporting and Public Outreach Information Collections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Environmental Justice CPS and G2G Programs: Post-Award Reporting and Public Outreach Information Collections (EPA ICR Number 2807.01, OMB Control Number 2035–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. This notice allows for 60 days for public comments.

DATES: Comments must be submitted on or before April 22, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OEJECR–2024–XXXX, to EPA online using *www.regulations.gov* (our preferred method), by email to *Docket_OMS@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Aarti Iyer, Office of the Chief Financial Officer, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; email address: *iyer.aarti@epa.gov;* phone: 202–564–0214.

SUPPLEMENTARY INFORMATION: This is a request for approval of a new collection. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

This notice allows 60 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate forms of information technology. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The U.S. Environmental Protection Agency (EPA) makes competitive financial assistance awards to support projects that tackle environmental and public health challenges across the country. This is accomplished by working directly with community-based nonprofit organizations (CBOs) and state, local, territorial, and tribal governments that have strong ties to the communities in which they are working. To help get resources and funding to underserved and overburdened communities EPA offers the Environmental Justice Collaborative Problem Solving (EJCPS) and Environmental Justice Government to Government (EJG2G) cooperative agreement programs, which are designed to address multi-statute environmental and/or public health issues. The EJCPS and EJG2G grantees will operate in cooperative agreements with EPA in their efforts to collaborate

and partner with other stakeholders to develop solutions that will significantly address environmental and/or public health issue(s) in communities disproportionately burdened by environmental harms and risks. With this Information Collection Request (ICR), EPA seeks authorization to collect information to track progress made by the EJCPS and EJG2G grantees and their partnerships. Collection of this information enables EPA to assess and manage these two programs, which ensures responsible stewardship of public funds; rigorous evidence-based learning and improvement; and transparent accountability to the American public. This ICR also requests authorization for the grantees to collect input and insights from communities who seek to benefit from project services, as well as stakeholders who have valuable experience and expertise in community engagement and empowerment. These information collections will enable the grantees to document local priorities, needs, and norms to ensure that they develop useful and relevant projects and training services. Furthermore, feedback about these services will enable the grantees to conduct self-assessments to identify best practices and areas for improvement.

Form numbers: None.

Respondents/affected entities: Recipients of financial assistance awards from the EJCPS and EJG2G programs; stakeholders; community members.

Respondent's obligation to respond: Mandatory for grant recipients as per reporting requirements included in EPA regulations 2 CFR parts 200 and 1500, and voluntary for public outreach information collections via surveys and focus groups.

Estimated number of respondents: 186 grantees and approximately 7,000 members of the public.

Frequency of response: One work plan, two semi-annual progress reports per year the grant is active; one final report. Variable numbers of surveys and focus groups per year.

Total estimated burden: 24,699 hours per year.

Total estimated cost: $835,759 per year.

Changes in the estimates: This is a new collection; therefore there is no change in burden.

Jacob Burney,

Director, Grants Management Division, Office of Community Support, Office of Environmental Justice and External Civil Rights.

[FR Doc. 2024–03457 Filed 2–20–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2024–0045; FRL–11716–01–OLEM]

Hazardous Waste Electronic Manifest System (''e-Manifest'') Advisory Board: Request for Public Input for Charge Questions to the Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Public notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites the public to provide input for potential charge questions which the Agency could consider when consulting the e-Manifest Advisory Board (''Advisory Board'') regarding the operations of EPA's hazardous waste electronic manifest system (''e-Manifest''). Relevant topics could include matters related to the operational activities, functions, policies, and regulations of EPA under the e-Manifest Act. The Advisory Board was established pursuant to the Hazardous Waste Electronic Manifest Establishment Act, (e-Manifest Act), and in accordance with the provisions of the Federal Advisory Committee Act (FACA). The purpose of the Advisory Board is to provide recommendations to the EPA Administrator on matters related to the e-Manifest program activities, functions, policies, and regulations of the EPA under the e-Manifest Act. EPA consults the Advisory Board at least annually.

DATES: Advisory Board charge recommendations comments must be received on or before March 22, 2024.

ADDRESSES: Advisory Board charge question recommendations should be submitted to the public docket under docket No. EPA–HQ–OLEM–2024–0045 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Designated Federal Officer (DFO), U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, email: *jenkins.fred@epa.gov;* phone: 202–566–0344.

SUPPLEMENTARY INFORMATION: The Hazardous Waste Electronic Manifest System Advisory Board is established in accordance with the provisions of the Hazardous Waste Electronic Manifest Establishment Act (e-Manifest Act) and the Federal Advisory Committee Act (FACA). The Advisory Board is in the public interest and supports the EPA in performing its duties and responsibilities. The Advisory Board meets annually to discuss, evaluate the effectiveness of, and provide recommendations about the system to the EPA Administrator. For more information, please visit the Advisory Board website at *https://www.epa.gov/e-manifest/hazardous-waste-electronic-manifest-system-e-manifest-advisory-board.*

To help ensure that the e-Manifest system is meeting the needs of its user community, EPA is inviting the public to suggest potential charges for which the Agency could consider asking the Advisory Board to address during future public meetings of the Advisory Board. A charge includes focused questions on a specific topic upon which the Agency could seek to obtain advice or recommendations from the Advisory Board. Relevant topics could include matters related to the operational activities, functions, policies, and regulations of EPA under the e-Manifest Act.

While EPA is soliciting public input on potential future charge questions for the Advisory Board, EPA notes the Agency has sole discretion in determining charge questions ultimately posed to the Advisory Board. EPA also notes that the Advisory Board only provides advice and recommendations to EPA, and EPA in turn considers such advice when making decisions pertaining to the e-Manifest system.

Dated: February 14, 2024.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2024–03496 Filed 2–20–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11753–01–ORD]

EPA Board of Scientific Counselors; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), the EPA Board of Scientific Counselors (BOSC) is in the public interest and is necessary in connection with the performance of EPA's duties. Accordingly, the BOSC will be renewed for an additional two-year period. The purpose of the BOSC is to provide advice and recommendations to the Administrator regarding the Office of Research and Development's National Research Programs.

FOR FURTHER INFORMATION CONTACT: Inquiries may be directed to Tom Tracy, U.S. EPA, (Mail Code B343–01), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, telephone (919) 541–4334, or *tracy.tom@epa.gov.*

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2024–03498 Filed 2–20–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1283; FR ID 201899]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before March 22, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *https://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1283.

Title: Improving Outage Reporting for Submarine Cables and Enhanced Submarine Outage Data.

Form Number: Not applicable.

Type of Review: Extension of a currently information collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 85 respondents; 154 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i)–(j) & (o), 405, and the Cable Landing License Act of 1921, 47 U.S.C. 34–39, and 3 U.S.C. 301, and Exec. Order No. 10530.

Total Annual Burden: 308 hours.

Total Annual Cost: No Cost.

Needs and Uses: Section 151 of the Communications Act of 1934 (Act), as amended, requires the Commission to promote the safety of life and property through the use of wire and radio communications. Additionally, the Cable Landing License Act, (47 U.S.C. 34–39), and Executive Order 10530, provide the Commission with authority to grant, withhold, condition and revoke submarine cable landing licenses. Further, the Cable Landing License Act and Executive Order 10530 provide that the Commission may place conditions on the grant of a submarine cable landing license in order to assure just and reasonable rates and service in the operation and use of cables so licensed. ''Just and reasonable service'' entails assurance that the cable infrastructure will be reasonably available. Availability of submarine cables is also critically important for national security and the economy because submarine cables carry approximately 95 percent of international communications traffic and are the primary means of connectivity for numerous U.S. states and territories.

This collection is part of the Commission's NORS outage reporting regime. As with the other information collection collected in NORS regarding other communications services (under OMB Control No. 3060–0484), this collection facilitates FCC monitoring, analysis, and investigation of the reliability and security of submarine cable networks, and to identify and act on potential threats to our Nation's telecommunications infrastructure. Drawing from a decade of experience in outage reporting, the Commission will seek an ongoing dialogue with submarine cable licensees, as well as with the industry at large, regarding lessons learned from the new information collection. These efforts will help the Commission develop a better understanding of the root causes of significant outages, and to explore

preventive measures to mitigate the impact of such outages on the Nation and the American public.

Mandatory submarine cable outage data provides the Commission with greater visibility into the availability and health of these networks, allowing the Commission to better track and analyze submarine cable resiliency. This enhanced visibility into submarine cable network outages will allow the Commission to take appropriate actions to mitigate disruptions, if necessary, and to avoid the development of larger, more significant problems which could impact national security and public safety interests. Submarine cable outages do not typically occur with the same frequency as terrestrial outages, but when they do occur have a greater impact on the Nation's telecommunications due to the volume and nature of communications carried over such cables. Damages to submarine cables are usually caused by weather or inadvertent slicing by underseas equipment. However, submarine cables are also susceptible to intentional damage for nefarious purposes that could lead to a severe degradation of crucial government, as well as non-government, communications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–03447 Filed 2–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 203054]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the Iowa Department of Health and Human Services. The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before March 22, 2024. This computer matching program will commence on March 22, 2024, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Elliot S. Tarloff, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Elliot S. Tarloff at 202–418–0886 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP benefits administered by the Iowa Department of Health and Human Services.

Participating Agencies

Iowa Department of Health and Human Services (source agency); Federal Communications Commission (recipient agency) and Universal Service Administrative Company.

Authority for Conducting the Matching Program

The authority to conduct the matching program for the FCC's ACP is 47 U.S.C. 1752(a)–(b). The authority to conduct the matching program for the FCC's Lifeline program is 47 U.S.C. 254(a)–(c), (j).

Purpose(s)

The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP in Iowa. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number,

date of birth, and last name. The National Verifier will transfer these data elements to the Iowa Department of Health and Human Services which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP administered by the Iowa Department of Health and Human Services.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–03444 Filed 2–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 203614]

Deletion of Item From February 15, 2024 Open Meeting

The following items were adopted by the Commission on February 13, 2024 and deleted from the list of items scheduled for consideration at the Thursday, February 15, 2024, Open Meeting. The items were previously listed in the Commission's Sunshine Notice on Wednesday, February 8, 2023.

Item No.	Bureau	Subject
5	MEDIA	*Title:* Restricted Adjudicatory Matter. *Summary:* The Commission will consider a restricted adjudicatory matter from the Media Bureau.
6	ENFORCEMENT.	*Title:* Enforcement Bureau Action. *Summary:* The Commission will consider an enforcement action.

Federal Communications Commission.

Dated: February 13, 2024.

Marlene Dortch,

Secretary.

[FR Doc. 2024–03445 Filed 2–20–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–05]

Notice of Filing of Complaint and Assignment; Impact Products, LLC and Safety Zone, LLC, Complainants, v. Mediterranean Shipping Company, S.A., Respondent

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Impact Products, LLC and Safety Zone, LLC (the ''Complainants'') against Mediterranean Shipping Company, S.A. (the ''Respondent''). Complainants state that the Commission has jurisdiction over the complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondent as an ocean common carrier, as defined in 46 U.S.C. 40102(18), that has entered into a service contract, as defined in 46 U.S.C. 40102(21), with the Complainants.

Complainant Impact Products, LLC is a corporation located in Toledo, Ohio. Complainant Safety Zone, LLC is a corporation located in Guilford, Connecticut. Complainants are shippers as this term is defined under 46 U.S.C. 40102(23).

Complainants identify Respondent as a company existing under the laws of Switzerland with its headquarters located in Geneva, Switzerland and as a global ocean carrier.

Complainants allege that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainants allege these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the Complainants and its agents and service providers, and from the acts or omissions of the Respondent that led to the assessment of these charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-05/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03508 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–10]

Impact Products, LLC and Safety Zone, LLC, Complainants v. Yang Ming Marine Transport Corp. Respondent; Notice of Filing of Complaint and Assignment

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Impact Products, LLC and Safety Zone, LLC (the ''Complainants'') against Yang Ming Marine Transport Corp. (the ''Respondent''). Complainants state that the Commission has jurisdiction over the complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondent as an ocean common carrier, as defined in 46 U.S.C. 40102(18), that has entered into a service contract, as defined in 46 U.S.C. 40102(21), with the Complainants. Complainant Impact Products, LLC is a corporation located in Toledo, Ohio. Complainant Safety Zone, LLC is a corporation located in Guilford, Connecticut. Complainants are shippers as this term is defined under 46 U.S.C. 40102(23).

Complainants identify Respondent as a company existing under the laws of Taiwan with a principal place of business in Keelung, Taiwan and as a global ocean carrier. Complainants allege that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainants allege these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances

outside the control of the Complainants and its agents and service providers, and from the acts or omissions of the Respondent that led to the assessment of these charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-10/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03518 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–08]

Notice of Filing of Complaint and Assignment; Impact Products, LLC and Safety Zone, LLC, Complainants, v. Orient Overseas Container Line Ltd. and OOCL (Europe) Ltd., Respondents

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Impact Products, LLC and Safety Zone, LLC (the ''Complainants'') against Orient Overseas Container Line Limited and OOCL (Europe) Limited (the ''Respondents''). Complainants state that the Commission has jurisdiction over the complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondents as ocean common carriers, as defined in 46 U.S.C. 40102(18), that entered into service contracts, as defined in 46 U.S.C. 40102(21), with the Complainants.

Complainant Impact Products, LLC is a corporation located in Toledo, Ohio. Complainant Safety Zone, LLC is a corporation located in Guilford, Connecticut. Complainants are shippers as this term is defined under 46 U.S.C. 40102(23).

Complainants identify Respondent Orient Overseas Container Line Limited as a company existing under the laws of Hong Kong with its principal place of business in Wan Chai, Hong Kong, and as a global ocean carrier.

Complainants identify Respondent OOCL (Europe) Limited as a company existing under the laws of the United Kingdom with a principal place of business in Suffolk, United Kingdom, and as a global ocean carrier.

Complainants allege that Respondents violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainants allege these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the Complainants and its agents and service providers, and from the acts or omissions of the Respondents that led to the assessment of these charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-08/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03510 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–07]

Notice of Filing of Complaint and Assignment; Impact Products, LLC and Safety Zone, LLC, Complainants, v. CMA CGM S.A., Respondent

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Impact Products, LLC and Safety Zone, LLC (the ''Complainants'') against CMA CGM S.A. (the ''Respondent''). Complainants state that the Commission has jurisdiction over the complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondent as an ocean common carrier, as defined in 46 U.S.C. 40102(18), that has entered into a service contract, as defined in 46 U.S.C. 40102(21), with the Complainants.

Complainant Impact Products, LLC is a corporation located in Toledo, Ohio. Complainant Safety Zone, LLC is a corporation located in Guilford, Connecticut. Complainants are shippers as this term is defined under 46 U.S.C. 40102(23).

Complainants identify Respondent as a company existing under the laws of France with its principal place of business in Marseilles, France and as a global ocean carrier.

Complainants allege that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainants allege these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the Complainants and its agents and service providers, and from the acts or omissions of the Respondent that led to the assessment of these charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-07/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03516 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 24–06]

Notice of Filing of Complaint and Assignment; Impact Products, LLC and Safety Zone, LLC, Complainants, v. Lihua Logistics Company Ltd.—LLHP, Respondent

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Impact Products, LLC and Safety Zone, LLC (the ''Complainants'') against Lihua Logistics Company Limited—LLHP (the ''Respondent''). Complainants state that the Commission has jurisdiction over the complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondent as an ocean common carrier, as defined in 46 U.S.C. 40102(18), that has entered into a service contract, as defined in 46 U.S.C. 40102(21), with the Complainants.

Complainant Impact Products, LLC is a corporation located in Toledo, Ohio. Complainant Safety Zone, LLC is a

corporation located in Guilford, Connecticut. Complainants are shippers as this term is defined under 46 U.S.C. 40102(23).

Complainants identify Respondent as a company existing under the laws of Hong Kong with its principal place of business in Wan Chai, Hong Kong and as a global ocean carrier.

Complainants allege that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainants allege these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the Complainants and its agents and service providers, and from the acts or omissions of the Respondent that led to the assessment of these charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-06/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03509 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 24–11]

Notice of Filing of Complaint and Assignment; OL USA LLC, Complainant, v. Maersk A/S, Respondent

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by OL USA LLC (the ''Complainant'') against Maersk A/S (the ''Respondent''). Complainant states that the Commission has subject matter jurisdiction over the complaint pursuant to the Shipping Act of 1984, 46 U.S.C. 40101 *et seq.* and personal jurisdiction over the Respondent as an ocean common carrier as defined in 46 U.S.C. 40102.

Complainant is a limited liability company formed and existing under the laws of the state of Delaware with a principal place of business in Westbury, New York, and a shipper, as defined in 46 U.S.C. 40102(17), in the business of providing non-vessel-operating common carrier services.

Complainant identifies Respondent as a foreign corporation organized and existing under the laws of Denmark with a principal place of business in Copenhagen, Denmark, and an ocean common carrier as defined in 46 U.S.C. 40102(18).

Complainant alleges that Respondent engaged in unreasonable and deceptive acts that violated 46 U.S.C. 40501 and 46 CFR part 520. Complainant alleges these violations arose from a dysfunctional online tariff platform maintained by the Respondent, and the platform prevented access to and review of Respondent's tariffs.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-11/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03517 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[DOCKET NO. 24–09]

Notice of Filing of Complaint and Assignment; Impact Products, LLC and Safety Zone, LLC, Complainants, COSCO Shipping Lines Co., Ltd., Respondent

Served: February 14, 2024.

Notice is given that a complaint has been filed with the Federal Maritime Commission (the ''Commission'') by Impact Products, LLC and Safety Zone, LLC (the ''Complainants'') against COSCO Shipping Lines Co., Ltd. (the ''Respondent''). Complainants state that the Commission has jurisdiction over the complaint pursuant to 46 U.S.C. 41301 through 41309 and personal jurisdiction over the Respondent as an ocean common carrier, as defined in 46 U.S.C. 40102(18), that has entered into a service contract, as defined in 46 U.S.C. 40102(21), with the Complainants. Complainant Impact Products, LLC is a corporation located in Toledo, Ohio. Complainant Safety Zone, LLC is a corporation located in Guilford, Connecticut. Complainants are shippers as this term is defined under 46 U.S.C. 40102(23).

Complainants identify Respondent as a company organized under the laws of China with its United States office located in Secaucus, New Jersey and as a global ocean carrier. Complainants allege that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(10) and 46 CFR 545.5. Complainants allege these violations arose from assessment of demurrage, detention, per diem, and yard storage charges during periods of time in which the charges were not just or reasonable because of circumstances outside the control of the Complainants and its agents and service providers, and from the acts or omissions of the Respondent that led to the assessment of these charges.

An answer to the complaint must be filed with the Commission within 25 days after the date of service.

The full text of the complaint can be found in the Commission's electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/24-09/.* This proceeding has been assigned to the Office of Administrative Law Judges. The initial decision of the presiding judge shall be issued by February 14, 2025, and the final decision of the Commission shall be issued by August 29, 2025.

David Eng,

Secretary.

[FR Doc. 2024–03511 Filed 2–20–24; 8:45 am]

BILLING CODE 6730–02–P

GOVERNMENT ACCOUNTABILITY OFFICE

Comptroller General's Advisory Council on Standards for Internal Control in the Federal Government; Notice of Meeting

AGENCY: Government Accountability Office.

ACTION: Notice of meeting.

SUMMARY: The Comptroller General's Advisory Council on Standards for Internal Control in the Federal Government will hold a meeting on Tuesday, March 12, 2024, from 11:00 a.m. to 2:00 p.m. to discuss proposed updates and revisions to the Standards for Internal Control in the Federal Government (known as the Green Book). The meeting will be virtual and is open to the public.

DATES: The meeting will be held on Tuesday, March 12, 2024, from 11:00 a.m. to 2:00 p.m.

ADDRESSES: The meeting will be virtual only.

FOR FURTHER INFORMATION CONTACT: For further information on the meeting or the Green Book, please contact Carrie Morrison, Assistant Director, Financial Management and Assurance, *MorrisonC@gao.gov* or (202) 512–4689. To request a reasonable accommodation (RA) for this meeting, email GAO's RA office at *ReasonableAccommodations@gao.gov*. Please request all accommodations at least 5 business days prior to the meeting (by March 5th).

SUPPLEMENTARY INFORMATION: Any interested person may attend the virtual meeting as an observer. Members of the public will have an opportunity to address the Council with brief (5 minute) presentations on matters directly related to the proposed updates and revisions. Any interested person who plans to attend the virtual meeting as an observer must contact Carrie Morrison, Assistant Director, at (202) 512–4689, before March 5, 2024. The meeting agenda will be available upon request one week before the meeting.

Authority: 31 U.S.C. 3512(c), (d).

James Dalkin,

Director, Financial Management and Assurance, U.S. Government Accountability Office.

[FR Doc. 2024–03494 Filed 2–20–24; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), 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, and the Determination of the Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. 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: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–22–005, Commercial Fishing Occupational Safety Research Cooperative Agreement; and RFA–OH–22–006, Commercial Fishing Occupational Safety Training Project Grants.

Date: May 14, 2024.

Time: 1 p.m.–4 p.m., EDT.

Place: Video-Assisted Meeting.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Laurel Garrison, M.P.H., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 5555 Ridge Avenue, Cincinnati, Ohio 45213. Telephone: (513) 533–8324; Email: *LGarrison@cdc.gov.*

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–03474 Filed 2–20–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10249]

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 March 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William 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:* Administrative Requirements for Section 6071 of the Deficit Reduction Act; *Use:* State Operational Protocols should provide enough information such that: the CMS Project Officer and other federal officials may use it to understand the operation of the demonstration, prepare for potential site visits without needing additional information, or both; the State Project Director can use it as the manual for program implementation; and external stakeholders may use it to understand the operation of the demonstration. The financial information collection is used in our financial statements and shared with the auditors who validate CMS' financial position. The Money Follows the Person Rebalancing Demonstration (MFP) Finders File, MFP Program Participation Data file, and MFP Services File are used by the national evaluation contractor to assess program outcomes while we use the information to monitor program implementation. The MFP Quality of Life data is used by the national evaluation contractor to assess program outcomes. The evaluation is used to determine how participants' quality of life changes after transitioning to the community. The semi-annual progress report is used by the national evaluation contractor and CMS to monitor program implementation at the grantee level. *Form Number:* CMS–10249 (OMB control number: 0938–1053); *Frequency:* Yearly, quarterly, and semi-annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 41; *Total Annual Responses:* 410; *Total Annual Hours:* 4,326. (For policy questions regarding this collection contact Alicia Ryce at 410–786–1075.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2024–03476 Filed 2–20–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Administration on Disabilities, The President's Committee for People With Intellectual Disabilities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The President's Committee for People with Intellectual Disabilities (PCPID) will host a virtual meeting for its members to address issues surrounding Home and Community Based Services (HCBS) to be examined in the Committee's Report to the President. All the PCPID meetings, in any format, are open to the public. This virtual meeting will be conducted in a discussion format with committee members addressing the issues and recommendations identified by PCPID workgroups proposing to be incorporated in the PCPID Report to the President.

DATES: The meeting will take place virtually on March 21, 2024 from 12:00 p.m. to 5:00 p.m. (EST).

Comments received by March 12, 2024 will be shared with the PCPID at the March 21, 2024 meeting.

ADDRESSES:

Comments: Comments and suggestions may be shared through the following *ACL.gov* link: *https://acl.gov/form/pcpid.*

Webinar/Conference Call: The virtual meeting is scheduled for Thursday, March 21, 2024 from 12:00 p.m. to 5:00 p.m. (EST) and may end early if discussions are finished. The meeting is open to the public and will be held through a zoom meeting platform. In order to observe the proceedings, you must register in advance of the meeting at the following link: *https://www.zoomgov.com/webinar/register/WN_HnpxBCCsSUGJv6SX_O_YlQ.*

FOR FURTHER INFORMATION CONTACT: Mr. David Jones, Director, Office of Intellectual Developmental Disabilities, 330 C Street SW, Switzer Building, Room 1126, Washington, DC 20201. Telephone: 202–795–7367. Fax: 202–795–7334. Email: *David.Jones@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Agenda: The Committee will collectively discuss the HCBS issues and recommendations identified by four PCPID workgroups as it relates to the areas of direct support professionals, employment, community living, and Federal support programs. This discussion will help develop a framework for the preparation of the PCPID Report to the President.

Comments: Stakeholder input is very important to the PCPID. Comments and suggestions especially from people with intellectual disabilities, are welcomed. If there are comments related to HCBS or other areas that you would like to inform the PCPID, please share them through the following *ACL.gov* link: *https://acl.gov/form/pcpid.*

Background Information on the Committee: The PCPID acts in an advisory capacity to the President and the Secretary of Health and Human Services on a broad range of topics relating to programs, services and support for individuals with intellectual disabilities. The function of PCPID is to: (1) provide such advice concerning intellectual disabilities as the President or the Secretary of Health and Human Services may request; and (2) provide advice to the President and the Secretary of Health and Human Services to promote full participation of people with intellectual disabilities in their communities, such as: (A) expanding educational opportunities; (B) promoting housing opportunities; (C) expanding opportunities for competitive integrated employment; (D) improving accessible transportation options; (E) protecting rights and preventing abuse; and (F) increasing access to assistive and universally designed technologies; and (3) provide advice to the President and the Secretary of Health and Human Services to help advance racial equity and support for people with intellectual disabilities within underserved communities.

Statutory Authority: E.O. 14048, 85 FR 57313.

Dated: February 14, 2024.

Jill Jacobs,

Commissioner, Administration on Disabilities.

[FR Doc. 2024–03458 Filed 2–20–24; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors of the NIH Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: March 25, 2024.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate the Pediatrics and Critical Care Medicine Department, Emerging Pathogens Section.

Place: Clinical Center, 10 Center Drive, Bethesda, MD 20892 (Virtual).

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: March 26, 2024.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate the Pediatrics and Critical Care Medicine Department, Emerging Pathogens Section.

Place: Clinical Center, 10 Center Drive, Bethesda, MD 20892 (Virtual).

Contact Person: Ronald Neumann, M.D., Deputy Scientific Director, Clinical Center, National Institutes of Health, 10 Center Drive, Bethesda, MD 20892, 301–496–6455, *rneumann@cc.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Patricia B. Hansberger,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03441 Filed 2–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Center for Inherited Disease Research (CIDR).

Date: March 7, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892.

Contact Person: Rudy O. Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 6700B Rockledge Drive, MSC 6908, Rockville, MD 20892, (301) 402–8739, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 15, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03520 Filed 2–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Preteen Suicide Prevention.

Date: March 19, 2024.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Evon Abisaid, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Rockville, MD 20852, (301) 827–0399, *ereifejes@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Precision HIV Health: Integrating Data and Implementation Science.

Date: March 20, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892, 301–435–1260, *jasenka.borzan@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pathway to Independence Awards (K99/R00).

Date: March 22, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 15, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03522 Filed 2–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIH Pathway to Independence Award (K99/R00) Applications.

Date: March 11–12, 2024.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical

Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, Maryland 20892, 301–435–0807, *slicelw@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of IDeA Clinical and Translational Research Development (CTR–D) Award.

Date: March 20–21, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Nina Sidorova, Ph.D. Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18–01, Bethesda, Maryland 20892, 301–594–3663, *sidorova@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of IDeA Clinical and Translational Research Network (CTR–N).

Date: March 22, 2024.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN18D, Bethesda, Maryland 20892, 301–594–2849, *dunbarl@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence—First Independent Research (SuRE-First) Award. (R16)

Date: March 25–26, 2024.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Person: Jason M. Chan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, 45 Center Drive, MSC 6200, Bethesda, Maryland 20892, 301–594–3663, *jason.chan2@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 14, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03404 Filed 2–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Healthcare Decision Making.

Date: March 18, 2024.

Time: 1:00 p.m. to 4:00 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: Janetta Lun, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg. Suite 213, (301) 496–9666, *janetta.lun@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 14, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03403 Filed 2–20–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis Panel, Maximizing Opportunities for Scientific and Academic Independent Careers, February 23, 2024, 1:00 p.m. to 4:00 p.m., National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 18, 2024, FR Document No. 2024–01294, 89 FRN 4614.

This notice is being amended to change the SRO/Executive Secretary and Contact Person. Nawazish Naqvi, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Y, Bethesda MD 20817, 301–451–6992, *nawazish.naqvi@nih.gov.* The meeting is closed to the public.

Dated: February 15, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03521 Filed 2–20–24; 8:45 am]

BILLING CODE 4140–01–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 878–880, and 882 (Fourth Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: February 5, 2024.

FOR FURTHER INFORMATION CONTACT: Lawrence Jones (202–205–3358), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On February 5, 2024, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses from the Rebar Trade Action Coalition, Ukrainian producer PJSC ArcelorMittal Kryvyi Rih, and from the Ministry of Economy of the Government of Ukraine to its notice of institution (88 FR 75033, November 1, 2023) were adequate, and determined to conduct full reviews of the orders on imports from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: February 15, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–03482 Filed 2–20–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–706–709 and 731–TA–1667–1672 (Preliminary)]

Melamine From Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–706–709 and 731–TA–1667–1672 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of melamine from Germany, India, Japan, Netherlands, Qatar, and Trinidad and Tobago, provided for in subheading 2933.61.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of Germany, India, Qatar, and Trinidad and Tobago. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 1, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by April 8, 2024.

DATES: February 14, 2024.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on February 14, 2024, by Cornerstone Chemical Company, Waggaman, Louisiana.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on March 6, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before 5:15 p.m. on March 4, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) | United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may

submit to the Commission on or before 5:15 p.m. on March 11, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on March 5, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: February 15, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–03497 Filed 2–20–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Second Stipulation and Final Order Under the Resource Conservation and Recovery Act

On February 13. 2024, the Department of Justice lodged a proposed Second Stipulation and Final Order (SSFO) with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States* v. *Municipality of Toa Alta, Puerto Rico,* Civil Action No. 3:21–01087.

The proposed SSFO resolves two issues that the ''Stipulation and Preliminary Injunction Order'' (SPIO) entered in this matter in August 2022 (Dkt. No. 127–1) did not address: the claim that failure to remove leachate from the Southeast Cell of the Municipality of Toa Alta's (MTA's) landfill constitutes an imminent and substantial endangerment under Section 7003(a) of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973(a), and the claim for civil penalties Section 7003(b) of RCRA, 42 U.S.C. 6973(b). The SSFO requires Toa Alta to remove and dispose of, under Puerto Rico's Department of Natural and Environmental Resources (DNER) oversight, leachate that is pooling on the bottom liner of the landfill's Southeast Cell and to pay a $50,000 civil penalty. The SSFO also converts the SPIO into a permanent injunction order.

The publication of this notice opens a period for public comment on the SSFO. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Municipality of Toa Alta,* D.J. Ref. No. 90–7–1–12090. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area. Any comments submitted in writing or at a public meeting may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the SSFO may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the SSFO, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–03504 Filed 2–20–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12090]

Proposed Exemption for DWS Investment Management Americas, Inc. and Certain Current and Future Asset Management Affiliates of Deutsche Bank AG Located in New York, NY

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed individual exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). This proposed exemption would permit certain qualified professional asset managers within the corporate family of Deutsche Bank AG (Deutsche Bank), including DWS Investment Management Americas Inc. (DIMA or the Applicant), and certain current and future affiliates of Deutsche Bank (each a DB QPAM), to continue to rely on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84–14 (PTE 84–14, or the QPAM Exemption), notwithstanding the 2017 criminal conviction of DB Group Services (UK) Limited (DB Group Services).

DATES:

Comments due: Written comments and requests for a public hearing on the proposed exemption should be

submitted to the Department by April 8, 2024.

Exemption date: If granted, this exemption will be in effect beginning on April 18, 2024, and ending on April 17, 2027.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12090 via email to *e-OED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Gonzalez and Ms. Blessed Chuksorji-Keefe of the Department at (202) 693–8553 and (202) 693–8567, respectively. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

Comments: Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) the name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption, and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) the request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment. Additionally, the *https://www.regulations.gov* website is an ''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of Section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and Section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the Department's exemption procedures regulation,[1] because it appears that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan. If the Department grants a final exemption, certain qualified professional asset managers within the corporate family of Deutsche Bank AG (Deutsche Bank), including DWS Investment Management Americas Inc. (DIMA or the Applicant), and certain current and future affiliates of Deutsche Bank (each a DB QPAM), will not be precluded from relying on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84–14 (PTE 84–14, or the QPAM Exemption)[2] notwithstanding the 2017 criminal conviction of DB Group Services (UK) Limited (DB Group Services) for wire fraud in connection with its role in manipulating the United States Dollar based London Interbank Offered Rate (LIBOR), as described in more detail below provided the conditions set forth in the exemption are met.

The exemption, if granted, would provide relief from certain restrictions set forth in ERISA sections 406. It would not, however, provide relief from any other violation of law, such as those laws implicated in the conviction. Furthermore, the Department cautions that the relief in the exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of a crime covered by Section I(g) of PTE 84–14 (other than the U.S. Conviction, as defined in Section I(a) of this proposed exemption) during the exemption period (as defined in Section I(c) of this proposed exemption). Although the DB QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption.

The terms of this proposed exemption have been specifically designed to permit plans to terminate their relationships in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with an entity covered by the exemption.

Summary of Facts and Representations[3]

Deutsche Bank

1. Deutsche Bank is a publicly held global banking and financial services company headquartered in Frankfurt,

[1] 29 CFR part 2570, subpart B (75 FR 66637, 66644, October 27, 2011). For purposes of this proposed exemption, reference to specific provisions of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding Code provisions.

[2] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[3] The Department notes that availability of this exemption would be subject to the express condition that the material facts and representations made by the Applicant in Application D–12090 are true and complete and accurately describe all material terms of the transaction(s) covered by the exemption. If there is any material change in a transaction covered by the exemption, or in a material fact or representation described in the application, the exemption will cease to apply as of the date of the change.

Germany. Deutsche Bank, with and through its affiliates, subsidiaries, and branches, provides a range of services to various entities.

2. Deutsche Bank has several affiliated asset managers, including: DIMA, a Delaware corporation; RREEF America L.L.C. (RREEF), a Delaware limited liability company; DWS Alternatives Global Limited (Global), an entity based in London, United Kingdom; and DWS Investments Australia Limited (DIAL), an entity based in Sydney, Australia.[4] These entities (and future affiliated asset managers of Deutsche Bank) are collectively referred to herein as the DB QPAMs. The DB QPAMs are investment advisers (Advisers) registered under the Investment Advisers Act of 1940, as amended, with the U.S. Securities and Exchange Commission.

3. The DB QPAMs are part of the DWS Group (formerly Deutsche Asset Management), a separate, publicly listed financial services firm that is majority-owned by Deutsche Bank. According to DIMA, the DWS Group is in a separate corporate ownership line than DB Group Services. Thus, the convicted entity is in a different ownership line from the DB QPAMs, *i.e.,* DB Group Services is not an upstream or downstream corporate affiliate of any DB QPAM. DWS Group is not itself a QPAM, but instead is the parent entity that indirectly owns the DB QPAMs. The DWS business has its own dedicated legal and compliance teams and the DB QPAMs have their own boards of directors (in the case of RREEF, which is a limited liability company, its own managers).

4. As Advisers, the DB QPAMs provide discretionary asset management services to plans that are subject to Part 4, Title I of ERISA (ERISA-covered plans) and Individual Retirement Accounts subject to Code Section 4975 (IRAs). For purposes of this proposed exemption, the term ''Covered Plan'' means an ERISA Plan or an IRA, in each case, with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

5. Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the DB QPAM will not represent that it is a QPAM and will not rely on the relief described in PTE 84–14.

ERISA and Code Prohibited Transactions and PTE 84–14

6. The rules set forth in ERISA Section 406 and Code Section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and certain parties in interest with respect to those plans.[5] ERISA Section 3(14) defines parties in interest with respect to a plan to include, among others, the plan fiduciary, a sponsoring employer of the plan, a union whose members are covered by the plan, service providers with respect to the plan, and certain of their affiliates.[6] The prohibited transaction provisions under ERISA Section 406(a) prohibit, in relevant part, (1) sales, leases, loans, or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), (2) the use of plan assets by or for the benefit of a party in interest, or (3) a transfer of plan assets to a party in interest.[7]

7. Under the authority of ERISA Section 408(a), the Department has the authority to grant an exemption from such ''prohibited transactions'' in accordance with the procedures set forth in the exemption procedure regulation [8] if the Department finds an exemption is: (a) administratively feasible, (b) in the interests of the plan and of its participants and beneficiaries, and (c) protective of the rights of participants and beneficiaries.

8. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and satisfies additional conditions of the exemption. PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary manager.[9]

9. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet the definition of QPAM from utilizing the exemptive relief provided by the QPAM Exemption for itself and its client plans if that entity, an ''affiliate'' thereof,[10] or any direct or indirect five percent or more owner in the QPAM has been either convicted or released from imprisonment, whichever is later, because of criminal activity described in section I(g) within the 10 years immediately preceding a transaction. Section I(g) was included in PTE 84–14, in part, based on the Department's expectation that QPAMs, and those who may be in a position to influence the QPAM's policies, must maintain a high standard of integrity.[11]

Prior Convictions and Related Exemptions

10. On October 11, 2011, DIMA requested an administrative exemption from the Department (the First Request) to allow certain DB QPAMs to continue utilizing the relief set forth in PTE 84–14 notwithstanding the then impending criminal conviction of DSK, a Deutsche Bank affiliate in South Korea under Korean law for spot/futures-linked market price manipulation (the Korean Conviction). Specifically, on January 25,

[4] Deutsche Bank reorganized Deutsche Asset Management into a separate financial services firm, DWS Group GmbH & Co. KGaA (DWS Group). On March 23, 2018, DWS Group completed the sale of a minority ownership interest and is now a separate, publicly listed financial services firm, but remains majority-owned subsidiary of Deutsche Bank. DIMA, and its investment advisory affiliates, including RREEF, Global and Dial, became wholly owned subsidiaries of DWS Group.

[5] For purposes of the Summary of Facts and Representations, references to specific provisions of Title I of ERISA, unless otherwise specified, refer also to the corresponding provisions of the Code.

[6] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[7] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[8] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

[9] See 75 FR 38837, 38839 (July 6, 2010).

[10] Section VI(d) of PTE 84–14 defines the term ''affiliate'' for purposes of Section I(g) as ''(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person, (2) Any director of, relative of, or partner in, any such person, (3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and (4) Any employee or officer of the person who—(A) Is a highly compensated employee (as defined in Section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or (B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.''

[11] See 47 FR 56947 (December 21, 1982).

2016, the Seoul Central District Court (the Korean Court) convicted DSK of violations of certain provisions of Articles 176, 443, and 448 of the Korean Financial Investment Services and Capital Markets Act (FSCMA) for spot/futures linked market manipulation in connection with the unwinding of an arbitrage position that in turn caused a decline in the Korean market. Upon the entering of the Korean Conviction, the Korean Court sentenced DSK to pay a criminal fine of 1.5 billion South Korean Won (KRW). Furthermore, the Korean Court ordered DB to forfeit KRW 43,695,371,124, and DSK to forfeit KRW 1,183,362,400.[12]

11. While the Department considered the First Request, DIMA submitted a second exemption application (the Second Request) to allow certain DB QPAMs to continue relying on PTE 84–14 for a period of 10 years, notwithstanding both the Korean Conviction and the then-anticipated conviction of DB Group Services (a Deutsche Bank indirect wholly-owned subsidiary based in London, United Kingdom) under U.S. law for one count of wire fraud in connection with its role in manipulating the United States Dollar (US Dollar) based LIBOR (the U.S. Conviction). Specifically, on April 23, 2015, the Fraud Section of the Criminal Division and the Antitrust Division of the United States Department of Justice filed a one-count criminal information in the U.S. District Court for the District of Connecticut (the District Court) charging DB Group Services with one count of wire fraud, in violation of Title 18, United States Code, Section 1343. Pursuant to a plea agreement (the Plea Agreement), DB Group Services entered a guilty plea in the District Court relating to the conduct described therein (including the conduct described in any of the exhibits thereto). On April 18, 2017, the District Court entered a judgment against DB Group Services that required remedies that are materially the same as those set forth in the Plea Agreement.

12. On September 4, 2015, the Department published PTE 2015–15 in connection with the First Request, which provided temporary exemptive relief permitting DB QPAMs to continue relying on PTE 84–14 for a period of nine months, notwithstanding the Korean Conviction.[13] PTE 2015–15 had an effective date of January 25, 2016, which was the day on which the Korean Court entered the Korean Conviction.

13. On October 28, 2016, the Department granted PTE 2016–12, also in connection with the First Request, which extended the relief provided in PTE 2015–15.[14] PTE 2016–12 had an effective date of October 24, 2016, and was scheduled to end on the earlier of April 23, 2017, or the effective date of the Department's final action in connection with the exemption request.

14. On December 22, 2016, the Department published PTE 2016–13 in connection with the Second Request, which granted temporary exemptive relief permitting DB QPAMs to continue to rely on PTE 84–14 for a period of nine months, notwithstanding the Korean Conviction and the U.S. Conviction (collectively, the Convictions).[15] PTE 2016–13 had an effective date of April 18, 2017, and was set to expire after the earlier of twelve months or the effective date of the Department's grant of supplemental exemptive relief.

15. On December 29, 2017, the Department granted PTE 2017–04, which provided temporary exemptive relief, permitting the DB QPAMs to continue to rely on PTE 84–14 for a period of three years beginning April 18, 2018, and ending on April 17, 2021, notwithstanding the Convictions.[16] Thereafter, on February 18, 2018, the Department issued certain technical corrections with respect to PTE 2017–04.

16. On December 12, 2018, Korea's Seoul High Court for the 7th Criminal Division (the Seoul High Court) reversed the Korean Court's decision and declared the defendants not guilty; subsequently, Korean prosecutors appealed the Seoul High Court's decision to the Supreme Court of Korea.

17. On April 19, 2021, the Department granted PTE 2021–01, which allowed the DB QPAMs to continue to rely on the relief provided in PTE 84–14, notwithstanding the U.S. Conviction for three years, beginning on April 18, 2021.[17] PTE 2021–01 extended the relief provided by PTE 2017–04 to April 17, 2024, but only with respect to the U.S. Conviction.[18]

18. On December 21, 2023, the Supreme Court of Korea affirmed the reversal of the Korean Conviction, and it dismissed all judicial proceedings against DSK. Accordingly, the exemptive relief related to the Korean Conviction is not required.

The Deferred Prosecution Agreement

19. On January 8, 2021, Deutsche Bank entered into a deferred prosecution agreement (DPA) with the U.S. Department of Justice in which Deutsche Bank agreed to pay more than $130 million to resolve criminal charges for violations of the Foreign Corrupt Practices Act (FCPA) and a commodities fraud scheme. Although the DPA did not result in ineligibility under Section I(g) of PTE 84–14, the Department believes it is important that Deutsche Bank's Covered Plan clients are aware of the DPA and Deutsche Bank's admissions of culpability. The DPA's resolution included criminal penalties of $85,186,206, criminal disgorgement of $681,480, victim compensation payments of $1,223,738, and $43,329,622 to be paid to the U.S. Securities & Exchange Commission. In the DPA, Deutsche Bank admitted, accepted, and acknowledged that, among other things, it was responsible under United States law for the acts of its officers, directors, employees, and agents, as charged. The charges stem from a scheme to conceal corrupt payments and bribes made to third-party intermediaries by making false entries on Deutsche Bank's books and records and related internal accounting control violations, and a separate scheme to engage in fraudulent and manipulative commodities trading practices involving publicly traded precious metals futures contracts. The FCPA misconduct occurred between 2009 and 2016, and the Commodities fraud misconduct occurred between 2009 and 2013.[19]

This Exemption Request[20]

20. On April 24, 2023, DIMA submitted an exemption application (the New Request) seeking to extend the relief provided in PTE 2021–01, which is set to expire on April 17, 2024. The New Request initially sought relief for

[12] The Korean Court determined that the forfeitures the government collected from both DB and DSK represents the amount of illegal profits that the entities received as result of the criminal conduct.

[13] 80 FR 53574 (September 4, 2015).

[14] 81 FR 75153 (October 28, 2016).

[15] 81 FR 94028 (December 22, 2016).

[16] 82 FR 61840 (December 29, 2017).

[17] 86 FR 20410 (April 19, 2021).

[18] Because of the Seoul High Court's decision reversing the Korean Conviction, the Applicant did not request an extension of the relief under PTE 2017–04 for the Korean Conviction.

[19] This exemption would require that, in connection with the DPA entered on January 8, 2021, between Deutsche Bank and the U.S. Department of Justice to resolve the U.S. government's investigation into violations of the Foreign Corrupt Practices Act and a separate investigation into a commodities fraud scheme, no DB QPAMs were involved in the conduct that gave rise to the DPA, and no Covered Plan assets were involved in the transactions that gave rise to the DPA. Furthermore, the DB QPAMs are not permitted to employ or knowingly engage any of the individuals that participated in the conduct that is the subject of the DPA.

[20] Unless otherwise noted, PTEs 2015–15, 2016–12, 2016–13, 2017–04, and 2021–01, are also referred to herein as the ''Prior Exemptions.''

both the U.S. Conviction and, if necessary, the Korean Conviction; however, based on the Supreme Court of Korea's dismissal of all judicial proceedings against DSK, such relief is no longer necessary.

Department's Note: The Department notes that the Applicant has provided a description below of the specific costs or harms, if any, that would occur to the DB QPAM's Covered Plan clients if the Department denies this exemption request, including evidence that quantifies in dollar amounts any valuable investment opportunities the Covered Plan clients would have to forego and/or the basis for concluding that certain investments could be subject to conditions or limitations that could be disadvantageous or would no longer be available to the Covered Plan clients on advantageous terms. Regardless of whether this proposed exemption is granted, the Department strongly emphasizes that a plan fiduciary's duties of prudence and loyalty apply when hiring, monitoring, evaluating, and retaining an asset manager, regardless of whether the asset manager retains the ability to continue relying on PTE 84–14 under a supplemental individual exemption.[21]

21. *Effective Period of the Proposed Exemption.* Exemptive relief would begin on April 18, 2024 (which is the first day following the expiration of PTE 2021–01) and would end on April 17, 2027.

Applicant's Representations in Support of Its Request

22. DIMA states that while exemptions other than PTE 84–14 may apply with respect to certain transactions, PTE 84–14 is particularly important for securities and other instruments that may be traded on behalf of Covered Plans, now or in the future, on a principal basis, such as real estate investments (including purchases and sales, leases and financings), corporate debt, municipal debt, other US fixed income securities, Rule 144A securities, non-US fixed income securities, non-US equity securities, US and non-US over-the-counter instruments (*e.g.,* swaps, forwards, and options), structured products, and foreign exchange. According to DIMA, PTE 84–14 is also important to Plans with respect to the extensions of credit inherent in leveraged investments.

23. DIMA states that because counterparties are familiar and comfortable with PTE 84–14 for a broad variety of transactions, PTE 84–14 is generally the most commonly used prohibited transaction exemption and is the exemption that counterparties generally rely on as the backup exemption for all transactions. Counterparties may provide less advantageous pricing or may not bid at all where the Covered Plan's investment manager is not a QPAM.

24. DIMA represents that plan fiduciaries expend significant resources, including time and money, in selecting asset managers for their plans. Forcing Covered Plan clients to terminate their chosen managers because the managers no longer have access to the broad coverage and efficiencies of PTE 84–14 will cause such plans to incur a number of additional costs. Additionally, Covered Plan clients will incur direct transaction costs from liquidating and reinvesting their portfolios, which costs and harms are discussed below.

25. DIMA states that the DB QPAMs have demonstrated a clean compliance record that the DB QPAM's independent auditor, Fiduciary Counselors Inc. (the Independent Auditor), confirmed after it examined the DB QPAMs compliance programs and culture through the course of six audits, as described below. According to DIMA, the DB QPAMs have demonstrated a strong culture of compliance through:

a. Continued compliance with applicable ERISA regulatory requirements, as reflected by the consistent results of six audits performed by the Independent Auditor over more than six years;

b. Continued compliance with other applicable regulatory requirements;

c. A thorough training module dedicated to ERISA, reviewed, and approved by the Independent Auditor, mandatory for all in-scope employees, at the outset of their employment and then on a periodic basis;

d. Centralized, focused, and comprehensive ERISA policies and procedures relating to ERISA and the Code, generally, as well as the specific requirements of PTE 84–14, PTE 2017–04, and PTE 2021–01;

e. Effective internal compliance processes, including testing and monitoring of DB QPAMs, with continuous improvement; and

f. No regulatory or judicial findings that a DB QPAM failed to meet the requirements of ERISA during the entire period.

26. *Independent Audits.* The DB QPAMs have undergone six audits in connection with PTE 2015–15, PTE 2016–12, PTE 2016–13, PTE 2017–04, and PTE 2021–01, most recently for the period from April 18, 2022, through April 17, 2023. During the course of these audits, the Independent Auditor reviewed the following materials, systems, policies and procedures:

- marketing materials directed to Covered Plans, the identity of investment committee members and their affiliations, minutes of investment committee meetings, information barriers, policies and procedures, and emails involving the receipt of nonpublic information;
- client complaints, client complaints policy and procedures, errors policy and procedures, any errors and how such errors are corrected, overdrafts policy and procedures, overdrafts, affiliated broker and/or dealer reports, hardcoding process to avoid trading violations in connection with affiliated broker and/or dealers in trading system, cross trade reports, cross trade hardcoding process in trading system, consent forms for PTE 77–4 and billing records to show offset of fees, the trading system, guideline breach and ERISA breach hardcoding process in the trading system, any guideline breaches and the correspondence file associated with the breaches, the client adoption process, performance metrics on ethics and integrity, personal trading controls, personal trading policy and procedures, and the personal trading system and any related incident reports;
- errors and complaints associated with Covered Plans, errors policy and procedures, complaints policy and procedures, issues relating to overdrafts, escalation procedures and requirements including customer complaints policy and procedures, investment risk oversight including reviews of counterparties, and investment committees' meeting minutes;
- excise tax filings and associated incident reports, and Form ADV and SEC Brochure Rules Policy—DWS, and Form ADV Part 2A (Brochure);
- investment performance reports, PTE 77–4 disclosures, PTE 86–128 disclosures, incident reports, investments marketing materials, and client complaints;
- compliance with PTE 84–14 conditions;
- compliance with PTE 2021–01 conditions (including the written report prepared by the Compliance Officer in accordance with PTE 2021–01); and
- proof of ERISA-related training, the content of training, proof of ethics training, training of new hires, interviews of the portfolio managers regarding the training system and the effectiveness of training, the online training module, the training system and process of assigning courses to employees, and the process for

[21] A fiduciary's failure to abide by these duties may give rise to personal liability on behalf of any such fiduciary.

employees completing assigned training.

27. During the course of the audits, the Independent Auditor interviewed portfolio managers and held meetings with key management and compliance officers, either in person or telephonically, including, most recently, the Compliance Officer, Team Manager Client & Investment Monitoring Investment Guideline Management, Senior Team Manager Client & Investment Monitoring Investment Guideline/DWS Americas Control Officer and Head Investment Guideline Management US, Assistant Vice President—Anti-Bribery and Corruption, Gifts and Entertainment, Senior Team Lead AFC & Anti-Fraud, Bribery & Corruption, Head of Anti-Fraud, Bribery and Corruption (DWS): Vice-President—Lead Anti-Bribery & Corruption, Director and Head of Employee Compliance for Americas, Assistant Vice President, Birmingham Regulatory Team Manager: and Vice President, Regulatory Training. The Independent Auditor was provided demonstrations of key account maintenance, trading, and compliance systems. Numerous documents, reports, policies and procedures and other pertinent information were requested and timely received by the Independent Auditor.

28. According to DIMA, the costs and harms to Covered Plans resulting from the DB QPAMs' inability to rely on PTE 84–14 can best be described by discussing the services for which the DB QPAMs rely on PTE 84–14. In this regard, the DB QPAMs provide discretionary asset management services in reliance on PTE 84–14 to Covered Plans under two DWS business lines: (1) Alternatives (including the Liquid Real Assets, Direct Real Estate and Private Equity businesses) (hereinafter the Alternatives) and (2) Active Institutional. Collectively, DB QPAMs provide discretionary asset management services to ERISA-covered plans, governmental plans and IRAs as follows: [22]

a. *ERISA Accounts:* Through 8 separately managed accounts and two pooled funds subject to ERISA, to a total of 10 ERISA plan accounts, with total assets under management (''AuM'') of approximately $619 million.

b. *Governmental Plan Accounts:* Through separately managed accounts, to a total of 13 governmental plan accounts, with total AuM of approximately $5.5 billion.

c. *IRAs:* After the first audit under PTE 2017–04, DIMA began to offer discretionary model portfolios to financial sponsors with IRA clients, but, in connection with DIMA's provision of such services, DIMA has expressly disclaimed, and intends to continue to expressly disclaim, its reliance on PTE 84–14.

29. The Applicant states that the following costs are in addition to the opportunity costs of investing in cash pending reinvestment with a new manager. The individual statistics for each of the foregoing business lines are set forth below:

a. *Alternatives:* Alternatives provides discretionary asset management services to, among others, 8 ERISA accounts and 10 governmental plan accounts. The largest ERISA account is $198 million. Total ERISA AuM is $498 million. The largest governmental plan account is $2.8 billion. Total governmental plan AuM is $4.9 billion. Alternatives provides these services through separately managed accounts and pooled funds subject to ERISA. Terminating Alternatives' management may result in the following specific harm to the relevant ERISA plan or governmental plan:

i. *Loss of the investor's preferred manager:* Virtually all plan investors expend large amounts of time (6–8 months) and thousands of dollars to find, evaluate, choose, and engage managers. Because of Alternatives' unique position in real estate, infrastructure, and commodities, replacing Alternatives would involve an even greater effort. Further, due to the unique assets chosen by Alternatives under its proprietary models, finding a true replacement is likely impossible, thus necessitating modifications to portfolios, and likely, to strategies and global investment policies, as well, with the consequent costs of those additional ripple effect changes;

ii. *Loss of leading investment manager/performance:* DIMA represents that Alternatives is a market leader, including when it comes to performance, thus making it difficult for investors to find quality replacements;

iii. *Consulting fees:* The consulting fees for searching for a new private manager range from $30,000 to $40,000. Consultants may charge twice as much or more for customized searches for private market managers than they charge for public market manager searches;

iv. *Additional time expended:* 25–50 hours of client time to evaluate alternative managers. Plans typically rely on several individuals (whether through a board of trustees, investment committees or otherwise) to evaluate and select managers. Further, unless a plan has in-house investment professionals, it almost invariably relies on outside consultants to assist with the search and evaluation (at a substantial cost, as noted above);

v. *Legal fees:* The cost in legal fees to review/negotiate new management agreement and guidelines ranges between $10,000 and $30,000. Agreements for institutional asset management are almost invariably negotiated. Further, agreements and guidelines for real estate strategies, especially direct real estate, are generally more complex than for other strategies;

vi. *Transaction costs for direct real estate:* For direct real estate, 30–100 bps in direct transaction costs for early liquidation (*e.g.,* $8.4 million to $27.8 million loss for Alternatives' largest governmental plan client);

vii. *Early liquidation discounts:* For direct real estate, 10–20% discount for early liquidation (*e.g.,* $278.4 million to $556.8 million loss for Alternatives' largest governmental plan client);

viii. *Transaction costs for non-direct real estate:* For other Alternatives' portfolios, 20–60 bps in direct transaction costs for liquidation (*e.g.,* $5.6 million to $16.7 million for Alternatives' largest ERISA client);

b. *Active Institutional:* The Active Institutional team provides institutional discretionary asset management services to a number of separately managed plan accounts, including 2 ERISA plan accounts and 3 governmental plan accounts. The Active Institutional team also provides discretionary model portfolio services to financial sponsors with IRA clients. The largest ERISA account is $86.5 million. Total ERISA AuM is $125.5 million. The largest governmental plan account is $518 million. Total governmental plan AuM is $644.6 million. The Active Institutional team currently manages these institutional accounts to a broad variety of strategies, including: (I) equities, (II) fixed income, (III) overlay, (IV) commodities, and (V) cash.

Department's Request for Comment Regarding ''Opportunity Costs'': The Department specifically requests comments from Covered Plans, the DB QPAMs, and the public as to the specific ''opportunity cost'' of having assets ''invested in cash pending reinvestment with a new manager.'' In this regard, the Department requests information validating that there is no way to avoid investing assets in cash during the transition to a new manager and information quantifying the costs of having assets uninvested during such a

[22] The Applicant states that all statistical data is as of December 31, 2022, to the best of the Applicant's knowledge.

transition using objective assumptions. The Department notes that it retains the ability to deny an exemption request if the record associated with the request lacks adequate or sufficient supporting data to enable the Department to make its findings that Covered Plans would suffer harms if exemptive relief was not afforded the Applicants.

30. Given the institutional nature of the underlying accounts, these strategies may involve a wide range of asset classes and types, including: (1) US and foreign fixed income (Treasuries, Agencies, corporate bonds, asset-backed securities, mortgage and commercial mortgage-backed securities, deposits); (2) US and foreign mutual funds and ETFs; (3) US and foreign futures, (4) currency; (5) swaps (interest rate and credit default); (6) US and foreign equities; and (7) short term investment funds.

31. According to the Applicant, terminating a plan's chosen manager under any strategy involves various costs, including loss of the investor's preferred manager, transaction costs, search costs and legal costs, with the particular cost turning on the strategy and the assets in which it invests. Estimated costs for the Active Institutional strategy are as follows:

a. *Consulting Fees:* $30,000 to $40,000 in consulting fees for a new manager search. Searches for private market managers are significantly more expensive than for public market managers;

b. *Additional Time Expended:* 25–50 hours of client time to evaluate alternative managers, assuming the task is handled by an institutional board of trustees, plan committee or similar group of individuals;

c. *Legal Fees:* $10,000–$30,000 in legal fees to review/negotiate new management agreement and guidelines, given that institutional agreements are almost invariably negotiated;

d. *Transaction Costs:* Approximately 8.0 bps in direct transaction costs for liquidation (*e.g.,* $414,430.44 for Active Institution's largest governmental plan client). This assumption is based on the account's holdings as of December 31, 2022, and may change at any time, given the flexible nature of institutional mandates;

e. *Legal Costs for New Trading Agreements:* The cost in legal fees to negotiate each new futures, cleared derivatives, swaps, or other trading agreement is between $15,000 and $30,000.

Department's Note: The Department specifically requests comments from Covered Plans, the DB QPAMs, and the public as to the specific costs or harms, if any, that would flow from denial of the exemption, and data from the Applicant that identifies and quantifies in dollar amounts any valuable investment opportunities that plans would have to forego, and the basis for concluding that those investments would no longer be available to Covered Plans on advantageous terms from the DB QPAMs or other financial service providers. The Department retains the ability to deny an exemption request if the record associated with the request lacks adequate or sufficient supporting data. The Department also requests comments from the public, Covered Plans, and the DB QPAMs regarding the validity of these concerns, as well as any data or analyses that quantify the magnitude of these associated costs and harms in dollar amounts. The Department could decide to deny the exemption request if the record associated with the request lacks adequate or sufficient supporting data.

Applicant's Additional Request

32. The Applicant requests that the Department consider imposing an audit requirement upon the DB QPAMs every other year for the remaining years of exemption relief, basing such request on the following three (3) reasons:

a. The U.S. Conviction occurred outside of the DB QPAMs, in an entity that is entirely separate from the asset management business. The DB QPAMs have been subjected to audits that, among other things, confirmed that the Independent Auditor found no suggestion of any inappropriate statements or discussions regarding transactions, interactions, or undue influence from or to Deutsche Bank and the DB QPAMs.

b. Since the Applicant's need for an exemption rests on a single crime, the Applicant submits that similarly situated applicants should be treated consistently and that its case is similar to other applicants with one crime. The Applicant believes that the appropriate and fair comparison is to the foreign exchange (''FX'') individual QPAM exemptions granted to those applicants with only one conviction. These applicants have, in their first five years of exemptive relief, three one-year audits. Moreover, those applicants were advised at the time that, if the audits revealed no deficiencies in their compliance programs, the Department could exercise its discretion to alter the exemption conditions in subsequent exemptions.

c. The compliance officer requirement, including full compliance reviews, imposed by PTE 2021–01 is a reasonable substitute for a full audit. Because the DB QPAMs have demonstrated a strong culture of compliance and commitment to addressing the Department's articulated concerns, the Applicant respectfully requests that the Department exercise its discretion to modify the Independent Auditor requirement for the years covered by the extension of the exemption.

33. The Applicant states that a biennial audit requirement also would benefit plan participants because the audits are expensive and monopolize significant amounts of time of the staff of the asset managers' control functions. In the absence of these requirements, the control functions would be able to set aside more time to develop and implement new and appropriate controls, and perform additional testing, surveillance, monitoring, and other compliance activities on a more expedited and efficient basis.

34. *Department's Response.* The Department declines to modify the timing of the DB QPAMs' audits to every other year. The Department notes that although the DPA is not a disqualifying event under Section I(g) of PTE 84–14, Deutsche Bank admitted to culpability for the crimes described in the DPA. Given the amount of bad conduct reflected by the record, the Department views an annual audit as necessary to ensure the DB QPAMs remain untainted by the bad conduct of certain Deutsche Bank affiliates.

35. The Applicant also requests the addition of a condition addressing newly-acquired investment managers, as was included in the exemption granted to JPMorgan Chase & Co. earlier in year 2023.[23] The Applicant is requesting that in respect to a newly-acquired manager relying on PTE 84–14, the proposed exemption shall first apply after a date that is six (6) months after the acquisition's closing date. The Applicant explains that, from time to time, the Applicant acquires asset managers that rely on the QPAM Exemption, as of the effective date of the acquisition. According to the Applicant, when a manager is in the process of being acquired, it is generally unwilling, or practically unable, to communicate with its clients regarding all the terms of the acquiror's individual QPAM exemption, *e.g.,* in case the transaction does not close. In addition, the associated information and documentation may raise questions from plan clients that the manager being acquired cannot answer, and it would be inappropriate to allow the acquiror to

[23] See 88 FR 1418 (January 10, 2023).

talk directly to the manager's clients prior to close.

36. In addition, PTE 2021–01 has many requirements, all of which must be contained in policies and procedures of the newly-acquired manager. The Applicant states that the acquired entity is typically unable to change its policies and procedures until the transaction has closed and only at that point does it try to meld new policies and procedures related to the individual QPAM exemption to its policies.

37. DIMA states that the consequences for violating the exemption are severe, and the acquired manager would understandably be reluctant to accept these liabilities until it had trained its employees. Further, the Applicant expects it would be quite challenging for the independent auditor to insert an entirely new entity, with which it has no familiarity, into its audit testing in real-time (to the extent it even has the necessary resources to expand its audit and can confirm it remains independent from the acquired manager).

38. According to DIMA, no time was allowed at the outset of the Prior Exemptions for a newly-acquired manager to comply with the exemptions' conditions. These conditions make it nearly impossible to come into full compliance with the exemption before any such acquisition closes, given all of the conditions regarding notices, training, policies, compliance regimes, etc. If full compliance with the exemption is not in place as of the closing date, such manager may not be able to transact in reliance on PTE 84–14 on behalf of its plan clients, even where it was doing so immediately prior to the closing date. For plans managed by the acquired manager, transactions may have to be terminated, strategies changed, and guidelines amended, causing disruption to such plans through no fault of their own.

39. *Department's Response.* The Department agrees, in part, with the Applicant's requested change. However, the Department believes any new DB QPAM must be subject to an audit covering the entirety of the DB QPAM's reliance on this exemption. The newly-acquired DB QPAM must submit itself to the first audit that begins following the DB QPAM's acquisition, but the period covered by such audit covers the period of time beginning with the date of acquisition. The Department is adding a condition in accordance with the Applicant's request that reads:

''With respect to an asset manager that becomes a DB QPAM after the effective date of this exemption by virtue of being acquired (in whole or in part) by DB or a subsidiary or affiliate of DB (a ''newly-acquired DB QPAM''), the newly-acquired DB QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the U.S. Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired DB QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired DB QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the DB QPAM was acquired.''

The Department explains that the first audit to which a newly-acquired DB QPAM submits may cover a period greater than 1 year. For example, assuming this proposed exemption is granted and the following: DB QPAMs are subject to an annual audit covering April 18th 2024 through April 17th 2025 and a new DB QPAM is acquired on January 1, 2025: The newly-acquired DB QPAM would (1) be permitted to rely on the relief provided by this exemption as of January 1, 2025 (the date of its acquisition), (2) first become subject to the conditional terms of the exemption on July 1, 2025, and (3) initially submit to the first audit beginning post-acquisition (covering April 18, 2025–April 17, 2026). However, such audit of this particular DB QPAM must look back to the date of acquisition and cover the period from January 1, 2025–April 17, 2026.

The Exemption's Protective Conditions

40. Several of this proposed exemption's conditions are designed to ensure that the DB QPAMs were not involved in the conduct that gave rise to the U.S. Conviction or the DPA. Accordingly, this proposal does not provide prohibited transaction relief if the DB QPAMs knew of, participated in, approved of, furthered, or profited from the conduct that gave rise to the U.S. Conviction or the DPA.[24] Nor is relief available if a DB QPAM exercised any authority over plan assets in a manner that it knew or should have known would further the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA or cause the DB QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA.

41. Further, the DB QPAMs may not employ or knowingly engage any of the individuals that participated in the conduct attributable to the U.S. Conviction or the DPA. The DB QPAMs (including their officers, directors, agents other than DB Group Services, and employees of these QPAMs) must not have received direct compensation or knowingly received indirect compensation in connection with the criminal conduct that is the subject of the U.S. Conviction or the DPA.

42. The proposal further provides that no DB QPAM will use its authority or influence to direct an ''investment fund'' that is subject to ERISA or the Code and managed by such DB QPAM in reliance on PTE 84–14, or with respect to which a DB QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such ''investment fund'' that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with DB Group Services to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption.

43. If the Department grants this exemption, it will terminate immediately if Deutsche Bank or any of its affiliates are convicted of any additional crimes (other than the U.S. Conviction) described in Section I(g) of PTE 84–14. Also, with limited exceptions, DB Group Services may not act as a fiduciary within the meaning of ERISA Section 3(21)(A)(i) or (iii), or Code Section 4975(e)(3)(A) and (C), with respect to ERISA-covered plan and IRA assets.

44. The proposal requires each DB QPAM to update, implement and follow certain written policies and procedures (the Policies). These Policies are identical to the policies and procedures mandated by PTE 2021–01. In general terms, the Policies must require and be reasonably designed to ensure among other things that: (i) the DB QPAMs' asset management decisions are conducted independently of the corporate management and business activities of DB Group Services; (ii) the DB QPAMs fully comply with ERISA's fiduciary duties, as applicable, and with ERISA and the Code's prohibited transaction provisions, as applicable; (iii) the DB QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans; (iv) any filings

[24] For clarity, references to the DB QPAMs include their officers, directors, agents other than Deutsche Bank, and employees of such QPAMs.

or statements made by the DB QPAMs to regulators on behalf of or in relation to Covered Plans are materially accurate and complete; (v) the DB QPAMs do not make material misrepresentations or omit material information in communications with such regulators with respect to Covered Plans; (vi) the DB QPAMs do not make material misrepresentations or omit material information in communications with Covered Plans; (vii) the DB QPAMs comply with the terms of the exemption; and (viii) any violation of or failure to comply with any of these items is corrected as soon as reasonably possible upon discovery, or as soon after the DB QPAM reasonably should have known of the noncompliance (whichever is earlier). Any violation or compliance failure not so corrected must be reported in writing to appropriate corporate officers, the head of compliance and the QPAM's general counsel (or their functional equivalent), and the independent auditor responsible for reviewing compliance with the Policies upon the discovery of the failure to correct.

45. This proposal mandates training (Training) that is identical to the training required under PTE 2021–01. In this regard, all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel must be trained during the Exemption Period. Among other things, the Training must cover at a minimum, the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the exemption conditions (including any loss of the exemptive relief provided herein) and the requirement for prompt reporting of wrongdoing. The Training must be conducted by a professional who has been prudently selected and has appropriate technical training and proficiency with ERISA and the Code.

Department's Comment Regarding Training: The Department views the Training obligation under this exemption as a key protection of Covered Plans and expects that DB QPAMs and their personnel will complete their training obligations fully and in good faith. To ensure the efficacy of the Training, Section III(h)(2)(iii) requires that the Training ''[b]e verified, through in-training knowledge checks, ''graduation'' tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training.''

Furthermore, the Department expects the independent auditor described in Section III(i)(1) of the exemption to validate the efficacy of the Training, and, if necessary, to suggest additional enhancements to the Applicant's Training program.

46. Under this proposal, as in PTE 2021–01, each DB QPAM must submit to an annual audit conducted by an independent auditor. Among other things, the auditor must test a sample of each DB QPAM's transactions involving Covered Plans that are sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training. The auditor's conclusions cannot be based solely on the Exemption Report created by the Compliance Officer, described below, in lieu of independent determinations and testing performed by the auditor.

47. The Audit Report must be certified by the respective DB QPAM's general counsel or one of the three most senior executive officers of the DB QPAM to which the Audit Report applies. A copy of the Audit Report must be provided to the Audit Committee of Deutsche Bank's Supervisory Board. A senior executive officer who has a direct reporting line to Deutsche Bank's highest ranking legal compliance officer must review the Audit Report for each DB QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report. Deutsche Bank must notify the Department in the event of a change in the committee to which the Audit Report will be provided.

48. This proposal requires the DB QPAM to agree and warrant with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan that, throughout the Exemption Period the DB QPAM will: (i) comply with ERISA and the Code, as applicable with respect to the Covered Plan; (ii) refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any inadvertent prohibited transactions); and (iii) comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such ERISA-covered plan. Each DB QPAM must also agree and warrant to indemnify and hold harmless the Covered Plan for any actual losses resulting directly from any of the following: (a) a DB QPAM's violation of ERISA's fiduciary duties and/or the prohibited transaction provisions of ERISA and the Code as applicable; (b) a breach of contract by the DB QPAM; or (c) any claim arising out of the failure of the DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of the exemption other than the Conviction. This condition applies to actual losses caused by the DB QPAM, including but not limited to losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code Section 4975 because of a DB QPAM's inability to rely upon the relief in the QPAM Exemption. The definition of ''actual losses'' used in this proposed exemption allows fiduciaries of Covered Plans to prudently manage and make the best decisions on behalf of their plans without needing to consider the costs caused by a DB QPAM's or its affiliate's misconduct, including costs associated with unwinding transactions and transitioning plan assets to a new asset manager, because these costs will be borne by the DB QPAM and not the Covered Plan.[25]

49. This proposed exemption contains specific notice requirements. Each DB QPAM must provide a notice regarding the proposed exemption and a separate summary describing the facts that led to each Conviction (the Summary), which must be submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction results in a failure to meet a condition in PTE 84–14, must be provided to each sponsor and beneficial owner of a Covered Plan that entered into a written asset or investment management agreement with a DB QPAM, or the sponsor of an investment fund in any case where a DB QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. The notice, Summary, and Statement must be provided before or contemporaneously with the client's receipt of a written asset management agreement from the DB QPAM. If the Department grants an exemption, the clients must receive a **Federal Register** copy of the notice of final exemption within sixty (60) days of this exemption's effective date. The notice may be delivered electronically (including by an email containing a link to this exemption).

50. The proposal requires each DB QPAM to maintain records necessary to demonstrate that the exemption

[25] The Department notes that with respect to the notice of obligations requirement in Section III(j)(7), all Covered Plans must receive a notice that includes the definition of actual losses as provided in Section III(j)(2) of this proposed exemption. For avoidance of doubt, Covered Plans must receive a new notice if the notice Covered Plans previously received or the contractual language previously agreed to in connection with Section I(j)(7) of PTE 2017–04 or Section I(j)(7) of PTE 2021–01 did not include the definition of actual losses that is provided in this exemption.

conditions have been met for six (6) years following the date of any transaction for which the DB QPAM relies upon the relief provided in the exemption. The proposal mandates that DB must continue to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an exemption review (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. The Compliance Officer must be a professional with extensive relevant experience with a reporting line to the highest-ranking corporate officer in charge of compliance for the applicable DB QPAM. At a minimum, the Exemption Review must include review of the following items: (i) any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer during the previous year; (ii) any material change in the relevant business activities of the DB QPAMs; and (iii) any change to ERISA, the Code, or regulations that may be applicable to the activities of the DB QPAMs.

51. The Compliance Officer must prepare a written report (the Exemption Report) that summarizes their material activities during the Exemption Period and sets forth any instance of noncompliance discovered during the Exemption Period and any related corrective action. In each Exemption Report, the Compliance Officer must certify in writing that to the best of their knowledge the report is accurate and note whether the DB QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any instances of noncompliance.

52. The Exemption Report must be (i) provided to the appropriate corporate officers of Deutsche Bank and each DB QPAM to which such report relates and to the head of compliance and the general counsel (or their functional equivalent) of the relevant DB QPAM, and (ii) made unconditionally available to the independent auditor. The Exemption Review, including the Compliance Officer's written Exemption Report, must be completed within three (3) months following the end of the period to which it relates.

53. Deutsche Bank must also immediately disclose to the Department any deferred prosecution agreement (DPA) or non-prosecution agreement (NPA) with the U.S. Department of Justice, entered into by DB or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411. Under this condition, the Applicant must also provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department will review the information provided and may seek additional information from the Department of Justice, in order to determine whether the conduct described in the DPA or NPA raises questions about the DB QPAMs' ability to act with a high standard of integrity. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Department's Request for Comment: The Department requests comments whether the Applicant should be required to provide information regarding adverse regulatory actions (*e.g.,* fines, censures, penalties, civil lawsuits, settlements of civil or criminal lawsuits), that are taken by other regulators against Deutsche Bank and its affiliates. For example, should the Applicant be required to provide information regarding actions taken by certain regulators (*e.g.,* IRS, SEC, OCC, UK FCA): Are there particular types of information or classes of regulatory actions that are relevant to the Department's determination whether the DB QPAMs should continue to be permitted to rely on PTE 84–14 notwithstanding the U.S. Conviction?

54. The proposal mandates that, among other things, each DB QPAM clearly and promptly informs Covered Plan clients of their right to obtain a copy of the Policies or a description (the Summary Policies) which accurately summarizes key components of the DB QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[26] With respect to this requirement, the description may be continuously maintained on a website, provided that such website's link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan.

[26] If the Applicant satisfies this disclosure requirement through Summary Policies, changes to the Policies will not require new disclosure to Covered Plans unless the Summary Policies are no longer accurate because of the changes.

55. Finally, all the material facts and representations set forth in the Summary of Facts and Representations must be true and accurate at all times.

Clarifying Definition. In order to avoid confusion and clarify the operation of certain conditions, the Department has included in this proposed exemption a constructional definition of ''best knowledge'' to clarify that any reference in this exemption to ''the best knowledge'' of a party will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted a diligent inquiry into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their ''best knowledge,'' then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the ''best knowledge'' of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

Statutory Findings

56. Based on the conditions included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an exemption under ERISA Section 408(a).

57. *The Proposed Exemption is ''Administratively Feasible.''* The Department has tentatively determined that the proposal is administratively feasible since, among other things, a qualified independent auditor will be required to perform in-depth audit(s) covering, among other things, each DB QPAM's compliance with the exemption, and a corresponding written audit report will be provided to the Department and available to the public. The Department notes that the independent audit will provide an incentive for, and a measure of, compliance with the exemption conditions, while reducing the immediate need for review and oversight by the Department.

58. *The Proposed Exemption is ''In the Interest of the Covered Plans.''* The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of each affected Covered Plan because of the likely costs the

plans would incur if the exemption were denied and the benefits of permitting plans to continue to rely upon the DB QPAM's services with the additional protections set forth in this exemption.

59. *The Proposed Exemption is ''Protective of the Plan.''* The Department has tentatively determined that this proposed exemption, if granted, is protective of Covered Plans. The Department takes note of the Applicant's representation that the DB QPAMs have consistently had strong controls in place, which have only improved since the predecessor exemptions were issued. Under this proposal, exemptive relief would begin on April 18, 2024, and it has a limited prospective term of three (3) years which coincides with the end of the disqualification period in connection with the U.S. Conviction, April 17, 2027. Additionally, the proposed exemption has substantially the same conditions set forth in PTE 2017–04 and PTE 2021–01, which covered the U.S. Conviction.

Summary

60. This proposed exemption provides relief from certain restrictions set forth in ERISA Sections 406. No relief or waiver of a violation of any other law is provided by the exemption. The relief in this proposed exemption would terminate immediately if, among other things, an entity within the Deutsche Bank corporate structure is convicted of any crime covered by PTE 84–14, Section I(g) (other than the Convictions) during the effective period of the proposed exemption. While such an entity could apply for a new exemption in that circumstance, the Department is not obligated to propose or grant a requested exemption, and no inferences should be drawn with respect to the Department's future action due the Department's issuance of this proposal.

61. When interpreting and implementing this exemption, the Applicant and the DB QPAMs should resolve any ambiguities considering the exemption's protective purposes. To the extent additional clarification is necessary, these persons or entities should contact EBSA's Office of Exemption Determinations at 202–693–8540.

62. Based on the conditions that are included in this proposed exemption, the Department has tentatively determined that the relief sought by the Applicant would satisfy the statutory requirements for an individual exemption under ERISA Section 408(a) and Code Section 4975(c)(2).

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed exemption in the **Federal Register** in the following manner. The Applicant must provide notice of the proposed exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to each Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that each Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests and a supplemental statement, as required pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment but NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA Section 404(a)(1)(b); nor does it affect the requirement of Code Section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA Section 408(a) and/or Code Section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete at all times, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Proposed Exemption

The Department is considering granting an exemption under the authority of ERISA Section 408(a) and Code Section 4975(c)(2) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

Section I. Definitions

(a) The term ''Covered Plan'' means a plan subject to ERISA Title I, Part 4 (an ERISA-covered plan) or a plan subject to Code Section 4975 (an IRA), in each case, with respect to which a DB QPAM relies on PTE 84–14, or with respect to which a DB QPAM (or any Deutsche Bank affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14 (the QPAM Exemption). A Covered Plan does not include an ERISA-covered Plan or IRA

to the extent the DB QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a DB QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the DB QPAM will not represent that it is a QPAM and will not rely on the relief described in PTE 84–14.

(b) The term ''DB QPAM'' or ''DB QPAMs'' means DWS Investment Management Americas, Inc. and any current and future Deutsche Bank asset management affiliates that (i) qualify as a ''qualified professional asset manager'' (as defined in PTE 84–14, Section VI(a)), (ii) rely on the relief provided by PTE 84–14, and (iii) with respect to which Deutsche Bank is an ''affiliate'' (as defined in PTE 84–14, Section VI(d)(1)). The term ''DB QPAM'' excludes DB Group Services (UK) Limited.

(c) The term ''Deutsche Bank'' or ''DB'' means Deutsche Bank AG, a publicly held global banking and financial services company headquartered in Frankfurt, Germany.

(d) The term ''Exemption Period'' means the period of time beginning on April 18, 2024, and ending on April 17, 2027.

(e) The term ''U.S. Conviction'' means the judgment of conviction against DB Group Services (UK) Limited (DB Group Services), a Deutsche Bank ''affiliate'' (as defined in PTE 84–14, Section VI(d)), entered on April 18, 2017, by the United States District Court for the District of Connecticut, in case number 3:15–cr–00062–RNC, for one (1) count of wire fraud, in violation of 18 U.S.C. 1343. For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of the [U.S. Conviction]'' encompasses the factual allegations described in Paragraph 13 of the Plea Agreement filed in the District Court in Case Number 3:15–cr–00062–RNC.

(f) The term ''2021 DPA'' means the Deferred Prosecution Agreement entered on January 8, 2021, between Deutsche Bank and the U.S. Department of Justice to resolve the U.S. government's investigation into violations of the Foreign Corrupt Practices Act and a separate investigation into a commodities fraud scheme.

(g) Wherever found, any reference in this exemption to ''the best knowledge'' of a party, ''best of [a party's] knowledge,'' and similar formulations of the ''best knowledge'' standard, will be deemed to mean the actual knowledge of the party and the knowledge which they would have had if they had conducted their reasonable due diligence required under the circumstances into the relevant subject matter. If a condition of the exemption requires an individual to provide certification pursuant to their ''best knowledge,'' then such individual, in order to make such certification, must perform their reasonable due diligence required under the circumstances to determine whether the information such individual is certifying is complete and accurate in all respects. Furthermore, with respect to an entity other than a natural person, the ''best knowledge'' of the entity includes matters that are known to the directors and officers of the entity or should be known to such individuals upon the exercise of such individuals' due diligence required under the circumstances.

Section II: Transactions

The DB QPAMs will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14) [27] notwithstanding the U.S. Conviction (as defined above in Sections I(e)), during the Exemption Period, provided that the conditions in Section III are satisfied.[28]

Section III. Conditions

(a) Other than a single individual who worked for a non-fiduciary business within Deutsche Bank and who had no responsibility for, nor exercised any authority in connection with, the management of plan assets, the DB QPAMs (including their officers, directors, agents other than DB Group Services, and employees of such QPAMs) did not know or have reason to know of, and did not participate in the criminal conduct of DB Group Services that is the subject of the U.S. Conviction or the 2021 DPA. Further, any other party engaged on behalf of the DB QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA. For purposes of this exemption, ''participate in'' or ''participated in'' refers not only to active participation in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA, but also applies to knowing approval of the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA or knowledge of the conduct without taking active steps to prevent the conduct, including reporting the conduct to the individual's supervisors and the Board of Directors;

(b) Apart from a non-fiduciary line of business within Deutsche Bank, the DB QPAMs (including their officers, directors, agents other than DB Group Services, and employees of such QPAMs) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA. Further, any other party engaged on behalf of the DB QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA;

(c) The DB QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA;

(d) At all times during the Exemption Period, no DB QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by a DB QPAM in reliance of PTE 84–14, or with respect to which to which a DB QPAM has expressly represented to a Covered Plan that it qualifies as a QPAM or relies on the QPAM Exemption, to enter into any transaction with DB Group Services, or to engage DB Group Services to provide any service to such Covered Plan, for a direct or indirect fee borne by such Covered Plan, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of the DB QPAMs to satisfy PTE 84–14, Section I(g) arose solely from the U.S. Conviction;

[27] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (October 10, 1985), as amended at 70 FR 49305(August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[28] Section I(g) of PTE 84–14 generally provides relief only if ''[n]either the QPAM nor any affiliate thereof . . . nor any owner . . . of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of'' certain felonies including fraud.

(f) A DB QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA; or cause the DB QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the U.S. Conviction or the 2021 DPA;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, DB Group Services will not act as a fiduciary within the meaning of ERISA Sections 3(21)(A)(i) or (iii) or Code Sections 4975(e)(3)(A) and (C) with respect to ERISA-covered plan and IRA assets; provided, however, that DB Group Services will not be treated as violating the conditions of this exemption solely because they acted as investment advice fiduciaries within the meaning of ERISA Section 3(21)(A)(ii) or Code Section 4975(e)(3)(B);

(h)(1) Each DB QPAM must continue to maintain, adjust (to the extent necessary), implement, and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the DB QPAM are conducted independently of the corporate management and business activities of DB Group Services;

(ii) The DB QPAM fully complies with ERISA's fiduciary duties and with ERISA's and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The DB QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the DB QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans are materially accurate and complete to the best of such QPAM's knowledge at the time;

(v) To the best of the DB QPAM's knowledge at the time, the DB QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The DB QPAM complies with the terms of the exemption;

(vii) Any violation of or failure to comply with a requirement in subparagraphs (h)(1)(ii) through (h)(1)(vi) is corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier) and any such violation or compliance failure not so corrected is reported upon the discovery of such failure to so correct, in writing, to the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A DB QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier) and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each DB QPAM must maintain, adjust (to the extent necessary) and implement a training program (the Training) that is conducted at least annually for all relevant DB QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(ii) Be conducted in-person, electronically or via a website by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be verified, through in-training knowledge checks, ''graduation'' tests, and/or other technological tools designed to confirm that personnel fully and in good faith participate in the Training;

(i)(1) Each DB QPAM must submit to an audit conducted annually by an independent auditor who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to evaluate the adequacy of each DB QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies, and the first audit must cover the period that begins on the first day this exemption is effective, if granted. Each audit must be completed no later than six (6) months after the corresponding audit's ending period;

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions described herein, and only to the extent such disclosure is not prevented by State or Federal statute, or involves communications subject to attorney client privilege, each DB QPAM and, if applicable, Deutsche Bank, will grant the auditor unconditional access to its business, including, but not limited to: its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives, as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each DB QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each DB QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test a sample of each QPAM's transactions involving Covered Plans that is sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, the auditor must issue a written report (the Audit Report) to Deutsche Bank, and the DB QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination on or before the end of the relevant period described in Section III(i)(1) for completing the audit. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all of the DB QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each DB QPAM's Policies and Training; each DB QPAM's compliance with the Policies and Training; the need, if any, to strengthen

such Policies and Training; and any instance of the respective DB QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The DB QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective QPAM. Any action taken or the plan of action to be taken by the respective DB QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective DB QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a DB QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular DB QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not rely solely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section III(m);

(6) The auditor must notify the respective DB QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the DB QPAM's general counsel, or one of the three most senior executive officers of the line of business engaged in discretionary asset management services through the DB QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that such signatory has reviewed the Audit Report and this exemption; and that, to the best of such signatory's knowledge at the time, such DB QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such signatory's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person who knew of, or should have known of, or participated in, any misconduct underlying the U.S. Conviction or the 2021 DPA, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct underlying the U.S. Conviction or the 2021 DPA;

(8) The Audit Committee of Deutsche Bank's Supervisory Board is provided a copy of each Audit Report, and a senior executive officer with a direct reporting line to the highest-ranking compliance officer of Deutsche Bank must review the Audit Report for each DB QPAM and certify in writing and under penalty of perjury that such officer has reviewed each Audit Report. Deutsche Bank must provide notice to the Department if there is a switch in the committee to which the Audit Report will be provided. With respect to this subsection (8), such certifying executive officer must not have known of, had reason to know of, or participated in, any misconduct underlying the U.S. Conviction (or the 2021 DPA), unless such person took active documented steps to stop the misconduct underlying the U.S. Conviction (or the 2021 DPA);

(9) Each DB QPAM provides its certified Audit Report by electronic mail to: *e-oed@dol.gov.* This delivery must take place no later than thirty (30) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each DB QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each DB QPAM and the auditor must submit the following document(s) to OED via electronic mail to *e-oed@dol.gov:* Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) Deutsche Bank must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor, and Deutsche Bank or any of its affiliates;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a DB QPAM and a Covered Plan, the DB QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in ERISA Section 404 with respect to each such Covered Plan to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a DB QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such DB QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the DB QPAM's violations. Actual losses include, but are not limited to, losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require or otherwise cause the Covered Plan to waive, limit, or qualify the liability of the DB QPAM for violating ERISA or the Code or engaging in prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the DB QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the DB QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Deutsche Bank and its affiliates, or damages arising from acts outside the control of the DB QPAM; and

(7) Within 60 calendar days after this exemption's effective date, each DB QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For Covered Plans that enter into a written asset or investment management agreement with a DB QPAM on or after 60 calendar days from this exemption's effective date, the DB QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the DB QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2017–04 or PTE 2021–01 that meets the terms of this condition. This condition will also be met where the DB QPAM has already agreed to the same obligations required by this Section III(j) in an updated investment management agreement between the DB QPAM and a Covered Plan. Notwithstanding the above, a DB QPAM will not violate the condition solely because a Covered Plan client refuses to sign an updated investment management agreement;

(k) Within 60 days after the effective date of this exemption, each DB QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the U.S. Conviction (the Summary), which have been submitted to the Department, and a prominently displayed statement (the Statement) that the U.S. Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a DB QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a DB QPAM (including a participation or subscription agreement in a pooled fund managed by a DB QPAM) after the date that is sixty days after the effective date of this exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the DB QPAM (for avoidance of doubt, all Covered Plan clients of a DB QPAM during the Exemption Period must receive the disclosures described in this Section by the later of (i) 60 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with a DB QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption. Notwithstanding the above paragraph, a DB QPAM will not violate the condition solely because a Plan or IRA refuses to sign an updated investment management agreement;

(l) The DB QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of PTE 84–14 Section I(g) that is attributable to the U.S. Conviction. If, during the Exemption Period, an affiliate of a DB QPAM (as defined in Section VI(d) of PTE 84–14) is convicted of a crime described in Section I(g) of PTE 84–14 (other than the U.S. Conviction), relief in this exemption would terminate immediately;

(m)(1) Deutsche Bank continues to designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer previously designated by the DB QPAM(s) under PTE 2021–01 may continue to serve in the role of Compliance Officer provided they meet all the requirements of this Section. Notwithstanding the above, no person who knew of, or should have known of, or participated in, any misconduct underlying the U.S. Conviction (or the 2021 DPA), by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct underlying the U.S. Conviction (or the 2021 DPA). The Compliance Officer must conduct an annual review for each twelve-month period, beginning on this exemption's effective date, (the Exemption Review) to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for asset management;

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of the DB QPAM's compliance with and effectiveness of the Policies and Training and of the following: any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued in connection with PTE 2017–04 or PTE 2021–01 or this exemption; (B) any material change in the relevant business activities of the DB QPAMs; and (C) any change to ERISA, the Code, or

regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the DB QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that: (A) summarizes their material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) the report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the DB QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) Each Annual Report must be provided to: (A) the appropriate corporate officers of Deutsche Bank and each DB QPAM to which such report relates, and (B) the head of compliance and the DB QPAM's general counsel (or their functional equivalent) of the relevant DB QPAM; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Each DB QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which the DB QPAM relies upon the relief in the exemption;

(o) During the Exemption Period, Deutsche Bank: (1) immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Deutsche Bank any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 and/or ERISA section 411; and (2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to such agreement;

(p) Within 60 days after the effective date of this exemption, each DB QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of the Covered Plan's right to obtain a copy of the Policies or a description (Summary Policies), which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan;

(q) A DB QPAM will not fail to meet the terms of this exemption, solely because a different DB QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l), (n) and (p) or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of Deutsche Bank or its affiliates;

(r) Deutsche Bank imposes its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the U.S. Conviction and the 2021 DPA;

(s) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate;

(t) With respect to an asset manager that becomes a DB QPAM after the effective date of the exemption by virtue of being acquired (in whole or in part) by DB or a subsidiary or affiliate of DB (a ''newly-acquired DB QPAM''), the newly-acquired DB QPAM would not be precluded from relying on the exemptive relief provided by PTE 84–14 notwithstanding the U.S. Conviction as of the closing date for the acquisition; however, the operative terms of the exemption shall not apply to the newly-acquired DB QPAM until a date that is six (6) months after the closing date for the acquisition. To that end, the newly acquired DB QPAM will initially submit to an audit pursuant to Section III(i) of this exemption as of the first audit period that begins following the closing date for the acquisition. The period covered by the audit must begin on the date on which the DB QPAM was acquired; and

(u) The DB QPAM(s) must provide the Department with the records necessary to demonstrate that each condition of this exemption has been met within 30 days of a request for the records by the Department.

Exemption Date: This exemption will be in effect beginning on April 18, 2024, and ending on April 17, 2027.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2024–03358 Filed 2–20–24; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

[OMB Control No. 1240–0044]

Proposed Extension of Information Collection; Health Insurance Claim Form (OWCP–1500)

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, OWCP is soliciting comments on the information collection for Health Claim Insurance Form, OWCP–1500.

DATES: All comments must be received on or before April 22, 2024.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit the DOL–OWCP, Office of Workers' Compensation Programs, U.S. Department of Labor, 200 Constitution Avenue NW, Room S3524, Washington, DC 20210.
- OWCP will post your comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov*.
- Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

FOR FURTHER INFORMATION CONTACT: Anjanette Suggs, Office of Workers' Compensation Programs, *suggs.anjanette@dol.gov* (email); (202) 354–9660.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101—administered by the Division of Federal Employees' Compensation Program; the Black Lung Benefits Act (BLBA), 30 U.S.C. 901—administered by the Division of Coal Miner Workers' Compensation Program; and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 administered by the Division of Energy Employees Occupational Illness Compensation Programs. All three of these statutes require that OWCP pay for medical treatment of beneficiaries; BLBA also requires that OWCP pay for medical examinations and related diagnostic services to determine eligibility for benefits under that statute. In order to determine whether billed amounts are appropriate, OWCP needs to identify the patient, the injury or illness that was treated or diagnosed, the specific services that were rendered and their relationship to the work-related injury or illness. The regulations implementing these statutes require the use of Form OWCP–1500 for medical bills submitted by certain physicians and other providers (20 CFR 10.801, 20 CFR 725.704, 30.701, 725.405, 725.406(e), 725.701 and 725.715).

II. Desired Focus of Comments

OWCP is soliciting comments concerning the proposed information collection related to the Health Insurance Claim Form (OWCP–1500).

OWCP is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of OWCP's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–OWCP located at 200 Constitution Avenue NW, Washington, DC 20210. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This information collection request concerns the Health Insurance Claim Form, OWCP–1500. OWCP has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Office of Workers' Compensation Programs.

OMB Number: 1240–0044.

Affected Public: Private Sector.

Number of Respondents: 57,099.

Frequency: On Occasion.

Number of Responses: 3,381,232.

Annual Burden Hours: 394,477.

Annual Respondent or Recordkeeper Cost: $0.

OWCP Form: OWCP Form OWCP–1500, Health Insurance Claim Form.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov*.

Anjanette Suggs,

Certifying Officer.

[FR Doc. 2024–03438 Filed 2–20–24; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit Princeton University (DMR) (#1203).

Date and Time: May 9, 2024; 7:30 a.m.–6:45 p.m.; May 10, 2024; 8:00 a.m.–3:45 p.m.

Place: Princeton University, 70 Prospect Avenue, Princeton, NJ 08540.

Type of Meeting: Part-Open.

Contact Person: Dr. Cosima Boswell-Koller, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4959.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Thursday, May 9, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Friday, May 10, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will

include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03418 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site; Visit Harvard University (DMR) (#1203).

Date and Time: April 25, 2024; 7:30 a.m.–6:45 p.m., April 26, 2024; 8:00 a.m.–3:45 p.m.

Place: Harvard University, 33 Oxford St., Room G115, Cambridge, MA 02138.

Type of Meeting: Part-Open.

Contact Person: Dr. Serdar Ogut, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4429.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Thursday, April 25, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Friday, April 26, 2024

8:00 a.m.–3:45.p.m—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03417 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit Ohio State University (DMR) (#1203).

Date and Time: May 23, 2024; 7:30 a.m.–6:45 p.m.; May 24, 2024; 8:00 a.m.–3:45 p.m.

Place: Ohio State University, 191 West Soodruff Ave., Columbus, OH 43210.

Type of Meeting: Part-Open.

Contact Person: Dr. Serdar Ogut, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4429.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Thursday, May 23, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Friday, May 24, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03419 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit University of Chicago (DMR) (#1203).

Date and Time: May 2, 2024; 7:30 a.m.–6:45 p.m.; May 3, 2024; 8:00 a.m.–3:45 p.m.

Place: University of Chicago, 929 East 57th Street, Chicago, IL 60637.

Type of Meeting: Part-Open.

Contact Person: Dr. Cosima Boswell-Koller, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4959.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Thursday, May 2, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Friday, May 3, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical

information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03414 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit Pennsylvania State (DMR) (#1203).

Date and Time: April 1, 2024; 7:30 a.m.–6:45 p.m.; April 2, 2024; 8:00 a.m.–3:45 p.m.

Place: Pennsylvania State Millennium Science Complex, Pollock Road, Room 201A/B, University Park, PA 16802.

Type of Meeting: Part-Open.

Contact Person: Dr. Cosima Boswell-Koller, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4959.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Monday, April 1, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed).
12:05 p.m.–1:00 p.m.—Lunch (Open).
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed).
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed).
3:30 p.m.–5:00 p.m.—Poster Session (Open).
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed).

Tuesday, April 2, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed).

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03420 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Advisory Committee for Cyberinfrastructure (#25150).

Date and Time: April 11–12, 2024; 8:30 a.m.–5 p.m. (Eastern).

Place: NSF, 2415 Eisenhower Avenue, Rm 3410, Alexandria, VA 22314 (In-Person).

The final meeting agenda and instructions to register and attend the meeting will be posted on the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Type of Meeting: Open.

Contact Persons: Walton, Amy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–4538.

Minutes: May be obtained from Christine Christy, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–2221 and will be posted within 90-days after the meeting end date to the ACCI website: *https://www.nsf.gov/cise/oac/advisory.jsp*

Purpose of Meeting: To advise NSF on the impact of its policies, programs, and activities in the OAC community. To provide advice to the Director/NSF on issues related to long-range planning.

Agenda: Updates on NSF wide OAC activities: *https://www.nsf.gov/cise/oac/advisory.jsp.*

Dated: February 15, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03519 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit University of California, Irvine (DMR) (#1203).

Date and Time: April 22, 2024; 7:30 a.m.–6:45 p.m.; April 23, 2024; 8:00 a.m.–3:45 p.m.

Place: University of California, Irvine, 3008 CalIT2, Building 325, Irvine, CA 92697.

Type of Meeting: Part-Open.

Contact Person: Dr. Cosima Boswell-Koller, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4959.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Monday, April 22, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Tuesday, April 23, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03413 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit Columbia University (DMR) (#1203).

Date and Time: April 15, 2024; 7:30 a.m.–6:45 p.m., April 16, 2024; 8:00 a.m.–3:45 p.m.

Place: Columbia University, 1140 Amsterdam Avenue, New York, NY 10027.

Type of Meeting: Part-Open.

Contact Person: Dr. Serdar Ogut, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4429.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Monday, April 15, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Tuesday, April 16, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03416 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board's NSB–NSF Commission on Merit Review (MRX), Committee on Awards and Facilities (A&F), and Committee on Strategy (CS) hereby give notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: The three meetings will be held on Tuesday, February 20, 2024. The MRX meeting will be held from 9:00 a.m.–12:00 p.m. Eastern. The A&F meeting will be held from 1:00 p.m.–2:00 p.m. and will resume at 3:30 p.m.–5:00 p.m. Eastern. The joint A&F and CS meeting will be held from 2:00 p.m.–3:30 p.m. Eastern.

PLACE: The meetings will be held virtually and in person at NSF headquarters, 2145 Eisenhower Ave., Alexandria, VA 22314, and by videoconference.

STATUS: The meetings are closed to the public.

MATTERS TO BE CONSIDERED:

MRX agenda: Commission Chair's opening remarks; Discussion of Big Ten Listening Session; Discussion of Preliminary Recommendations and Suggestions; and Closing remarks.

A&F agenda: Opening Remarks: Context of National Solar Observatory Operations and Management Award; and Discussion of ASTRO2020 Decadal Recommendations and vote on proposed resolution.

Joint A&F/CS agenda: Opening Remarks by committee chairs; Discussion of Budget Context and Planning for Future Major Facilities; and Discussion of Next Steps.

CONTACT PERSON FOR MORE INFORMATION: Point of contact for this meeting is: Michelle McCrackin, *mmccrack@nsf.gov,* (703) 292–7000. Members of the public can observe the public portion of this meeting through a YouTube livestream. The link is: *https://www.youtube.com/watch?v=dU9-rjFpgḣM.* Meeting information and updates may be found at *www.nsf.gov/nsb.*

Ann E. Bushmiller,

Senior Legal Counsel to the National Science Board.

[FR Doc. 2024–03558 Filed 2–16–24; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

The National Science Board (NSB), the NSB Committee on Strategy (CS), and the Committee on Awards and Facilities (A&F) hereby give notice of the scheduling of meetings for the transaction of National Science Board business pursuant to the National Science Foundation Act and the Government in the Sunshine Act.

TIME AND DATE: Wednesday, February 21, 2024, from 10:00 a.m.–4:45 p.m. and Thursday, February 22, 2024, from 9:00 a.m.–1:35 p.m. Eastern.

PLACE: These meetings will be held at NSF headquarters, 2415 Eisenhower Avenue, Alexandria, VA 22314, and by videoconference. If the COVID status for Alexandria, Virginia goes to ''high,'' please fill out and bring OMB's certification of vaccination form with you. All open sessions of the meeting will be webcast live on the NSB YouTube channel.

February 21, 2024: *https://www.youtube.com/watch?v=-xabZle0pBw*

February 22, 2024: *https://www.youtube.com/watch?v=g7129GfU61Y*

STATUS: Parts of these meetings will be open to the public. The rest of the meetings will be closed to the public. See full description below.

MATTERS TO BE CONSIDERED:

Wednesday, February 21, 2024

Plenary Board Meeting

Open Session: 10:00 a.m.–3:30 p.m.

- NSB Chair's Opening Remarks
  - Report on Board members' visit to Antarctica
  - Recognition of Black History month
- NSF Director's Opening Remarks
  - Tribute to Dr. John Slaughter, Rep. Eddie Bernice Johnson, and recognition of Black History month
  - Highlights of NSF Thematic Priorities
  - Senior Staff introductions
- NSF's Role in the Future of Artificial Intelligence
  - Presentation and Discussion, Dr. Tess DeBlanc-Knowles and Dr. Michael Littman
- Approval of November 2023 Open Meeting Minutes
- NSB Committee Reports
  - Committee on External Engagement
  - Continued strategic engagement and planning
  - Committee on Science and Engineering Policy
  - Discussion of draft policy messages and *Indicators 2024* rollout
    - Vote on ''Talent is the Treasure'' policy message
  - Overview of the future of *Indicators*
  - Working Group Reports: updates on efforts to explore, identify, and prioritize policy work
    - National Security Team
    - Talent Development Team
- NSF Diversity, Equity, Inclusion, and Accessibility
  - Presentation and Discussion, Dr. Charles Barber

- NSF Sexual Assault and Harassment Prevention Response Update
  - Presentation and Discussion, Dr. Renee Ferranti

Closed Session: 3:30–3:45 p.m.

- NSF Discussion, Sexual Assault and Harassment Prevention Response

Committee on Strategy

Closed Meeting: 3:45–4:45 p.m.

- Committee Chair's Opening Remarks on the Agenda
- Update on NSF's FY 2024 Budget
- Preview and Discussion of NSF's FY 2025 Budget Request

Thursday, February 22, 2024

Plenary Board meeting

Open Session: 9:00–9:20 a.m.

- NSB Chair's Opening Remarks
- Commission Report
  - NSB–NSF Commission on Merit Review

Committee on Awards and Facilities Meeting

Open Session: 9:20 a.m.–10:05 a.m.

- Antarctic Support Contract Presentation and Discussion, Patrick Breen

Plenary Board

Closed Session: 10:05 a.m.–12:15 p.m.

- Committee Reports
- Committee on Awards and Facilities
  - Discussion of ASTRO2020 Decadal Recommendations and vote on proposed resolution
  - Discussion of National Solar Observatory
  - Joint meeting with A&F, Research Infrastructure
- Committee on Strategy
  - NSF FY 2025 Annual Performance Plan and FY 2023 Annual Performance Report
- Committee on Oversight
  - NSF's Pilot programs to include Broader Impacts practitioners on Committees of Visitors and improve review training
- NSB–NSF Commission on Merit Review
- Vote to move into Executive Plenary Closed

Closed (Executive) Session: 12:45 p.m.–1:35 p.m.

- NSB Chair's Opening Remarks
- Approval of November 2023 Executive Plenary closed meeting minutes
- NSF Director's Remarks
  - Organizational Updates
- NSB Chair's Closing Remarks

Meeting Adjourns: 1:35 p.m.

Portions Open to the Public

Wednesday, February 21, 2024

10:00 a.m.–3:30 p.m. Plenary NSB

Thursday, February 22, 2024

9:00 a.m.–10:05 a.m. Plenary NSB

Portions Closed to the Public

Wednesday, February 21, 2024

3:30 p.m.–3:45 p.m. Plenary NSB
3:45 p.m.–4:45 p.m. Committee on Strategy

Thursday, February 22, 2024

10:05 a.m.–12:15 p.m. Plenary NSB
12:45 p.m.–1:35 p.m. Plenary NSB (executive session)

Members of the public are advised that the NSB provides some flexibility around start and end times. A session may be allowed to run over by as much as 15 minutes if the Chair decides the extra time is warranted. The next session will start no later than 15 minutes after the noticed start time. If a session ends early, the next meeting may start up to 15 minutes earlier than the noticed start time. Sessions will not vary from noticed times by more than 15 minutes.

CONTACT PERSON FOR MORE INFORMATION: The NSB Office contact is Christopher Blair, *cblair@nsf.gov,* 703–292–7000. The NSB Public Affairs contact is Nadine Lymn, *nlymn@nsf.gov,* 703–292–2490. Please refer to the NSB website for additional information: *https://www.nsf.gov/nsb.*

Ann E. Bushmiller,

Senior Legal Counsel to the National Science Board.

[FR Doc. 2024–03560 Filed 2–16–24; 11:15 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit University of Delaware (DMR) (#1203).

Date and Time: May 6, 2024; 7:30 a.m.–6:45 p.m., May 7, 2024; 8:00 a.m.–3:45 p.m.

Place: University of Delaware Day 1: 591 Collaboration Way, Newark, DE 19713, University of Delaware Day 2: 150 Academy St., Newark, DE 19716.

Type of Meeting: Part-Open.

Contact Person: Dr. Serdar Ogut, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4429.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Monday, May 6, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Tuesday, May 7, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03411 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit Brandeis University (DMR) (#1203).

Date and Time: May 16, 2024; 7:30 a.m.–6:45 p.m., May 17, 2024; 8:00 a.m.–3:45 p.m.

Place: Brandeis University, 415 South Street, Waltham, MA 02453.

Type of Meeting: Part-Open.

Contact Person: Dr. Serdar Ogut, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4429.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Thursday, May 16, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Friday, May 17, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site visit will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03410 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Proposal Review Panel for Materials Research—Materials Research Science and Engineering Center (MRSEC) Site Visit University of Minnesota (DMR) (#1203).

Date and Time: April 8, 2024; 7:30 a.m.–6:45 p.m.; April 9, 2024; 8:00 a.m.–3:45 p.m.

Place: University of Minnesota, 615 Washington Ave. SE, Minneapolis, MN 55414.

Type of Meeting: Part-Open.

Contact Person: Dr. Cosima Boswell-Koller, Program Director, National Science Foundation, 2415 Eisenhower Ave., Alexandria, VA 22314; Telephone: 703–292–4959.

Purpose of Meeting: NSF site visit to conduct a review during year 4 of the award period as stipulated in the cooperative agreement.

Agenda: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Monday, April 8, 2024

7:30 a.m.–12:05 p.m.—Executive Sessions (Closed)
12:05 p.m.–1:00 p.m.—Lunch (Open)
1:00 p.m.–2:30 p.m.—Executive Sessions (Closed)
2:30 p.m.–3:30 p.m.—Facilities Overview and Lab Tour (Closed)
3:30 p.m.–5:00 p.m.—Poster Session (Open)
5:00 p.m.–6:45 p.m.—Executive Sessions (Closed)

Tuesday, April 9, 2024

8:00 a.m.–3:45 p.m.—Executive Sessions (Closed)

Reason for Closing: The program being reviewed during the site review will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the program. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 14, 2024.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2024–03421 Filed 2–20–24; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Application To Make Deposit or Redeposit (CSRS)—SF 2803 and Application To Make Service Credit Payment for Civilian Service (FERS)—SF 3108, 3206–0134

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) is proposing an extension to a currently approved information collection: OMB Control Number, 3206–0134, Application to Make Deposit or Redeposit (CSRS)—SF 2803 and Application to Make Service Credit Payment for Civilian Service (FERS)—SF 3108.

DATES: Comments are encouraged and will be accepted until March 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Office of Personnel Management'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this information collection activity, please contact: Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *RSPublicationsTeam@opm.gov* or faxed to (202) 606–0910 or via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: OPM, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the public with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Agency's information collection requirements and provide the requested data in the desired format. OPM is soliciting comments on the proposed information collection request (ICR) that is described below. The Agency is especially interested in public comment addressing the following issues: (1) whether this collection is necessary for the proper functions of the Agency; (2) whether this information will be processed and used in a timely manner; (3) the accuracy of the burden estimate; (4) ways the Agency can enhance the quality, utility, and clarity of the information to be collected; and (5) ways the Agency can minimize the burden of this collection on the respondents, including through the use of information technology. Written comments received in response to this notice will be considered public records.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application to Make Deposit or Redeposit (CSRS), and Application to Make Service Credit Payment for Civilian Service (FERS).

OMB Number: 3206–0134.

Affected Public: Individual or Households.

Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 75.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–03443 Filed 2–20–24; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–191 and CP2024–197]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 23, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–191 and CP2024–197; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 190 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 15, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* February 23, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–03500 Filed 2–20–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99534; File No. SR–BX–2024–004]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

February 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2024, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its pricing schedule at Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to provide an additional calculation for purposes of determining whether a member qualifies for fees set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in Equity 7, Section 118(a) that pertain to providing liquidity.

The Exchange operates on the ''taker-maker'' model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. In Equity 7, Section 118(a), the Exchange sets forth such credits and charges applicable for all securities prices at or above $1. Members may qualify for tiers of discounted fees and premium credits based, in part, upon the volume of their activities on the Exchange as a percentage of total ''Consolidated Volume.''

Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the following are excluded from both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (*i.e.,* on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (*i.e.,* on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes.

Generally, the ratio of consolidated volumes in securities priced at or above $1 (''dollar plus volume'') relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that ''Consolidated Volume'' has been a reasonable baseline for determining tiered incentives for members that execute dollar plus volume on the Exchange. However, there have been a few months where volumes in securities priced below a dollar (''sub-dollar volume'') have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on members' qualifications for pricing tiers/incentives because such qualifications depend members upon achieving threshold percentages of volumes as a percentage of Consolidated Volume, and an extraordinary rise in sub-dollar volume stands to elevate Consolidated Volume. As a result, members may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing pricing tiers during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for its members that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing pricing tiers for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend its Rules to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of pricing tiers for their dollar plus stock executions.

Accordingly, the Exchange proposes to amend its pricing schedule at Equity 7, Section 118(a) to state that, for purposes of calculating a member's qualifications for fees that pertain to providing liquidity set forth in Section 118(a), the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume as presently set forth in Equity 7, Section 118(a) (*i.e.,* inclusive of volume that consists of executions in securities priced less than $1). Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, while also increasing the distinct qualifying volume percentage thresholds, as set forth in Section 118(a), by 10%. Thereafter, the Exchange proposes to assess which of these two calculations would qualify the member for the most advantageous fees for the month and then it will apply those to the member.

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of pricing tiers for their dollar plus stock executions, the Exchange proposes to include certain limits on the proposal to efficiently allocate the Exchange's limited resources for pricing tiers/incentives. Specifically, as noted above, the Exchange proposes to limit the application of the proposed calculation excluding sub-dollar volumes to those incentives in Section 118(a) that pertain to providing liquidity. In addition, as noted above, the Exchange proposes to increase the distinct qualifying volume percentage thresholds set forth in Section 118(a) by 10% for purposes of the proposed calculation excluding sub-dollar volumes.[3] The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to members in months with extraordinary spikes in sub-dollar volumes. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution

[3] For example, the Exchange assess a fee of $0.0020 per share executed to members providing liquidity for a displayed order entered by a member that adds liquidity equal to or exceeding 0.05% of total Consolidated Volume during a month. *See* Equity 7, Section 118(a). Under the proposal, in addition to calculating the member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, the distinct qualifying volume percentage threshold would be increased by 10%. Therefore, for purposes of this example, in order to qualify for the fee tier using volumes excluding sub-dollar activity, the member would need to add liquidity equal to or exceeding 0.055% of total Consolidated Volume during a month (*i.e.,* 0.05% + (10%)(0.05%)).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

of order flow from broker dealers'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposal is reasonable and equitable because, in its absence, members may experience material adverse impacts on their ability to qualify for certain incentives during a month with an anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize members that execute significant volumes on the Exchange due to anomalous and extraneous trading activities of a small number of firms in sub-dollar securities. The proposed rule would seek to provide a means for members that provide liquidity to avoid such a penalty by determining whether calculating member volume and total Consolidated Volume to include or exclude sub-dollar volume [8] would result in Exchange members qualifying for the most advantageous charges, and then applying the calculations that would result in the incentives for providing liquidity that are most advantageous to each member. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to fees that pertain to providing liquidity and increasing the distinct qualifying volume percentage thresholds by 10% when using the proposed calculation excluding sub-dollar volumes because the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular member and the Exchange will apply the proposed calculation to all similarly situated members.

Those participants that are dissatisfied with the changes to the Exchange's pricing schedule are free to shift their order flow to competing venues that provide more favorable fees or generous incentives.

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 not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposal to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular member. The Exchange also intends for its proposal to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 40% of industry volume.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] As noted above, in considering whether a member meets qualifying fee criteria using the proposed calculation excluding sub-dollar volumes, the distinct qualifying volume percentage thresholds would be increased by 10%.

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–BX–2024–004 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–BX–2024–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–BX–2024–004, and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03452 Filed 2–20–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35131; File No. 812–15488]

Barings Corporate Investors, et al.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: Barings Corporate Investors, Barings Global Short Duration High Yield Fund, CI Subsidiary Trust, Barings Participation Investors, PI Subsidiary Trust, Barings LLC, Massachusetts Mutual Life Insurance Company, C.M. Life Insurance company, Barings Finance LLC, Tower Square Capital Partners IV, L.P., Tower Square Capital Partners IV–A, L.P., Barings BDC, Inc., Energy Hardware Holdings, Inc., SIC Investment Holdings LLC, Barings Private Credit Corporation, Barings Capital Investment Corporation, BCIC Holdings, Inc., Barings Private Equity Opportunities and Commitments Fund, Barings Global Credit Fund (LUX)—Segregated Loan Account 5, Barings Segregated Loans 5 S.À R.L., BAYVK R Private Debt SCS, SICAV–FIS, BAYVK R PD 1 Loan S.À R.L., Barings Umbrella Fund plc—Barings European High Yield Bond Fund, Barings Global Investment Funds plc—Barings European Loan Fund, Barings European Loan Limited, BCF Europe Funding Limited, BCF Senior Funding I Designated Activity Company, BCF Senior Funding I LLC, MassMutual Global Floating Rate Fund, Barings Umbrella Fund plc—Barings Global High Yield Bond Fund, Barings Global Investment Funds 2 plc—Barings Global High Yield Credit Strategies Fund, Barings Global High Yield Credit Strategies Limited, Barings Global Investment Funds plc—Barings Global Loan Fund, Barings Global Loan Limited, Barings Global Credit Fund (LUX)—Barings Global Private Loan Fund, Barings Global Private Loans 1 S.À R.L., Barings Umbrella Fund plc—Barings Global Senior Secured Bond Fund, Barings CMS Fund, LP, Barings Umbrella Fund plc—Barings U.S. High Yield Bond Fund, Barings Direct Lending 2018 LP, Barings European Direct Lending 1 L.P., Barings European Direct Lending 1 S.À R.L., Barings Global Credit Fund (LUX)—Barings European Private Loan Fund II, Barings European Private Loans 2 S.À R.L., Barings Global Credit Fund (LUX)—Barings European Private Loan Fund III, Barings European Private Loans 3 S.À R.L., Barings Global Credit Fund (LUX)—Barings European Private Loan Fund III (A), Barings European Private Loans 3A S.À R.L., Barings Global Investment Funds plc—Barings Global Loan and High Yield Bond Fund, Barings Global Loan and High Yield Bond Limited, Barings Global Investment Funds plc—Barings Global Loan Select Responsible Exclusions Fund, Barings Global Loan Select Responsible Exclusions Limited, Barings Global Credit Fund (LUX)—Barings Global Private Loan Fund 2, Barings Global Private Loans 2 S.À R.L., Barings Global Credit Fund (LUX)—Barings Global Private Loan Fund 3, Barings Global Private Loans 3 S.À R.L., Barings Global Private Loan Fund 4 SCSp, Barings Global Private Loans 4 S.À R.L., Barings Global Private Loan Fund 4(S) SCSp, Barings Global Private Loans 4(S) S.À R.L., Barings Global Credit Fund (LUX)—Segregated Loan Account 3, Barings Segregated Loans 3 S.À R.L., Barings Global Credit Fund (LUX)—Segregated Loan Account 1, Barings Segregated Loans 1 S.À R.L., Barings Global Credit Fund (LUX)—Segregated Loan Account 2, Barings Segregated Loans 2 S.À R.L., Barings Global Investment Funds plc—Global Private Loan Strategy Fund 1, Barings Global Private Loan Strategy 1 Limited, Barings Global Credit Fund (LUX)—Segregated Loan Account 4, Barings Global Credit Fund (LUX)—Segregated Loan Account 6, Barings Segregated

[10] 17 CFR 200.30–3(a)(12).

Loans 6 S.À R.L., Barings SLA 6 LLC, Barings SS4 (LUX) LLC, Barings Umbrella Fund (LUX)—Barings Global Special Situations Credit Fund 4 (LUX) Fund, Barings Global Special Situations Credit 4 (LUX) S.À R.L., Barings Global Credit Fund (LUX)—Barings Global Special Situations Credit Fund 3, Barings Global Special Situations Credit 3 S.À R.L., Barings Global Umbrella Fund—Barings Developed and Emerging Markets High Yield Bond Fund, Barings—MM Revolver Fund LP, Barings North American Private Loan Fund (Cayman)-A, L.P., Barings North American Private Loan Fund, L.P., Barings North American Private Loan Fund (Cayman), LP, Barings Small Business Fund, L.P., Barings Middle Market CLO Ltd. 2017–I, Barings CLO Ltd. 2018–I, Barings CLO Ltd. 2018–II, Barings CLO Ltd. 2018–III, Barings CLO Ltd. 2018–IV, Barings Middle Market CLO Ltd. 2018–I, Barings CLO Ltd. 2019–I, Barings CLO Ltd. 2019–II, Barings CLO Ltd. 2019–III, Barings Middle Market CLO Ltd. 2019–I, Barings CLO Ltd. 2020–1, Barings CLO Ltd. 2020–IV, Barings CLO Ltd. 2021–I, Barings CLO Ltd. 2021–II, Barings CLO Ltd. 2021–III, Barings Middle Market CLO Ltd. 2021–I, Barings CLO Ltd. 2016–II, Babson CLO Ltd. 2014–I, Barings CLO Ltd. 2015–I, Barings CLO Ltd. 2016–I, Barings CLO Ltd. 2017–I, Barings U.S. High Yield Collective Investment Fund, MassMutual High Yield Fund, MassMutual Ascend Life Insurance Company, MassMutual Trad Private Equity LLC, Barings Global Investment Funds plc—Global Multi-Credit Strategy Fund 1, Barings Global Multi-Credit Strategy 1 Limited, Barings Global Investment Funds 2 plc—Global Multi-Credit Strategy Fund 3, Barings Global Multi-Credit Strategy 3 Limited, Barings Global Investment Funds plc—Global Multi-Credit Strategy Fund 4, Barings Global Multi-Credit Strategy 4 Limited, BME SCSp, BME Investment S.À R.L., Barings North American Private Loan Fund II (Cayman)-A, LP, NAPLF (Cayman)-A Senior Funding I LLC, Barings North American Private Loan Fund II (Cayman), L.P., NAPLF (Cayman) Senior Funding I LLC, Barings North American Private Loan Fund II (Unlevered), L.P., NAPLF Senior Funding I LLC, NAPLF (Cayman)-A Senior Funding II LLC, NAPLF (Cayman) Senior Funding II LLC, OTPP—BNAPLF II LP, OTPP—BNAPLF II Funding LP, Barings Global Special Situations Credit Fund 4 (Delaware) L.P., Tryon Street Funding III Ltd., Barings Global Investment Funds plc—European Loan Strategy Fund 1, Barings European Loan Strategy 1 Limited, BPC Funding LLC, and BPCC Holdings, Inc.

Filing Dates: The application was filed on July 20, 2023, and amended on October 25, 2023 and December 4, 2023.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on March 11, 2024, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: Jill Dinerman, Chief Legal Officer, Barings LLC at *jill.dinerman@barings.com*.

FOR FURTHER INFORMATION CONTACT: Matthew Cook, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated December 4, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: February 14, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03422 Filed 2–20–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99538; File No. SR–NYSEARCA–2024–13]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

February 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2024, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to introduce additional base credit adjustments for Lead Market Makers for Adding Displayed Liquidity in certain assigned Exchange Traded Products listed on the Exchange. The Exchange proposes to implement the proposed changes effective February 1, 2024.The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to introduce additional base credit adjustments for Lead Market Makers (''LMMs'') [3] for Adding Displayed Liquidity in certain assigned Exchange Traded Products (''ETPs'') listed on the Exchange. The Exchange proposes to implement the proposed changes effective February 1, 2024.

Current Market and Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, cash equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow. Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

The Exchange currently provides financial incentives to LMMs that are based on whether the LMM meets certain prescribed metrics. Specifically, the Exchange provides incremental credits to LMMs based on how many performance metrics an LMM meets in each NYSE Arca-listed security. The financial incentives are intended to encourage LMMs to maintain better market quality in securities in which they are registered as the LMM, including in lower volume and newly-listed securities.

The Exchange notes that its listing business operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or other factors at a particular venue to be insufficient or excessive. The proposed rule change reflects the current competitive pricing environment and is designed to incentivize market participants to participate as LMMs, and thereby, further enhance the market quality on all securities listed on the Exchange and encourage issuers to list new products on the Exchange.

Currently, under the Lead Market Maker Transaction Fees and Credits section of the Fee Schedule, pursuant to Section II titled ''LMM Base Fees and Credits per Share,'' the Exchange currently charges LMMs a base fee of $0.0029 per share for orders that remove liquidity and provides the following base credits:

- $0.0033 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month greater than 3,000,000 shares;
- $0.0040 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month of between 1,000,000 and 3,000,000 shares; and
- $0.0045 per share for orders that provide liquidity in securities for which the LMM is registered as the LMM and which have a CADV in the previous month of less than 1,000,000 shares.

Additionally, LMMs are provided a credit of $0.0030 per share for orders that provide undisplayed liquidity in Non-Routable Limit Orders in securities for which the LMM is registered as the LMM, and a credit of $0.0015 per share for Non-Displayed Limit Orders that provide liquidity in securities for which the LMM is registered as the LMM. The Exchange also does not charge LMMs a fee for orders executed in the Closing Auction.

Further, pursuant to Section III titled ''LMM Performance Metrics-based Incremental Base Credit Adjustments,'' the base credit earned by an LMM for Adding Displayed Liquidity (as provided in Section II) in an assigned ETP is adjusted based on the number of Performance Metrics [10] met by the LMM in the billing month for each assigned ETP, as follows:

Number of performance metrics met	Incremental base credit adjustment per ETP	Incremental base credit adjustment per leveraged ETP
4	($0.0001)	($0.0001)

[3] The term ''Lead Market Maker'' is defined in Rule 1.1(w) to mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Exchange is the primary market.

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fastanswers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, available at *https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is available at *https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] The Performance Metrics are enumerated on the Fee Schedule in Section III under LMM Transaction Fees and Credits.

Number of performance metrics met	Incremental base credit adjustment per ETP	Incremental base credit adjustment per leveraged ETP
3	(0.00005)	(0.00005)
2	0.0000	0.0000
1	0.0001	0.0000
0	0.0002	0.0000

The Exchange proposes to introduce four new categories of ETPs in which a LMM is registered as the LMM and provide an incremental credit to such LMMs based on the number of Performance Metrics met by the LMM in the billing month for each assigned ETP. The proposed new categories of ETPs are Less Active ETP,[11] Less Active Leveraged ETP,[12] New ETP [13] and New Leveraged ETP.

As proposed, LMMs that are registered as the LMM in a Less Active ETP would be able to earn an incremental credit of $0.0001 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of $0.0002 per share if the LMM meets all 4 Performance Metrics. There would be no adjustment to the base credit payable to the LMM if the LMM meets 2 Performance Metrics. LMMs that meet just 1 Performance Metric would have their base credit reduced by $0.0002 per share and LMMs that do not meet any Performance Metric would have their base credit reduced by $0.0004 per share.

Further, as proposed, LMMs that are registered as the LMM in a Less Active Leveraged ETP would be able to earn an incremental credit of $0.0001 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of $0.0002 per share if the LMM meets all 4 Performance Metrics. There would be no adjustment to the base credit payable to the LMM if the LMM meets 1 or 2 Performance Metrics or if the LMM does not meet any Performance Metric.

Additionally, as proposed, LMMs that are registered as the LMM in a New ETP would be able to earn an incremental credit of $0.0002 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of $0.0004 per share if the LMM meets all 4 Performance Metrics. LMMs that meet 2 Performance Metrics would have their base credit reduced by $0.0002 per share while LMMs that meet just 1 Performance Metric would have their base credit reduced by of $0.0004 per share. LMMs that do not meet any Performance Metric would have their base credit reduced by $0.0005 per share.

Lastly, as proposed, LMMs that are registered as the LMM in a New Leveraged ETP would be able to earn an incremental credit of $0.0002 per share if the LMM meets 3 Performance Metrics or earn an incremental credit of $0.0004 per share if the LMM meets all 4 Performance Metrics. There would be no adjustment to the base credit payable to the LMM if the LMM meets 1 or 2 Performance Metrics or if the LMM does not meet any Performance Metric.

The table below illustrates the proposed new incremental base credit adjustments discussed above.

Number of performance metrics met	Incremental base credit adjustment per less active ETP	Incremental base credit adjustment per less active leveraged ETP	Incremental base credit adjustment per new ETP	Incremental base credit adjustment per new leveraged ETP
4	($0.0002)	($0.0002)	($0.0004)	($0.0004)
3	(0.0001)	(0.0001)	(0.0002)	(0.0002)
2	0.0000	0.0000	0.0002	0.0000
1	0.0002	0.0000	0.0004	0.0000
0	0.0004	0.0000	0.0005	0.0000

The Exchange believes the proposed rule change would further enhance market quality on New ETPs and Less Active ETPs by incentivizing LMMs to meet the Performance Metrics across all ETPs, including Less Active ETPs (and Less Active Leveraged ETPs) and New ETPs (and New Leveraged ETPs), which would support the quality of price discovery in such securities on the Exchange and provide additional liquidity for incoming orders for the benefit of all market participants.

The Exchange believes the proposed rule change would also provide superior market quality and price discovery for Exchange-listed securities, specifically securities that are new or less active, through new financial incentives for achieving various performance metrics illustrated in Section III under the Lead Market Maker Transaction Fees and Credits section of the Fee Schedule, *i.e.,* LMM spread, LMM shares within 1% of NBBO and LMM quoting size requirements in Core Open Auction and Closing Auction, thus promoting liquidity in in such securities. The proposed rule change is intended to provide a more meaningful incentive to LMMs to provide liquidity in new and less active securities by providing financial incentives to the Exchange's members as long as they meet certain prescribed quoting criteria. The Exchange believes that a performance-driven incentive would encourage such members to provide meaningful quotes and size in new and less active securities listed and traded on the Exchange.

[11] A ''Less Active ETP'' is currently defined on the Fee Schedule in Section I under LMM Transaction Fees and Credits to mean ''ETPs that have a CADV in the prior calendar quarter that is the greater of either less than 100,000 shares or less than 0.013% of Consolidated Tape B ADV.''

[12] A ''Leveraged ETP'' is currently defined on the Fee Schedule in Section I under LMM Transaction Fees and Credits to mean ''an ETP that tracks an underlying index by a ratio other than on a one-to-one basis.''

[13] The Exchange proposes to adopt a definition of New ETP on the Fee Schedule in Section I under LMM Transaction Fees and Credits. As proposed, a ''New ETP would mean an ETP for the first 12 months of listing on NYSE Arca.'' Under the proposal, the Exchange would treat an ETP listed for the first 12 months as a New ETP even if it qualifies as a Less Active ETP.

Additionally, for newly-listed and less active ETPs, the cost to a firm for making a market, such as holding inventory in the security, is often not fully offset by the revenue through rebates provided by the Exchange. In some cases, firms may even operate at a loss in new and less active ETPs. The Exchange believes the proposed incentives, which would compensate members as long as they meet the prescribed performance metrics, is a more deterministic program from a member's perspective. The member would decide how many, if any, new and less active ETPs it wants to provide tight and deep markets in. The more securities the member provides heightened quoting in, the more the member could collect in the form of a rebate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

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.[14] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[15] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange notes that its ETP listing business operates in a highly-competitive market in which market participants, which includes LMMs, as well as ETP issuers, can opt not to participate on the Exchange or readily transfer their listings from the Exchange, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all ETPs listed on the Exchange.

The Proposed Change Is Reasonable

The Exchange believes that the proposal to adopt market quality-based incentives is a reasonable means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and the Exchange is not the only venue for listing ETPs. Competition in ETPs is further exacerbated by the fact that listings can and do transfer from one listing market to another. The proposed rule change is intended to help the Exchange compete as a listing venue for ETPs, specifically New and Less Active ETPs. Further, the Exchange notes that the proposed incentives are not transaction fees, nor are they fees paid by participants to access the Exchange. Rather, the proposed rebates are based on achieving certain objective market quality metrics. The Exchange believes providing rebates that are based on the quality of the market in individual ETPs that generally have low volume, or are newly-listed, will allow ETP Holders to anticipate their revenue and will incentivize them to provide tight and deep markets in those securities.

The Exchange cannot be certain that LMMs will choose to actively compete for the proposed incentives. For LMMs that do choose to actively participate by providing deep and tight markets in Less Active ETPs and New ETPs, the Exchange expects those members to receive payments comparable to what they currently receive, with the potential for additional upside when they meet the Performance Metrics in a greater number of securities. The Exchange believes the proposed incentives, which would compensate LMMs as long as they meet the prescribed Performance Metrics, is also reasonable because it is a more deterministic program from an ETP Holder's perspective.

The Exchange believes the proposed rule change is intended to encourage LMMs to promote price discovery and market quality in Less Active ETPs and New ETPs for the benefit of all market participants. The Exchange believes the proposed rule change is reasonable and appropriate in that the incentives are based on the amount of business transacted on the Exchange. The Exchange notes that the proposed incremental credits offered by the Exchange is similar to market quality incentive programs already in place on other markets, such as the Designated Liquidity Provider incentives on the Nasdaq Stock Market LLC (''Nasdaq''), which requires a member on that exchange to provide meaningful and consistent support to market quality and price discovery in low volume exchange-traded products by quoting at the National Best Bid and Offer and adding liquidity in a minimum number of such securities. In return, Nasdaq provides the member with an incremental rebate.[17]

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposed rule change is equitable because the proposal would provide discounts that are reasonably related to the value to the Exchange's market quality associated with higher volumes and improved quoting in Less Active ETPs and New ETPs. The Exchange further believes that the proposed incentives are equitable because they are consistent with the market quality and competitive benefits associated with the fee program and because the magnitude of the proposed incentives are not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders. The Exchange believes that it is equitable to offer increased rebates to LMMs as they are currently subject to obligations specified in Rule 7.23–E, which are not applicable to non-Market Maker ETP Holders, and LMMs would be subject to additional requirements and obligations (such as meeting Performance Metrics) that other market participants are not.

The Exchange believes that the proposal to offer incentives tied to market quality metrics represents an equitable allocation of payments because LMMs would be required to not only meet their Rule 7.23–E obligations, but also meet prescribed quoting requirements to qualify for the credits, as described above. Where an LMM does not meet at least 3 Performance Metrics, that member will not receive any additional financial benefit. Further, all LMMs on the Exchange are eligible to participate and could do so by simply registering in a Less Active ETP and/or a New ETP and meeting the prescribed market quality metrics. The Exchange has designed the proposed pricing incentives to be sustainable over the long-term and generally expects that credits paid to LMMs will be comparable to credits the Exchange

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Equity 7 Pricing Schedule, Section 114. Market Quality Incentive Programs, at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207#section_114_market_quality_incentive_programs.*

currently provides to its members and comparable to pricing incentives offered by the Exchange's competitors. As such, the Exchange believes that the proposal represents an equitable allocation of dues, fees and credits.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, LMMs are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to adopt incremental credits applicable to LMMs because LMMs are already subject to additional obligations, as specified in Rule 7.23–E, and the proposed additional credits would be provided on an equal basis to all similarly-situated participants provided each such participant meets the prescribed market quality metrics. If an LMM does not meet the required number of Performance Metrics, the LMM would not receive any incremental credit. Further, the Exchange believes the incremental credit would incentivize each of these participants to register in Less Active ETPs and New ETPs and send more orders to the Exchange to qualify for higher credits. The Exchange also believes that the proposed rule change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume.

The proposal to offer an additional credit tied to meeting certain market quality requirements neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because LMMs already have increased obligations vis-á-vis non-Market Maker ETP Holders, as specified in Rule 7.23–E, and the proposed requirements would be applied to all similarly-situated LMMs equally.

The Exchange believes that the proposed rule change is not unfairly discriminatory because all LMMs that choose to qualify for the incremental credits would be required to meet a minimum number of Performance Metrics in order to receive the credits. Where a participant does not achieve a certain number of Performance Metrics, it will not receive any incremental credits. Further, all LMMs on the Exchange are eligible to participate in the program and could do so by being registered as the LMM in Less Active ETPs and/or New ETPs and meeting a minimum number of Performance Metrics. The Exchange has designed the pricing incentives proposed herein to be sustainable over the long-term and generally expects that credits provided to LMMs would be comparable to credits the Exchange currently provides to its LMMs and comparable to pricing incentives offered by the Exchange's competitors. As such, the Exchange believes that the proposal is not unfairly discriminatory.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for LMMs. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [19]

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed Performance Metrics-based incremental credit applicable to LMMs in Less Active ETPs (including Less Active Leveraged ETPs) and New ETPs (including New Leveraged ETPs) in which they are registered as the LMM would continue to incentivize market participants to direct their displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages LMMs to send additional orders to the Exchange, thereby contributing to robust levels of liquidity. The proposed pricing incentive would be applicable to all similarly-situated market participants that have obligations under Rule 7.23–E to meet specified obligations, and, as such, the proposed changes would not impose a disparate burden on competition among market participants on the Exchange. Accordingly, the Exchange does not believe that the proposed change will impair the ability of LMMs to maintain their competitive standing. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. The Exchange believes that the proposed rule change could promote competition between the Exchange and other execution venues, including those that currently offer comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) [20] of the Act and paragraph (f) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[18] 15 U.S.C. 78f(b)(8).

[19] *See* Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

[20] 15 U.S.C. 78s(b)(3)(A).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2024–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2024–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2024–13, and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03453 Filed 2–20–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99537; File No. SR–Phlx–2024–04]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 3(a)

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 February 1, 2024, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its pricing schedule at Equity 7, Section 3(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to provide an additional calculation for purposes of determining whether a member qualifies for credits set forth in Equity 7, Section 3(a) that pertain to providing liquidity.

Presently, the Exchange provides its members with various credits for executing orders that add liquidity to the Exchange and charges them various fees for executing orders, that remove liquidity from the Exchange, as set forth in Equity 7, Section 3(a) of the Exchange's Rules. The charges and credits in Equity 7, Section 3(a) apply to the use of the order execution and routing services of the Nasdaq PSX System by members for all securities priced at $1 or more that it trades. Members may qualify for tiers of discounted fees and premium credits based, in part, upon their volume on the Exchange as a percentage of total ''Consolidated Volume.''

Pursuant to Equity 7, Section 3(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the following are excluded from both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (*i.e.,* on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (*i.e.,* on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq-100 and Nasdaq Biotechnology Indexes.

Generally, the ratio of consolidated volumes in securities priced at or above $1 (''dollar plus volume'') relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that ''Consolidated Volume'' has been a reasonable baseline for determining tiered incentives for members that execute dollar plus volume on the Exchange. However, there have been a few months where

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

volumes in securities priced below a dollar (''sub-dollar volume'') have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on members' qualifications for pricing tiers/incentives because such qualifications depend members upon achieving threshold percentages of volumes as a percentage of Consolidated Volume, and an extraordinary rise in sub-dollar volume stands to elevate Consolidated Volume. As a result, members may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for its members that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the Exchange wishes to amend its Rules to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of incentives for their dollar plus stock executions.

Accordingly, the Exchange proposes to amend its pricing schedule at Equity 7, Section 3(a) to state that, for purposes of calculating a member's qualifications for credits that pertain to providing liquidity set forth in Section 3(a), the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume as presently set forth in Equity 7, Section 3(a) (*i.e.,* inclusive of volume that consists of executions in securities priced less than $1). Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, while also increasing the distinct qualifying volume percentage thresholds, as set forth in Section 3(a), by 10%. Thereafter, the Exchange proposes to assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those to the member.

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of incentives for their dollar plus stock executions, the Exchange proposes to include certain limits on the proposal to efficiently allocate the Exchange's limited resources for incentives. Specifically, as noted above, the Exchange proposes to limit the application of the proposed calculation excluding sub-dollar volumes to those incentives in Section 3(a) that pertain to providing liquidity. In addition, as noted above, the Exchange proposes to increase the distinct qualifying volume percentage thresholds set forth in Section 3(a) by 10% for purposes of the proposed calculation excluding sub-dollar volumes.[3] The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to members in months with extraordinary spikes in sub-dollar volumes. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposal is reasonable and equitable because, in its absence, members may experience material adverse impacts on their ability to qualify for certain incentives during a month with an anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize members that execute significant volumes on the Exchange due to anomalous and extraneous trading activities of a small number of firms in sub-dollar securities. The proposed rule would seek to provide a means for members that provide liquidity to avoid

[3] For example, the Exchange provides a credit of $0.0033 per share executed to members providing liquidity for orders entered by a member that provide 0.15% or more of total Consolidated Volume during the month. *See* Equity 7, Section 3(a). Under the proposal, in addition to calculating the member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, the distinct qualifying volume percentage threshold would be increased by 10%. Therefore, for purposes of this example, in order to qualify for the credit using volumes excluding sub-dollar activity, the member would need to provide 0.165% or more of total Consolidated Volume during the month (*i.e.,* 0.15% + (10%)(0.15%)).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

such a penalty by determining whether calculating member volume and total Consolidated Volume to include or exclude sub-dollar volume [8] would result in Exchange members qualifying for the most advantageous credits, and then applying the calculations that would result in the incentives for providing liquidity that are most advantageous to each member. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to incentives that pertain to providing liquidity and increasing the distinct qualifying volume percentage thresholds by 10% when using the proposed calculation excluding sub-dollar volumes because the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular member and the Exchange will apply the proposed calculation to all similarly situated members.

Those participants that are dissatisfied with the changes to the Exchange's schedule of credits are free to shift their order flow to competing venues that provide more favorable fees or generous incentives.

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 not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposal to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular member. The Exchange also intends for its proposal to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even the largest U.S. equities exchange by volume has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 40% of industry volume.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[8] As noted above, in considering whether a member meets qualifying credit criteria using the proposed calculation excluding sub-dollar volumes, the distinct qualifying volume percentage thresholds would be increased by 10%.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[9]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2024–04 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–Phlx–2024–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE,

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–Phlx–2024–04, and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Dated: February 14, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03450 Filed 2–20–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99535; File No. SR–NASDAQ–2024–005]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

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 February 1, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's pricing schedule at Equity 7, Section 118, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 purpose of the proposed rule change is to (i) provide an additional calculation for purposes of determining whether a member qualifies for credits set forth in Equity 7, Section 118(a) that pertain to providing liquidity; and (ii) amend certain fees assessed for transactions in the Nasdaq Closing Cross and Nasdaq Opening Cross under Equity 7, Section 118(d)(1) and Equity 7, Section 118(e)(1) respectively.

Proposed Changes to Equity 7, Section 118(a)

Presently, the Exchange provides its members with various credits for executing orders that add liquidity to the Exchange and charges them various fees for executing orders that remove liquidity from the Exchange, as set forth in Equity 7, Section 118(a) of the Exchange's Rules. The charges and credits in Equity 7, Section 118(a) apply to the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades. Members may qualify for tiers of discounted fees and premium credits based, in part, upon the volume of their activities on the Exchange as a percentage of total ''Consolidated Volume.''

Pursuant to Equity 7, Section 118(a), the term ''Consolidated Volume'' means the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, the following are excluded from both total Consolidated Volume and the member's trading activity: (1) the date of the annual reconstitution of the Russell Investments Indexes; (2) the dates on which stock options, stock index options, and stock index futures expire (*i.e.,* the third Friday of March, June, September, and December); (3) the dates of the rebalance of the MSCI Equities Indexes (*i.e.,* on a quarterly basis); (4) the dates of the rebalance of the S&P 400, S&P 500, and S&P 600 Indexes (*i.e.,* on a quarterly basis); and (5) the date of the annual reconstitution of the Nasdaq–100 and Nasdaq Biotechnology Indexes. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the charges and credits applicable to such member's activity, all M–ELO Orders that a member executes on Nasdaq during the month count as liquidity-adding activity on Nasdaq. In addition, volume from ETC Eligible LOC Orders and ETC Orders is not utilized to determine eligibility for any pricing tiers set forth in Section 118(a) to the extent that such eligibility is based upon MOC or LOC volume.

Generally, the ratio of consolidated volumes in securities priced at or above $1 (''dollar plus volume'') relative to consolidated volumes inclusive of securities priced below a dollar is usually stable from month to month, such that ''Consolidated Volume'' has been a reasonable baseline for determining tiered incentives for members that execute dollar plus volume on the Exchange. However, there have been a few months where volumes in securities priced below a dollar (''sub-dollar volume'') have been elevated, thereby impacting the ratio mentioned above.

Anomalous rises in sub-dollar volume stand to have a material adverse impact on members' qualifications for pricing tiers/incentives because such qualifications depend members upon achieving threshold percentages of volumes as a percentage of Consolidated Volume, and an extraordinary rise in sub-dollar volume stands to elevate Consolidated Volume. As a result, members may find it more difficult, if not practically impossible, to qualify for or to continue to qualify for their existing incentives during months where there are such rises in sub-dollar volumes, even if their dollar plus volumes have not diminished relative to prior months.

The Exchange believes that it would be unfair for its members that execute significant dollar plus volumes on the Exchange to fail to achieve or to lose their existing incentives for such volumes due to anomalous behavior that is extraneous to them. Therefore, the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange wishes to amend its Rules to help avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of incentives for their dollar plus stock executions.

Accordingly, the Exchange proposes to amend its pricing schedule at Equity 7, Section 118(a) to state that, for purposes of calculating a member's qualifications for credits that pertain to providing liquidity set forth in Section 118(a), the Exchange will calculate a member's volume and total Consolidated Volume twice. First, the Exchange will calculate a member's volume and total Consolidated Volume as presently set forth in Equity 7, Section 118(a) (*i.e.,* inclusive of volume that consists of executions in securities priced less than $1). Second, the Exchange will calculate a member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, while also increasing the distinct qualifying volume percentage thresholds, as set forth in Section 118(a), by 10%. Thereafter, the Exchange proposes to assess which of these two calculations would qualify the member for the most advantageous credits for the month and then it will apply those to the member.

Although the Exchange wishes to avoid extraordinary spikes in sub-dollar volumes from adversely affecting a member's qualification of incentives for their dollar plus stock executions, the Exchange proposes to include certain limits on the proposal to efficiently allocate the Exchange's limited resources for incentives. Specifically, as noted above, the Exchange proposes to limit the application of the proposed calculation excluding sub-dollar volumes to those incentives in Section 118(a) that pertain to providing liquidity. In addition, as noted above, the Exchange proposes to increase the distinct qualifying volume percentage thresholds set forth in Section 118(a) by 10% for purposes of the proposed calculation excluding sub-dollar volumes.[3] The Exchange wishes to impose such limitations in order to limit the cost impact on the Exchange, while still providing some relief to members in months with extraordinary spikes in sub-dollar volumes. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives.

Proposed Changes to Equity 7, Section 118(d)(1) and (e)(1)

Equity 7, Section 118(d)(2) provides pricing tiers applicable to Market-on-Close and Limit-on-Close orders executed in the Nasdaq Closing Cross and ETC Eligible Limit-on-Close and ETC Orders executed in the Extended Trading Close, ranging from $0.0008 to $0.0016 per share executed. Equity 7, Section 118(d)(1) provides that the fee for all other quotes and orders executed in the Nasdaq Closing Cross is $0.00085 per share executed. The Exchange proposes to increase the fee assessed members for all quotes and orders executed in the Nasdaq Closing Cross (other than Market-on-Close and Limit-on-Close orders executed in the Nasdaq Closing Cross and ETC Eligible Limit-on-Close and ETC Orders executed in the Extended Trading Close) from $0.00085 to $0.0011 per share executed. Increasing this fee to $0.0011 per share executed would bring the fee more in line with other pricing in the Nasdaq Closing Cross, which ranges from $0.0008 to $0.0016 per share executed.

Equity 7, Section 118(e)(1) provides that Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders executed in the Nasdaq Opening Cross are assessed a fee of $0.0015 per share executed. Equity 7, Section 118(e)(1) provides that the fee for all other quotes and orders executed in the Nasdaq Opening Cross is $0.00085 per share executed. The Exchange proposes to increase the fee assessed members for all quotes and orders (other than Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders) executed in the Nasdaq Opening Cross from $0.00085 to $0.0011 per share executed. Increasing this fee to $0.0011 per share executed would bring the fee more in line with other pricing in the Nasdaq Opening Cross, which is set at $0.0015 per share executed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[4] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its schedule of credits and fees are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [6]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [7]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for equity security transaction services. The

[3] For example, the Exchange provides a credit of $0.00305 per share executed for displayed orders (other than Supplemental Orders or Designated Retail Orders) to a member with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.50% of Consolidated Volume. *See* Equity 7, Section 118(a). Under the proposal, in addition to calculating the member's volume and total Consolidated Volume exclusive of volume that consists of executions in securities priced less than $1, the distinct qualifying volume percentage threshold would be increased by 10%. Therefore, for purposes of this example, in order to qualify for the credit using volumes excluding sub-dollar activity, the member would need to demonstrate shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 1.65% of Consolidated Volume (*i.e.,* 1.5% + (10%)(1.5%)).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

Exchange is only one of several equity venues to which market participants may direct their order flow. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules.

The Exchange believes that the proposal to amend Equity 7, Section 118(a) is reasonable and equitable because, in its absence, members may experience material adverse impacts on their ability to qualify for certain incentives during a month with an anomalous rise in sub-dollar volumes. The Exchange does not wish to penalize members that execute significant volumes on the Exchange due to anomalous and extraneous trading activities of a small number of firms in sub-dollar securities. The proposed rule would seek to provide a means for members that provide liquidity to avoid such a penalty by determining whether calculating member volume and total Consolidated Volume to include or exclude sub-dollar volume [8] would result in Exchange members qualifying for the most advantageous credits, and then applying the calculations that would result in the incentives for providing liquidity that are most advantageous to each member. The Exchange believes it is reasonable to limit the proposal by applying the proposed calculation to incentives that pertain to providing liquidity and increasing the distinct qualifying volume percentage thresholds by 10% when using the proposed calculation excluding sub-dollar volumes because the Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. The Exchange believes that the proposed rule change is an equitable allocation and is not unfairly discriminatory because the Exchange does not intend for the proposal to advantage any particular member and the Exchange will apply the proposed calculation to all similarly situated members.

The Exchange also believes it is reasonable, equitable, and not unfairly discriminatory for the Exchange to increase certain fees assessed for transactions in the Nasdaq Closing Cross and Nasdaq Opening Cross under Equity 7, Section 118(d)(1) and Equity 7, Section 118(e)(1) respectively, as described above. The Exchange has limited resources to devote to incentive programs, and it is appropriate for the Exchange to reallocate these incentives periodically in a manner that best achieves the Exchange's overall mix of objectives. The proposed increase in fees would better align the fees with other pricing in the Opening and Closing Crosses. Specifically, the Exchange's proposal to increase the fee assessed members for all quotes and orders (other than Market-on-Close and Limit-on-Close orders executed in the Nasdaq Closing Cross and ETC Eligible Limit-on-Close and ETC Orders executed in the Extended Trading Close) executed in the Nasdaq Closing Cross to $0.0011 per share executed is reasonable because the proposed fee is comparable to other pricing in the Nasdaq Closing Cross, which ranges from $0.0008 to $0.0016 per share executed. Similarly, the Exchange's proposal to increase the fee assessed members for all quotes and orders (other than Market-on-Open, Limit-on-Open, Good-till-Cancelled, and Immediate-or-Cancel orders) executed in the Nasdaq Opening Cross to $0.0011 per share executed is reasonable because the proposed fee is comparable to other pricing in the Nasdaq Opening Cross, which is $0.0015 per share executed. The Exchange believes that proposal is an equitable allocation and is not unfairly discriminatory because the Exchange will apply the same fees to all similarly situated members.

Those participants that are dissatisfied with the changes to the Exchange's schedule of credits and fees are free to shift their order flow to competing venues that provide more favorable fees or generous incentives.

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 not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participant at a competitive disadvantage.

The Exchange intends for its proposed changes to its credits and fees to reallocate its limited resources more efficiently and to align them with the Exchange's overall mix of objectives. The Exchange intends for its proposed change in Equity 7, Section 118(a) to help avoid pricing disadvantages due to anomalous spikes in sub-dollar volumes and is not intended to provide a competitive advantage to any particular member. The Exchange intends for its proposed fee changes in Equity 7, Section 118(d)(1) and (e)(1) to bring such fees more in line with other fees for orders executed in the Nasdaq Opening and Closing Crosses, as described above. The Exchange notes that its members are free to trade on other venues to the extent they believe that the proposal is not attractive. As one can observe by looking at any market share chart, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes.

Intermarket Competition

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its credits and fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own credits and fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which credit or fee changes in this market may impose any burden on competition is extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 40% of industry volume.

[8] As noted above, in considering whether a member meets qualifying credit criteria using the proposed calculation excluding sub-dollar volumes, the distinct qualifying volume percentage thresholds would be increased by 10%.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[9]

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–005 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–NASDAQ–2024–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–005, and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Dated: February 14, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03451 Filed 2–20–24; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99540; File No. SR–CboeEDGA–2024–005]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 14, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2024, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 its Fee Schedule applicable to its equities trading platform (''EDGA Equities'') by: (1) modifying the rate associated with fee code DQ; and (2) modifying certain Add/Remove Volume Tiers. The Exchange proposes to implement these changes effective February 1, 2024.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory

[3] The Exchange initially filed the proposed fee change on February 1, 2024 (SR–CboeEDGA–2024–004). On February 7, 2024, the Exchange withdrew that filing and submitted this proposal.

responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 13% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Taker-Maker'' model whereby it pays credits to members that remove liquidity and assesses fees to those that add liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that remove and provide liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that remove liquidity and assesses a fee of $0.0030 per share for orders that add liquidity.[5] For orders in securities priced below $1.00, the Exchange does not assess any fees or provide any rebates for orders that add or remove liquidity.[6] Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Fee Code DQ

The Exchange currently offers fee code DQ, which is appended to Midpoint Discretionary Orders (''MDOs'')[7] using the Quote Depletion Protection (''QDP'')[8] order instruction which add liquidity to the EDGA Book.[9] QDP is designed to provide enhanced protections to MDOs by tracking significant executions that constitute the best bid or offer on the EDGA Book and enabling Users to avoid potentially unfavorable executions by preventing MDOs entered with the optional QDP instruction from exercising discretion to trade at more aggressive prices when QDP has been triggered.[10] Currently, MDOs entered with a QDP instruction and which add liquidity to the EDGA Book are appended fee code DQ and assessed a fee of $0.0015 per share in securities at or above $1.00 and 0.30% of dollar value for securities priced below $1.00. The Exchange now proposes to amend the fee associated with fee code DQ from $0.0015 per share in securities at or above to $1.00 to $0.0018 per share. There is no proposed change in the fee assessed to securities priced below $1.00. The purpose of increasing the fee associated with fee code DQ is for business and competitive reasons, as the Exchange believes that increasing such fee as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity.

Add/Remove Volume Tiers

Under footnote 7 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers three Remove Volume Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes N,[11] W,[12] 6[13] and BB[14] where a Member reaches certain add volume-based criteria. The Exchange now proposes to modify the criteria associated with Remove Volume Tier 1 and Remove Volume Tier 2. The current criteria for Remove Volume Tiers 1–2 is as follows:

• Remove Volume Tier 1 provides an enhanced rebate of $0.0018 per share for securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes N, W, 6, or BB) where a Member adds or removes an ADV[15] ≥0.02% of the TCV.[16]

• Remove Volume Tier 2 provides an enhanced rebate of $0.0020 per share for securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes N, W, 6, or BB) where a Member adds or removes an ADV ≥0.05% of the TCV.

The proposed criteria for Remove Volume Tiers 1–2 is as follows:

• Remove Volume Tier 1 provides an enhanced rebate of $0.0018 per share for securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes N, W, 6, or BB) where a Member adds or removes an ADV ≥0.05% of the TCV.

• Remove Volume Tier 2 provides an enhanced rebate of $0.0020 per share for securities priced at or above $1.00 to qualifying orders (*i.e.,* orders yielding fee codes N, W, 6, or BB) where a Member adds or removes an ADV ≥0.10% of the TCV.

The Exchange believes that the proposed modifications to Remove Volume Tiers 1–2 will incentivize Members to add volume to and remove volume from the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange. While the proposed criteria is slightly more difficult to achieve than the current criteria, the Exchange believes that the criteria continues to be commensurate with the enhanced rebate offered by the Exchange for Members who satisfy the proposed criteria of Remove Volume Tiers 1–2 and remains in-line with the criteria offered under Remove Volume Tier 3.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market

[4] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 26, 2024), available at *https://www.cboe.com/us/equities/market_statistics/*.

[5] *See* EDGA Equities Fee Schedule, Standard Rates.

[6] *Id.*

[7] *See* Exchange Rule 11.8(e).

[8] *See* Exchange Rule 11.8(e)(10).

[9] *See* Exchange Rule 1.5(d).

[10] *See* Securities Exchange Act Release No. 89016 (June 4, 2020), 85 FR 35488 (June 10, 2020) (SR–CboeEDGA–2020–005) (''Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Rule Relating to MidPoint Discretionary Orders to Allow Optional Offset or Quote Depletion Protection Instructions'').

[11] Fee code N is appended to orders that remove liquidity from EDGA in Tape C securities.

[12] Fee code W is appended to orders that remove liquidity from EDGA in Tape A securities.

[13] Fee code 6 is appended to orders that remove liquidity from EDGA in the pre and post market for securities listed on all tapes.

[14] Fee code BB is appended to orders that remove liquidity from EDGA in Tape B securities.

[15] ''ADV'' means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[16] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4) [20] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify Remove Volume Tiers 1–2 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[21] including the Exchange,[22] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify Remove Volume Tiers 1–2 is reasonable because the tiers will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes that modified Remove Volume Tiers 1 and 2 will provide a reasonable means to encourage adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

In addition, the Exchange believes that its proposal to increase the fee associated with fee code DQ is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which assesses various fees for liquidity-adding orders and provides various rebates for liquidity-removing orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The proposed higher fee ($0.0018 per share in securities priced at or above $1.00) is reasonable and appropriate because it represents only a modest increase from the current fee ($0.0015 per share) and remains competitive with, and generally lower than, other fees assessed for liquidity-adding orders on the Exchange. The Exchange further believes that the proposed increase to the fee associated with fee code DQ is not unfairly discriminatory because it applies to all Members equally, in that all Members will be assessed the higher fee upon appending an order with fee code DQ.

The Exchange believes the proposed modified Remove Volume Tiers 1–2 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the new and revised tiers and have the opportunity to meet the tiers' criteria and receive the corresponding reduced fee or enhanced rebate if such criteria are met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed rule changes would definitely result in any Members qualifying for the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least six Members will be able to satisfy proposed Remove Volume Tier 1, and at least four Members will be able to satisfy proposed Remove Volume Tier 2. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes to Remove Volume Tiers 1 and 2 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria are met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of EDGA by adopting a new pricing incentive and amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

[19] *Id.*

[20] 15 U.S.C. 78f(b)(4)

[21] *See e.g.,* BYX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[22] *See e.g.,* EDGA Equities Fee Schedule, Fee Codes 3 and 6.

Further, the Exchange believes the proposed increased fee associated with fee code DQ does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed fees associated with fee code DQ would apply to all Members equally in that all Members would be subject to the same fee for the execution of an MDO with a QDP instruction that adds liquidity to the Exchange. Both MDO and the associated QDP instruction are available to all Members on an equal and non-discriminatory basis. As a result, any Member can decide to use (or not use) the QDP instruction based on the benefits provided by that instruction in potentially avoiding unfavorable executions, and the associated charge that the Exchange proposes to amend.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 13% of the market share.[23] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [24] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .''.[25] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [26] and paragraph (f) of Rule 19b–4 [27] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2024–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeEDGA–2024–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2024–005 and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03454 Filed 2–20–24; 8:45 am]

BILLING CODE 8011–01–P

[23] *Supra* note 3.

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[25] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99533; File No. SR–NYSE–2024–06]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete Current Rule 7.39

February 14, 2024.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 6, 2024, New York Stock Exchange LLC (''NYSE'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete current Rule 7.39 governing Off-Hours Trading. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes delete current Rule 7.39 governing Off-Hours Trading.

The Exchange adopted Rule 7.39 in 2022 in order to continue offering an off-hours trading facility known as Crossing Session II (''CS II'') pursuant to an updated and streamlined rule that reflected Pillar terminology.[4] Rule 7.39 permits NYSE member organizations to enter aggregate-price coupled orders for securities, defined as orders to buy or sell a group of securities that have a total market value of $1 million or more and that are comprised of 15 or more securities listed or traded on the NYSE, which includes UTP securities.

In 2023, the Exchange determined to cease offering an after-hours crossing session and decommission the Off-Hours Trading Facility, effective January 31, 2024. The Exchange announced the implementation date by Trader Update.[5] In connection with the effective decommissioning of the Off-Hours Trading Facility, the Exchange proposes to delete Rule 7.39 in its entirety.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5),[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Specifically, the Exchange believes that deleting Rule 7.39 following the decommissioning of the Off-Hours Trading Facility would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system by deleting obsolete rules, thereby adding clarity, transparency and consistency to the Exchange's rulebook. By making the proposed change, the Exchange would ensure that its rules are consistent with the existing functionality offered by the Exchange, thereby promoting clarity and transparency in its rules. The Exchange believes that the change would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from the increased clarity and transparency that the change would introduce, thereby reducing potential confusion.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, because it would remove any potential confusion among market participants that may result if the Exchange retained rules governing its Off-Hours Trading Facility after the Exchange decommissioned it.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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. Specifically, the Exchange believes that decommissioning its Off-Hours Trading Facility would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange further believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate because the proposed change is designed to promote clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii)

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 95498 (August 12, 2022), 87 FR 50906, 50906–07 (August 18, 2022) (SR–NYSE–2022–37) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule 7.39 and Delete Current Rules 900–907). Rules 900 through 907 governing off-hours trading activity on the Exchange were deleted when Rule 7.39 was adopted. *See id.*

[5] On June 30, 2023, the Exchange announced that it would cease offering CS II and decommission the Off-Hours Trading Facility on December 29, 2023. On August 3, 2023, the Exchange announced that it would cease offering CS II and decommission the Off-Hours Trading Facility on January 31, 2024.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[13] the Commission may 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 so that the proposal may become operative immediately upon filing.

The Exchange has represented that it no longer offers an after-hours crossing session and has decommissioned its off-hours trading facility. The Exchange asserts that permitting the rule filing to become operative immediately would thereby alleviate potential investor or market participant confusion that could result from the Exchange retaining obsolete rules on its rulebook relating to functionality the Exchange no longer offers.

The Commission agrees that retaining the rule text in the Exchange's rulebook may create investor confusion about the availability of off-hours trading on the Exchange. Accordingly, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of such 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) [15] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2024–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSE–2024–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSE–2024–06 and should be submitted on or before March 13, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03449 Filed 2–20–24; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) 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.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12), (59).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[FAA–2024–0396]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Reduced Vertical Separation Minimum

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Aircraft Operators seeking specific operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations must submit application to the FAA. Specific approval is required when aircraft operators intend to operate outside the United States (U.S.) or their aircraft are not equipped with Automatic Dependent Surveillance—Broadcast (ADS–B) Out.

DATES: Written comments should be submitted by April 22, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Christopher A. Mitchell, Federal Aviation Administration (FAA), Flight Technologies and Procedures Division, 6500 S McArthur Blvd., Building 26, Suite 217, Oklahoma City, OK 73169.

By fax: 202–267–5230.

FOR FURTHER INFORMATION CONTACT: Christopher A. Mitchell by email at: *Christopher.a.mitchell@faa.gov;* phone: 954–758–1564.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0679.

Title: Reduced Vertical Separation Minimum.

Form Numbers: N/A.

Type of Review: Renewal.

Background: The authority to collect data from aircraft operators seeking operational approval to conduct Reduced Vertical Separation Minimum (RVSM) operations is contained in Part 91, Section 91.180, as established by a final rule published in the **Federal Register** on October 27, 2003 (68 FR 61304) and in Part 91, Section 91.706, as established by a final rule published April 9, 1997 (62 FR 17487, Apr. 9, 1997). Aircraft operators seeking specific operational approval to conduct RVSM operations outside the U.S. must submit their application to the responsible Flight Standards office. The responsible Flight Standards office registers RVSM approved airframes in the FAA RVSM Approvals Database to track the approval status for operator airframes. Application information includes evidence of aircraft equipment and RVSM qualification information along with operational training and program elements.

Respondents: Operators are required to submit application for RVSM specific approval if they desire to operate in RVSM airspace outside the U.S. or if they do not meet the provisions of Title 14 of the Code of Federal Regulations (14 CFR), Part 91, Appendix G, Section 9—Aircraft Equipped with Automatic Dependent Surveillance—Broadcast Out. The FAA estimates processing 900 initial applications annually and 2,136 annual updates to existing approvals.

Frequency: An Operator must make application for initial specific approval to operate in RVSM airspace, or whenever requesting an update to an existing approval.

Estimated Average Burden per Response: 4.00 hours for updates to existing applications and 6.8 hours for application of initial approvals.

Estimated Total Annual Burden: 14,664 hours [(2,136 × 4.00) + (900 × 6.8)].

Issued in District of Columbia.

Christopher A Mitchell,

Aviation Safety Inspector, Operations, FAA, Flight Technologies & Procedures Division.

[FR Doc. 2024–03469 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0122; FMCSA–2013–0123; FMCSA–2015–0326; FMCSA–2015–0329; FMCSA–2016–0003; FMCSA–2017–0058; FMCSA–2019–0111; FMCSA–2020–0024; FMCSA–2021–0015]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 16 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov*. Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2013–0122, FMCSA–2013–0123, FMCSA–2015–0326, FMCSA–2015–0329, FMCSA–2016–0003, FMCSA–2017–0058, FMCSA–2019–0111, FMCSA–2020–0024, or FMCSA–2021–0015) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 3, 2024, FMCSA published a notice announcing its decision to renew exemptions for 16 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 433). The public comment period ended on February 2, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 16 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of January 6, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 434):

Steven Andrews (FL)
John Brown (MN)
Jerry Doose (MN)
Donald Howton (AL)

The drivers were included in docket numbers FMCSA–2015–0326, FMCSA–2015–0329, or FMCSA–2017–0058. Their exemptions were applicable as of January 6, 2024 and will expire on January 6, 2026.

As of January 8, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 434):

Matthew Burgoyne (MN); Joshua Gelona (OK); Eduardo Pedregal (TX).

The drivers were included in docket number FMCSA–2016–0003. Their exemptions were applicable as of January 8, 2024 and will expire on January 8, 2026.

As of January 14, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (89 FR 435):

Geoffrey Canoyer (MN)
Chase Cooke (VA)
Douglas Gray (OR)
Sue Gregory (UT)

The drivers were included in docket numbers FMCSA–2013–0122,

FMCSA–2013–0123, or FMCSA–2017–0058. Their exemptions were applicable as of January 14, 2024 and will expire on January 14, 2026.

As of January 21, 2024, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following five individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Mario Alvarado (CA)
Kevin Clickner (MI)
Herman Fleck (PA)
Matthew Honkanen (MN)
Michael Steffen (IN)

The drivers were included in docket numbers FMCSA–2017–0058, FMCSA–2019–0111, FMCSA–2020–0024, or FMCSA–2021–0015. Their exemptions were applicable as of January 21, 2024 and will expire on January 21, 2026.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–03435 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0090]

Parts and Accessories Necessary for Safe Operation; Exemption Renewal for Automobile Carriers Conference and Auto Haulers Association of America

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of provisional renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to provisionally renew an exemption requested jointly by the Automobile Carriers Conference (ACC) of the American Trucking Associations and the Auto Haulers Association of America (AHAA) to relieve motor carriers operating stinger-steered automobile transporter equipment from the requirement to place warning flags on projecting loads of new and used motor vehicles. The Federal Motor Carrier Safety Regulations (FMCSRs) require any commercial motor vehicle (CMV) transporting a load which extends more than 4 feet beyond the rear of the vehicle be marked with a single red or orange fluorescent warning flag at the extreme rear if the projecting load is 2 feet wide or less and two warning flags if the projecting load is wider than 2 feet.[1] The exemption is renewed for 5 years, unless revoked earlier.

DATES: This renewed exemption is effective February 15, 2024, through August 9, 2024, unless revoked earlier. Comments must be received on or before March 22, 2024.

ADDRESSES: You may submit comments identified by docket number FMCSA–2018–0090 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2018-0090/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: David Sutula, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–9209; *MCPSV@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2018–0090), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency

[1] In their renewal request, the applicants additionally asked for relief from 49 CFR 393.11, which requires ''lamps or reflective devices'' to be affixed to the rear of a load that extends more than 4 feet beyond a trailer. Because this is a new request for exemption, FMCSA is not considering the request with the renewal of the current exemption. FMCSA will process that request separately.

can contact you if it has questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2018-0090/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the notice. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or via email at *brian.g.dahlin@dot.gov.* At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this notice.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2018-0090/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public to better inform its exemption process. DOT posts these comments, including any personal information the commenter provides, to *www.regulations.gov* as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edit and are searchable by the name of the submitter.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b)(2) and 49 CFR 381.300(b) to renew an exemption from the FMCSRs for subsequent 5-year periods if it finds that such exemption would likely maintain a level of safety that is equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). ACC and AHAA have requested a 5-year extension of the current exemption.

III. Background

Current Regulatory Requirements

FMCSA requires in § 393.87 any CMV transporting a load which extends beyond the sides by more than 4 inches, or more than 4 feet beyond the rear, to have the extremities of the load marked with red or orange fluorescent warning flags. Each warning flag must be at least 18 inches square. There must be a single flag at the extreme rear if the projecting load is 2 feet wide or less, and two warning flags are required if the projecting load is wider than 2 feet. The flags must be located to indicate the maximum width of loads which extend beyond the sides and/or rear of the vehicle.

Original Exemption

In its original exemption application, ACC requested an exemption from § 393.87 for motor carriers operating stinger-steered automobile transporter equipment. A stinger-steered transporter has a fifth wheel hitch located on a drop frame behind and below the rear-most axle of the power unit. It was noted that stinger-steered automobile transporters have been allowed to have a rear vehicular overhang of at least 6 feet since December 2015 (49 U.S.C. 31111(b)(1)(G)). Previously, a minimum 4-foot rear overhang was allowed for all automobile transporters.

ACC contended that adhering to flag requirements while transporting new motor vehicles posed a challenge to the vehicle industry. Vehicle manufacturers prohibit affixing flags or any items to their vehicles due to the potential for scratches and damage. Auto transporters tried to comply with the intent of § 393.87 by attaching flags to the rear of their trailers. However, this effort did not adhere to the letter of the regulation and resulted in carriers receiving numerous citations for being in violation of the flag requirements.

ACC emphasized that motor vehicles are the only commodity to be transported that must adhere to the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''*Lamps, reflective devices, and associated equipment,*'' which has mandated since 1968 the use of side-facing reflex reflectors,[2] amber reflectors at the front, and red reflectors at the rear of vehicles. ACC believed that these reflective devices, combined with the required lighting and conspicuity treatments on the trailers, adequately fulfill the intention of § 393.87 by notifying other motorists when a load extends more than 4 feet beyond the rear of the trailer. Additionally, ACC noted that FMVSS No. 108 imposes specific performance criteria for these required reflectors, while no such performance requirements exist for the flags mandated by § 393.87.

ACC pointed out that the population of automobile transporter vehicles is relatively small, comprising around 16,000 units, with stinger-steered vehicles being a subset of that population. ACC cited statistics showing that, following the enactment of the FAST Act which allowed 6 feet of overhang on the rear of the transporter, the frequency of rear-end collisions with auto transporters has been minuscule, with a rate of less than 0.05 percent.

On February 15, 2019, following notice and consideration of the comments received, FMCSA determined that an exemption for motor carriers

[2] FMVSS No. 108 defines reflex reflectors as devices used on vehicles to give an indication to approaching drivers using reflected light from the lamps of the approaching vehicle (49 CFR 571.108).

operating stinger-steered automobile transporters from the requirement to place warning flags on projecting loads of motor vehicles would likely maintain a level of safety that is equivalent to or greater than the level of safety that would be obtained by complying with § 393.87 and granted ACC's exemption request for a 5-year period (84 FR 4602). In its decision, FMCSA stated that the transport of automobiles that are permitted, by statute, to extend up to 6 feet beyond the rearmost portion of a stinger-steered auto transporter is a unique situation as compared to the transportation of other items because automobiles extend across virtually the entire width of the transporter and are easily identifiable as automobiles to the motoring public. FMCSA stated further that this is especially true if the rearmost automobile being transported faces the front of the auto transporter, as the rear of the automobile is required to be equipped with two reflex reflectors located as far apart as practicable, which meet the photometric requirements specified in FMVSS No. 108. To the contrary, § 393.87 requires extending loads be marked with red or orange fluorescent warning flags, but does not impose any specific photometric requirements for these flags, *i.e.,* required level of visibility from a certain distance, etc. While FMVSS No. 108 does not require the front of automobiles to be equipped with reflex reflectors, FMCSA noted that even if the rearmost automobile being transported is facing the rear of the auto transporter, oncoming motorists will easily identify the extending load as an automobile that extends across the full width of the auto transporter.

Application for Renewal of Exemption

In the renewal application, ACC and AHAA stated that since the granting of the exemption in 2019, they are unaware of any events that suggest the exemption has resulted in a lower level of safety than would be achieved by complying with § 393.87 or that the exemption has jeopardized public safety in any way. They also requested that FMCSA clarify that the exemption applies to transportation of both new and used vehicles. ACC and AHAA stated it is their view that the exemption granted for transportation of ''motor vehicles'' already includes new and used vehicles; however, not everyone in CMV enforcement agrees with their interpretation. A copy of the request to renew the exemption is available in the docket.

IV. Equivalent Level of Safety Analysis

FMCSA is not aware of any evidence indicating that providing relief to motor carriers operating stinger-steered automobile transporter equipment from the requirement to place warning flags on projecting loads of new and used motor vehicles in accordance with the conditions of the original exemption has resulted in any degradation in safety. ACC and AHAA are also unaware of any events that suggest the exemption has resulted in a lower level of safety than would be maintained by complying with § 393.87. The Agency, however, is continuing to analyze crash data to better assess the safety of this exemption. Therefore, for the reasons discussed above and in the prior notice granting the original exemption request, FMCSA concludes that provisionally renewing the exemption granted on February 15, 2019, for a period of six (6) months to allow FMCSA to receive comment on the application and assess any additional relevant crash data, on the terms and conditions set forth in this exemption renewal decision, would likely maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

V. Exemption Decision

A. Grant of Exemption

FMCSA provisionally renews the exemption for a period of six (6) months subject to the terms and conditions of this decision and the absence of adverse public comments that would cause the Agency to terminate the exemption at an earlier date. The exemption from the requirements of 49 CFR 393.87 is otherwise effective February 15, 2024, through August 9, 2024, 11:59 p.m. local time, unless revoked.

B. Applicability of Exemption

During the temporary exemption period, motor carriers operating stinger-steered automobile transporter equipment are exempt from the requirements of § 393.87 to place warning flags on loads of new or used motor vehicles that project up to 6 feet from the rear of the stinger-steered automobile transporter.

C. Terms and Conditions

1. This exemption is limited to stinger-steered automobile transporter equipment and the transport of new or used motor vehicles. It does not apply to any other type of transporter equipment or other types of projecting or oversized loads.

2. Motor carriers operating under this exemption involved in any crash to the rear end of the stinger-steered automobile transporter equipment during the transport of new or used motor vehicles must notify FMCSA within 7 business days of the crash by email at *MCPSV@DOT.GOV,* even if such crash is not a reportable crash as defined in § 390.5T.

3. New and used motor vehicles transported on Stinger-steered automobile transporters that overhang from the transporter must be equipped with all other lights and reflective devices required by the applicable FMVSS or FMCSRs.

4. Motor carriers and CMVs operating under this exemption must comply with all other applicable FMCSRs (49 CFR parts 350–399), unless specifically exempted from a requirement.

D. Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption. States may, but are not required to, adopt the same exemption with respect to operations in intrastate commerce.

E. Termination

The exemption will be valid for as provided in section V.A. above, unless revoked earlier by FMCSA. FMCSA does not believe that motor carriers and CMVs covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption without prior notice. The exemption may be immediately rescinded if: (1) motor carriers and/or CMVs fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 or chapter 313.

Interested parties possessing information that would demonstrate that this exemption or motor carriers operating stinger-steered automobile transporter equipment without warning flags and with loads of new or used motor vehicles projecting up to 6 feet beyond the rear of the automobile transporter are not achieving the requisite statutory level of safety should immediately notify FMCSA by email at *MCPSV@DOT.GOV.* The Agency will evaluate any such information and, if

safety is being compromised or if the continuation of the exemption is not consistent with the goals and objectives of 49 U.S.C. 31136 or chapter 313, may take immediate steps to revoke the exemption or impose additional requirements as part of the exemption.

VI. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on ACC and AHAA's application for renewal of the exemption from § 393.87.

All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024–03446 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0026]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 10 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on February 9, 2024. The exemptions expire on February 9, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov*. Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov*. Insert the docket number (FMCSA–2023–0026) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Older-Newer),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On January 3, 2024, FMCSA published a notice announcing receipt of applications from 10 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (89 FR 432). The public comment period ended on February 2, 2024, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record

demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 10 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Crystal Anderson-Grose (MA)
Ricardo Cabrera (FL)
Cody DeVries (TX)
Elexis Fernandez Quian (FL)
Joshua Grant (ME)
Kennard Johnson (IL)
Barbara Nacarelli (NE)
Bridgette Nielson (UT)
Darrious Smith (TX)
Steven Warren (AZ)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–03437 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2023–0002–N–42]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) summarized below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collection and their expected burden. On October 2, 2023, FRA published a notice providing a 60-day period for public comment on the two ICRs. FRA received no comments related to the proposed collections of information.

DATES: Interested persons are invited to submit comments on or before March 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908 or Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On October 2, 2023, FRA published a 60-day notice in the **Federal Register** soliciting public comments on the ICRs for which it is now seeking OMB approval. *See* 88 FR 67866. FRA received no comments related to the proposed collections of information.

Before OMB decides whether to approve the proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); see also 60 FR 44978, 44983 Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Identification of Railroad Cars.

OMB Control Number: 2130–0506.

Abstract: This collection of information is associated with 49 CFR 232.3(d), formerly contained in Interstate Commerce Commission (ICC) Order 13528. Paragraph (d)(3) of 49 CFR 232.3 conditionally excepts certain export, industrial, and other cars not owned by a railroad from part 232 compliance. It requires cars to be identified by a card attached to each side of the equipment, signed by the shipper, specifically noting that the car

is being moved under the proper authority. Railroads typically use carrier bad order forms or tags for these purposes. These forms are readily available from all carrier repair facilities. FRA estimates approximately 400 cars per year, each bearing two forms or tags, are moved under this regulation.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 765 railroads and freight car owners.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 800.

Total Estimated Annual Burden: 67 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $4,496.

Title: U.S. Locational Requirement for Dispatching U.S. Rail Operations.

OMB Control Number: 2130–0556.

Abstract: Title 49 CFR part 241 requires, in the absence of a waiver, that all dispatching of United States railroad operations be performed in the United States. A railroad may, however, dispatch from a country other than the United States in an emergency situation, but only for the duration of the emergency situation.[1] A railroad relying on this exception must provide written notification of its action to FRA as soon as practicable; such notification is not required before addressing the emergency situation. The information collected under this ICR is used as part of FRA's oversight function to help ensure that extraterritorial dispatchers comply with applicable safety regulations.

Type of Request: Extension without change (with changes in estimate) [2] of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 4 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 1.

Total Estimated Annual Burden: 2 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $171.86.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2024–03477 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–06–P

[1] *See* 49 CFR 241.9(c).

[2] FRA published a 60-day notice in the **Federal Register** on October 2, 2023, that reflected a total burden of 8 hours for § 241.9(c). After further review, FRA is making an adjustment in this 30-day notice, reducing the total burden hours from 8 to 2 hours. The adjustment is due to the increased use of electronic delivery systems. All other reporting information remains the same.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0003]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before April 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2024–0003. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0595) in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice and include them in its information collection submission to OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Safety and Health Requirements Related to Camp Cars.

OMB Control Number: 2130–0595.

Subparts C and E of 49 CFR part 228 address the construction of railroad-provided sleeping quarters (camp cars) and set certain safety and health requirements for such camp cars. Specifically, subpart E of part 228 prescribes minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees (covered-service employees) and individuals employed to maintain its right-of-way. Subpart E requires railroad-provided camp cars to be clean, safe, and sanitary, and be equipped with indoor toilets, potable water, and other features to protect the health of car occupants. Subpart C of part 228 prohibits a railroad from positioning a camp car intended for occupancy by individuals employed to maintain the railroad's right-of-way in the immediate vicinity of a switching or humping yard

that handles railcars containing hazardous materials. Generally, the requirements of subparts C and E of part 228 are intended to provide covered-service employees an opportunity for rest free from the interruptions caused by noise under the control of the railroad.

The information collected under this rule is used by FRA to ensure railroads operating camp cars comply with all the requirements mandated in this regulation to protect the health and safety of camp car occupants. FRA estimates that there is one railroad that may choose to use camp cars in the three-year period covered by this ICR. That estimate is unchanged from the last ICR submitted to OMB in 2021. Since March 2020, no railroads have used camp cars. However, camp cars were used by one railroad before the COVID–19 pandemic led to discontinuation of their use and it is possible the same railroad or another railroad may decide to again use camp cars in the next three years. Therefore, in this 60-day notice, FRA makes no adjustments to the previously approved burden hours in the Office of Information and Regulatory Affairs (OIRA) inventory.[1]

Type of Request: Extension without change of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 1 railroad.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Wage rate	Total cost equivalent in U.S. dollars (D = C * wage rates)[2]
228.323(b)(4)—Water hydrants—Records of inspection.	1 railroad	740 inspection records	2 minutes	24.67	63.07	$1,555.94
—Copy of records at central location	1 railroad	740 record copies	10 seconds	2.06	63.07	129.92
—(b)(6) Certification from State or local health authority.	1 railroad	666 certificates	1 hour	666.00	85.93	57,229.38
—Certification by laboratory	1 railroad	74 certificates	20 minutes	24.67	85.93	2,119.89
—Certification copies at central location	1 railroad	740 certificate copies	10 seconds	2.06	63.07	129.92
—(c)(4) Storage and distribution system—Flushing and draining—Records.	1 railroad	111 records	30 minutes	56.00	63.07	3,531.92
—(c)(6) Lab report copies	1 railroad	10 lab report copies	2 minutes	0.33	63.07	20.81
—(d) Signage (for non-potable water)	1 railroad	740 signs	3 minutes	30.83	63.07	1,944.45
228.331(d)—First aid and life safety—Modified emergency preparedness plan.	1 railroad	740 modified plans	15 minutes	185.00	85.93	15,897.05
—Modified emergency preparedness plan—copies.	1 railroad	1,560 plan copies	3 seconds	1.30	85.93	111.71
228.333—Remedial action—A good faith notice of needed repair.	1 car occupant/employee labor organization.	4 good faith notices	15 minutes	1.00	63.07	63.07
Total[3]	1 railroad	6,125 responses	N/A	994	N/A	82,734

Total Estimated Annual Responses: 6,125.

Total Estimated Annual Burden: 994.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $82,734.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2024–03479 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–06–P

[1] Changes to the total cost equivalent in U.S. dollars, a category not included in the OIRA inventory, are due to updated statistics from the 2022 Surface Transportation Board (STB) Full Year Wage A&B data Series.

[2] The dollar equivalent cost is derived from the 2022 STB Full Year Wage A&B data series using employee group 200: (Professional & Administrative) hourly wage rate of $49.10 and employee group 600 (Transportation (Train & Engine)) hourly wage rate of $36.04. The total burden wage rate (straight time plus 75%) used for group 200 is $85.93 ($49.10 × 1.75 = $85.93). The total burden wage rate used for group 600 is $63.07 ($36.04 × 1.75 = $63.07).

[3] Totals may not add up due to rounding.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2024–0008]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) summarized below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before April 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2024–0008. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number (2130–0632) in any correspondence submitted. FRA will summarize comments received in a subsequent 30-day notice and include them in its information collection submission to OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or

telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60 days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Metrics and Minimum Standards for Intercity Passenger Train Operations.

OMB Control Number: 2130–0632.

Abstract: In November 2020, in connection with a Congressional mandate, FRA published a final rule titled Metrics and Minimum Standards for Intercity Passenger Train Operations. (49 CFR part 273). The final rule established metrics and a minimum standard for measuring the performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services.[1]

In this 60-day notice, FRA makes adjustments that will reduce the currently approved burden hours from 507 to 141 hours. The reduced burden hours are a result of 126 one-time start-up burden hours required by Amtrak to initially create a system to process, prepare, and submit this data. Now that a system has been implemented, the estimated timeframe it takes to produce the data has been reduced and is reflected in the adjusted burden hours for each of the requirement that are being completed under the following sections:

§ 273.5(b) Ridership data—10-hour start-up burden.

§ 273.5(c) Certified schedule—26-hour start-up burden.

§ 273.5(f) Station performance—20-hour start-up burden.

§ 273.5(g) Host running time—40-hour start-up burden.

§ 273.11(b) Missed connections—10-hour start-up burden.

§ 273.11(c) Community access—10-hour start-up burden.

§ 273.11(d) Service availability—10-hour start-up burden.

Additionally, under § 273.5(c)(2), the estimated burden has been reduced from 300 to 60 hours to accurately reflect the number of anticipated responses for the next three-year information collection period, based on experience from the first three years this regulation was in effect.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Amtrak.

Form(s): N/A.

Respondent Universe: Amtrack and Host Railroad(s).

Frequency of Submission: Varied.

REPORTING BURDEN

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (hours) (B)	Total annual burden hours (C = A * B)	Wage rate [2] (E)	Total cost equivalent in U.S dollars (D = C * E)
273.5(a)—Customer on-time performance	1 railroad	4	1	4	$85.93	$343.72
273.5(b)—Ridership data	1 railroad	12	1	12	85.93	1,031.16
273.5(c)—Certified schedule	1 railroad	1	1	1	85.93	85.93
273.5(c)(2)—Monthly letter to U.S. Congress and other officials.	Amtrack and Host railroad	12	5	60	85.93	5,155.80
273.5(d)—Train delays	1 railroad	4	1	4	85.93	343.72
273.5(e)—Train delays per 10,000 train miles	1 railroad	4	1	4	85.93	343.72
273.5(f)—Station performance	1 railroad	4	1	4	85.93	343.72
273.5(g)—Host running time	1 railroad	4	1	4	85.93	343.72
273.7(a)—Customer satisfaction	1 railroad	4	1	4	85.93	343.72
273.7(b)—Amtrak personnel	1 railroad	4	1	4	85.93	343.72
273.7(c)—Information given	1 railroad	4	1	4	85.93	343.72
273.7(d)—On-board comfort	1 railroad	4	1	4	85.93	343.72
273.7(e)—On-board cleanliness	1 railroad	4	1	4	85.93	343.72
273.7(f)—On-board food service	1 railroad	4	1	4	85.93	343.72
273.9(a)—Cost recovery	1 railroad	4	1	4	85.93	343.72
273.9(b)—Avoidable operating costs covered by passenger revenue.	1 railroad	4	1	4	85.93	343.72
273.9(c)—Fully allocated core operating costs covered by passenger revenue.	1 railroad	4	1	4	85.93	343.72
273.9(d)—Average ridership	1 railroad	4	1	4	85.93	343.72
273.9(e)—Total ridership	1 railroad	4	1	4	85.93	343.72
273.11(a)—Connectivity	1 railroad	1	1	1	85.93	85.93
273.11(b)—Missed connections	1 railroad	1	1	1	85.93	85.93

[1] *See* 85 FR 72971.

REPORTING BURDEN—Continued

CFR section	Respondent universe	Total annual responses (A)	Average time per responses (hours) (B)	Total annual burden hours (C = A * B)	Wage rate [2] (E)	Total cost equivalent in U.S dollars (D = C * E)
273.11(c)—Community access	1 railroad	1	1	1	85.93	85.93
273.11(d)—Service availability	1 railroad	1	1	1	85.93	85.93
Total [3]	Amtrak and host railroad	93	N/A	141		12,116

Total Estimated Annual Responses: 93.

Total Estimated Annual Burden: 141 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $12,116.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Christopher S. Van Nostrand,

Acting Deputy Chief Counsel.

[FR Doc. 2024–03478 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0019]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: UNTETHERED (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0019 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0019 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0019, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel UNTETHERED is:

—*Intended Commercial Use of Vessel:* Requester intends to use for charters of six passengers or less.

—*Geographic Region Including Base of Operations:* South Carolina. Base of Operations: Charleston, SC.

—*Vessel Length and Type:* 39′ Sail Catamaran

The complete application is available for review identified in the DOT docket as MARAD 2024–0019 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0019 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that

[2] The dollar equivalent cost is derived from the 2022 Surface Transportation Board Full Year Wage A&B data series using employee group 200 (Professional & Administrative) hourly wage rate of $49.10. The total burden wage rate (straight time plus 75%) used in the table is $85.93 ($49.10 × 1.75 = $85.93).

[3] Totals may not add up due to rounding.

you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–03467 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0020]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MOONSHOT (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0020 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0020 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0020, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MOONSHOT is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger charters.

—*Geographic Region Including Base of Operations:* Florida, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine. Base of Operations: Palm Beach, FL.

—*Vessel Length and Type:* 82.6′ Motor Yacht

The complete application is available for review identified in the DOT docket as MARAD 2024–0020 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0020 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–03468 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0018]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Majestic Moments (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0018 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0018 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0018, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Majestic Moments is:

—*Intended Commercial Use of Vessel:* Requester intends to use for charters in New England, Florida, and Gulf areas.

—*Geographic Region Including Base of Operations:* Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida, Texas, Louisiana Mississippi, Alabama. Base of Operations: Miami, FL.

—*Vessel Length and Type:* 78.6′ Motor Yacht.

The complete application is available for review identified in the DOT docket as MARAD 2024–0018 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0018 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–03472 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0021]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MANDALU 2 (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 22, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0021 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0021 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0021, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel MANDALU 2 is:

—*Intended Commercial Use of Vessel:* Requester intends to use for Atlantic coast passenger charters.

—*Geographic Region Including Base of Operations:* Delaware, New Jersey, Maryland, Virginia, North Carolina. Base of Operations: Lewes, DE.

—*Vessel Length and Type:* 34′ Motor

The complete application is available for review identified in the DOT docket as MARAD 2024–0021 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0021 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you

should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–03466 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

[DOT–OST–2024–0010]

U.S. Coast Guard Loran Sites

AGENCY: Office of the Assistant Secretary for Research and Technology (OST–R), U.S. Department of Transportation (DOT).

ACTION: Notification.

SUMMARY: The U.S. Department of Transportation (DOT) is issuing this Notification to the U.S. Coast Guard (USCG) that neither DOT, nor the U.S. Department of Defense (DoD), are seeking transfer of the Loran properties from the USCG. This notification is being given based on the fact there was no identification of a need for the USCG Loran properties in response to the DOT Request for Information (RFI) on a Commercial enhanced Long Range Navigation (eLoran) Capability, DOT–OST–2023–0118.

DATES: Responses should be filed by May 21, 2024. All questions concerning this Notification shall be emailed to *PNT_RFI@dot.gov.* When submitting questions and comments, please refer to the specific relevant text of this Notification. Each question submitted to DOT should be stated in such a way that there would be no objection to DOT's publishing that precise question (and its answer) in a formal Amendment to the Notification. That is, each question should be worded in such a way that the publication of that question (and its answer) would not divulge any information that would be considered proprietary or confidential. Further, any questions concerning any apparent error, omission, or ambiguity in this Notification shall include the questioner's supporting rationale as well as a description of the remedies that the questioner is asking DOT to consider. All questions that DOT decides to answer will be collectively answered in writing.

ADDRESSES: You may file responses identified by the docket number DOT–OST–2024–0010 by any of the following methods:

- *Federal Rulemaking Portal:* go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9:00 a.m. and 5:00 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Instructions: You must include the agency name and docket number DOT–OST–2024–0010 at the beginning of your submission. All submissions received will be posted without change to *http://www.regulations.gov,* including any personal information provided, unless proprietary and other sensitive information is so marked with requested disposition instructions. Any submissions with Confidential/Propriety information should be labeled as such in the title of the submission.

Privacy Act: Anyone is able to search the electronic form of all submissions received in any of our dockets by the name of the individual submitting the document (or signing the submission, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *https://www.transportation.gov/individuals/privacy/dot-privacy-policy.*

Docket: For access to the docket and comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

SUPPLEMENTARY INFORMATION:

1. Overview

On October 3, 2023, DOT issued a Commercial eLoran Capability RFI, DOT–OST–2023–0118 (88 FR 68283), to determine:

(1) If there is interest from private entities in offering a U.S. commercial eLoran service to the general public in the United States on a fee-for-service basis without any Federal investment, subsidy, procurement commitment or other commitment of credit or budgetary resources.

(2) If respondent has an interest in offering a U.S.-based commercial eLoran service on a fee-for-service basis, identify what impediments stand in the way of respondent offering a U.S. commercial eLoran service. If lack of access to any federally-controlled assets and non-budgetary assistance related to utilizing such federally-controlled assets are identified as impediments to offering such a service, a subsequent Request for Information may be issued to obtain additional data.

This RFI was issued specifically to inform USCG divestiture of their legacy Loran sites, as required by section 11211 of the FY 2023 National Defense Authorization Act (NDAA; 14 U.S.C. 914). Per the FY 2023 NDAA, if DOT or DoD expresses interest in obtaining any of the Loran-C properties, the properties will be transferred from USCG to DOT. No respondents to the RFI identified a need for the USCG Loran properties to provide a commercial eLoran capability in the United States. Therefore, neither DOT, nor DoD, are seeking transfer of the Loran properties from the USCG.

Issued this day of February 15, 2024, in Washington, DC.

Robert C. Hampshire,

Deputy Assistant Secretary for Research and Technology, U.S. Department of Transportation.

[FR Doc. 2024–03495 Filed 2–20–24; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL REGISTER

Vol. 89 Wednesday,

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Part II

Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210, 215, 220, et al.

Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225, and 226

[FNS–2024–0005]

RIN 0584–AE83

Serious Deficiency Process in the Child and Adult Care Food Program and Summer Food Service Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes important modifications to make the application of serious deficiency procedures in the Child and Adult Care Food Program and Summer Food Service Program consistent, effective, and in line with current requirements under the Richard B. Russell National School Lunch Act. The serious deficiency process provides a systematic way for State agencies and sponsoring organizations to correct serious management problems, and when that effort fails, protect Child Nutrition Program integrity through due process. In response to public comments received on a prior rulemaking, the Food and Nutrition Service (FNS) proposes improvements to ensure that application of the serious deficiency process is fair and fully implemented. FNS proposes to add clarity to the serious deficiency process by defining key terms, establishing a timeline for full correction, and establishing criteria for determining when the serious deficiency process must be implemented. This rulemaking will also address termination for cause and disqualification, implementation of legal requirements for records maintained on individuals on the National Disqualified List, and participation of multi-State sponsoring organizations.

DATES: Written comments must be received on or before May 21, 2024 to be assured of consideration.

ADDRESSES:

Federal eRulemaking Portal: Go to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Send comments to: Navneet Kaur Sandhu, Program Integrity and Innovation Division, USDA Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314.

All written comments submitted in response to the provisions of this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the written comments publicly available on the internet via *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Navneet Kaur Sandhu, Program Integrity and Innovation Division, USDA Food and Nutrition Service, 703–305–2728, *navneet.sandhu@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Integrity is essential to meeting the mission of all Child Nutrition Programs. To improve program operations, the Food and Nutrition Service (FNS) works in close collaboration with State and local partners. In the Child and Adult Care Food Program (CACFP), State agencies are responsible for approving and monitoring institutions—independent child and adult care centers and sponsoring organizations of family day care homes and centers—to maintain program integrity and ensure compliance with program requirements. State agencies have a similar responsibility for oversight of sponsors in the Summer Food Service Program (SFSP).

More than 20 years ago, FNS established a system for protecting CACFP against the incidence of mismanagement, abuse, and fraud by institutions and facilities participating in the program. The serious deficiency process was implemented in response to Federal reviews that revealed critical weaknesses in State agency and institution management controls over program operations. The reviews uncovered examples of regulatory noncompliance by institutions and facilities, including improper use of program funds, inadequate financial and administrative controls, and documented instances of mismanagement and, in some cases, fraud, by program participants.

These findings raised questions regarding Federal and State administration of CACFP that led to increased focus on program management and integrity in CACFP. The Agricultural Risk Protection Act of 2000, Public Law 106–224, established statutory requirements under section 17 of the Richard B. Russell National School Lunch Act (NSLA), at 42 U.S.C. 1766(d)(5), for terminating or suspending participating institutions and day care home providers. The Grains Standards and Warehouse Improvement Act of 2000 and Healthy Hunger-Free Kids Act of 2010, Public Laws 106–472 and 111–296, respectively, further amended those provisions.

In response to the Federal reviews, FNS published guidance to help State agencies implement the statutory requirements relating to a serious deficiency determination, corrective action, suspension, termination, and disqualification of institutions and responsible principals and responsible individuals in CACFP. FNS implemented these as requirements through publication of the *Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity* interim rule, 67 FR 43447, June 27, 2002; and *Child and Adult Care Food Program Improving Management and Integrity* final rule, 76 FR 34542, June 13, 2011. These rulemakings established a serious deficiency process at 7 CFR 226.6 and 226.16 that requires a process for addressing severe and pervasive problems, with a structured series of steps that give CACFP institutions and day care homes the opportunity for corrective action and due process.

To protect program integrity, these rulemakings implemented procedures that would correct problems in a timely manner. That is why there are corrective action timeframes for completion of corrective action and milestones for monitoring progress towards meeting the deadline. The serious deficiency process for CACFP starts when the State agency identifies a serious problem and concludes when that serious problem is resolved, either through corrective action or by termination and disqualification. The regulations identify lists of serious deficiencies and describe corrective action, termination, and disqualification procedures.

The current CACFP serious deficiency process at 7 CFR 226.6(c) includes procedures to help the State agency document the case to terminate and disqualify non-performing CACFP institutions that are unwilling to or incapable of resolving their serious deficiencies. The process also includes procedures to provide seriously deficient institutions the opportunity to appeal the State agency's adverse actions and to continue to receive payments of valid claims while they receive a fair hearing. CACFP sponsoring organizations implement a similar process to correct serious problems of noncompliance in day care homes, as described in 7 CFR 226.16(l).

Until enactment of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), there were no corresponding statutory requirements for implementing a serious deficiency process for SFSP. However, through HHFKA, Congress established requirements relating to the termination of participation of service institutions which included maintaining a list of disqualified service institutions and individuals. The regulations under 7 CFR 225.6(h) specify criteria State agencies must consider when approving sites for participation; provide authority for the State agency to terminate sponsor participation at 7 CFR 225.11(c); and establish procedures for sponsors to appeal adverse actions, including termination of a sponsor or site and denial of an application for participation, at 7 CFR 225.13. However, SFSP regulations do not currently reflect the statutory requirement to disqualify service institutions and individuals that are seriously deficient from participating in SFSP, or any other Child Nutrition Program, the provision for a fair hearing and prompt determination, or placement on a list of disqualified institutions and individuals.

In developing the proposed rule, *Child Nutrition Program Integrity,* 81 FR 17563, March 29, 2016, FNS applied existing serious deficiency requirements to establish a serious deficiency process for service institutions and individuals, *i.e.,* sponsors and sites in SFSP and unaffiliated child care centers and unaffiliated adult day care centers in CACFP. To strengthen management practices and eliminate gaps that put program integrity at risk, FNS proposed amendments that would:

- Extend the serious deficiency process to unaffiliated centers in CACFP;
- Implement a serious deficiency process in SFSP;
- Require each SFSP State agency to provide appeal procedures to sponsors, annually and upon request;
- Specify the types of adverse actions that cannot be appealed in SFSP;
- Establish a list of disqualified institutions and individuals for SFSP that FNS would maintain and make available to all State agencies;
- Require each SFSP State agency to establish a list of sponsors, responsible principals, and responsible individuals declared seriously deficient;
- Require the State agency to deny the application of any applicant that has been terminated for cause from any Child Nutrition Program or placed on a CACFP or SFSP list of disqualified institutions and individuals;
- Require the State agency to terminate an agreement whenever a program operator's participation ends; and
- Require action by the State agency to terminate an agreement for cause, through the serious deficiency process or placement on list of disqualified institutions and individuals.

FNS also published a notice, *Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program,* 84 FR 22431, May 17, 2019, to gather information to help FNS understand firsthand the experiences of State agencies and program operators. An analysis of the comments on the proposed rule and responses to the notice convinced FNS that important modifications were needed to make the application of the serious deficiency process consistent and effective, and to ensure it is in line with current statutory requirements.

On August 23rd, 2023, FNS published the *Child Nutrition Program Integrity* final rule, 88 FR 57792, which codifies changes required under HHFKA to strengthen administration of Child Nutrition Programs, at all levels, through enhanced oversight and enforcement tools. As proposed, the Child Nutrition Program Integrity final rule included amendments related to serious deficiency and termination procedures in SFSP, serious deficiency and termination procedures for unaffiliated sponsored centers in CACFP, and reciprocal disqualification of applicants terminated for cause and placed on the National Disqualified List. However, FNS received comments expressing concern about using the CACFP serious deficiency process as a model for establishing procedures in other Child Nutrition Programs. The comments suggested that FNS further investigate and attempt to address potential inconsistencies in implementation of the serious deficiency process among States. Ultimately, FNS agreed that further changes from what was proposed in the *Child Nutrition Program Integrity* rule are needed to improve the serious deficiency process and ensure its application is fair and fully implemented. Instead of finalizing the proposed rule as it related to the serious deficiency process, FNS decided to pursue a separate rulemaking in order to consider improvements to the serious deficiency process before extending serious deficiency, termination, and disqualification procedures to SFSP.

To better serve administering agencies and program operators, this proposed rule is intended to make the application of the serious deficiency process for CACFP and SFSP consistent, effective and in line with current statutory requirements. FNS proposes improvements to ensure that the serious deficiency process is fair, equitable, and effective. This new rulemaking proposes amendments to CACFP and SFSP regulations that are designed to increase program operators' accountability and operational efficiency, while improving the ability of administering agencies to address severe or repeated violations of Federal requirements.

While minimizing changes to procedures, FNS proposes to add clarity to the serious deficiency process by defining key terms, establishing a timeline for full correction, and establishing criteria for determining when the serious deficiency process must be implemented. This proposed rule also addresses agreements that are terminated for cause, disqualification from participation in CACFP or SFSP, reciprocal disqualification from any Child Nutrition Program, legal requirements for records maintained on individuals on the National Disqualified List, and participation of multi-State sponsoring organizations.

This rulemaking also re-examines the concept of good standing in light of recent rulemaking. The final rule, *Streamlining Program Requirements and Improving Integrity in the Summer*

Food Service Program (SFSP), 87 FR 57304, September 19, 2022, established that a program operator would be considered in ''good standing'' if it were reviewed by the State agency with no major program findings or it had completed and implemented all corrective actions from the last compliance review. Good standing reflects a program operator's status and is considered by State agencies as a factor when making decisions around frequency of reviews. Therefore, FNS recognized that providing further clarification to determine what good standing means across all Child Nutrition Programs would benefit State agencies and program operators. This proposed rule would define the status of good standing as a program operator that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time. This would serve as a general definition that would apply to all program operators across Child Nutrition Programs and would be added to 7 CFR 210.2, 215.2, 220.2, 225.2, and 226.2.

FNS also proposes to reorganize the CACFP and SFSP regulations to improve readability and reduce duplication of information in the serious deficiency process. For CACFP, references to program operations that are seriously deficient and corresponding requirements pertaining to appeals, suspension of participation, termination of agreements, and disqualification are found in multiple sections of existing regulations. This proposed rule would move these requirements into a new single subchapter under 7 CFR 226.25. The other provisions described under 7 CFR part 226, subpart G would be renumbered to correspond with this proposed change. FNS also proposes to reorganize SFSP regulations by collecting all provisions of the serious deficiency process under a single subchapter at 7 CFR 225.18 and renumbering the other sections of 7 CFR part 225, subpart D.

This proposed rule gives the public the opportunity to provide comments that will inform the development of a final rule on the oversight and implementation of the serious deficiency process in CACFP and SFSP. FNS will consider all relevant comments submitted during the 60-day comment period for this rulemaking. FNS invites the public to submit comments on all aspects of this proposed rule, including comments in response to specific program changes that are found throughout this preamble and alternatives that are suggested for certain provisions. FNS also invites comments from administering agencies and program operators on the administrative cost of compliance and the potential impact on program access of any of the provisions in this rulemaking.

Please select those issues that most concern and affect you, or that you best understand, and include examples of how the proposed rule would impact you, positively or negatively. Consider what could be done to foster incentives for flexibility, consistency, eliminating duplication, ensuring compliance, and protecting program integrity. Your written comments should be specific to the issues raised in this proposed rule and explain the reasons for any changes you recommend or proposals you oppose. Where possible, please reference the specific section or paragraph of the proposal you are addressing and whether the concern is related to either CACFP or SFSP, or both.

II. Section-By-Section Discussion of the Regulatory Provisions

A. Child and Adult Care Food Program (CACFP)

1. The CACFP Serious Deficiency Process

Defining Serious Deficiency

Underlying the concerns of the serious deficiency process is the broader, systemic issue of what constitutes a serious deficiency and how State agencies and sponsoring organizations should utilize the serious deficiency process as an effective tool in managing program operations. Public comments that FNS has received in response to previous rulemakings and informal feedback from CACFP professionals and advocates consistently point out that the lack of defined terminology confuses program administrators and contributes to errors in responding to serious management problems. Before extending the serious deficiency process to unaffiliated centers or establishing a process for SFSP, these stakeholders asked FNS to define terms in 7 CFR 226.2 that align with the statutory structure and are consistent across CACFP and SFSP.

As explained in the *Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity* interim rule, prior to 2002, the term ''serious deficiency'' was used to describe program performance at two very different stages of an oversight process. In the first instance, an institution failing to perform under the terms of its agreement was notified by its State agency that it was seriously deficient in its operation of CACFP and was given an opportunity to take corrective action. Later, if the institution failed to take corrective action during the specified time, its agreement was terminated by the State agency and the institution was placed on a list of seriously deficient institutions. The use of the same term in both instances, as stakeholders pointed out, caused confusion for State agencies and institutions.

The concept of serious deficiency changed when the first interim rule addressing management improvement and oversight, *Child and Adult Care Food Program; Implementing Legislative Reforms to Strengthen Program Integrity,* 67 FR 43447, June 27, 2002, was published. This interim rule amended 7 CFR 226.2 to define seriously deficient as ''the status of an institution or a day care home that has been determined to be non-compliant in one or more aspects of its operation of the program.'' Serious deficiency is a larger concept in that it reflects the situation before the opportunity for corrective action or the right to appeal is exercised by an institution. In the interim rule preamble, FNS attempted to explain this concept, emphasizing that the serious deficiency process should refer to every action that happens after a serious deficiency is declared, beginning with the determination of the finding, and ending with full and permanent resolution or disqualification.

Although current CACFP regulations define ''seriously deficient,'' other terms that affect implementation of the current serious deficiency process are not clearly defined. For example, there is no corresponding definition of ''serious deficiency'' under 7 CFR 226.2. The regulations do not clearly define standards for determining the severity of a problem identified as a finding and when that finding rises to the level of a serious deficiency. The regulations are also ambiguous with regard to differentiating between occasional administrative errors and systemic management problems. Some terms have multiple connotations—for example, administrative review may mean a fair hearing or it may mean an evaluation of program operations—while other terms, such as good standing, are vague or subjective. As public comments and stakeholder feedback have revealed, these gaps have long been of concern to the CACFP community.

Under this proposed rule, the findings that trigger the serious deficiency

process would be defined as serious management problems, which are currently known as serious deficiencies. This term appears in section 17 of the NSLA, at 42 U.S.C. 1766(d), which requires State agencies to conduct more frequent reviews of any institution that has serious management problems or is at risk of having serious management problems. The proposed definition characterizes a serious management problem as the type of administrative weakness that affects an institution's ability to meet CACFP performance standards—financial viability, administrative capability, and program accountability—or that affects the quality of meals served or the integrity of a claim for reimbursement in a day care home or center. For example, a sponsoring organization that operates a variety of community programs may be at risk of serious management problems if it has limited staffing to support program operations or is devoting too small of a share of administrative resources to CACFP. More frequent monitoring by the State agency and sponsoring organization would help improve CACFP operations by identifying and addressing these weaknesses. However, if these measures are not effective, the State agency would have to apply the serious deficiency process to require the sponsoring organization to take specific corrective actions to protect program integrity.

FNS proposes that the serious deficiency process provide program operators with the opportunity to correct serious management problems through a corrective action plan. Institutions would develop corrective action plans to identify the steps they will take to correct serious management problems, or serious deficiencies as they are known under the current process.

Prior to 2011, serious deficiencies were ''rescinded'' when an institution's corrective action plan was approved. Unfortunately, rescinding the serious deficiency that early in the process often resulted in later reviews that demonstrated the serious deficiency had not been corrected, or that the corrective action left institutions vulnerable to other serious deficiencies. As a result, FNS changed the process to temporarily defer a finding of serious deficiency. In current regulations at 7 CFR 226.6(c)(1)(iii)(B), (c)(2)(iii)(B), and (c)(3)(iii)(B), the State agency is required to temporarily defer the institution's serious deficiency. However, under this process, institutions were never able to have their serious deficiency status removed, even after years of reviews with no additional findings. Through this rulemaking, changing the serious deficiency determination to occur at the point of termination aligns the regulations with statute at section 17 of the NSLA, at 42 U.S.C. 1766(a), which asserts that an institution that has been seriously deficient in operating any Child Nutrition Program cannot be eligible to participate in CACFP.

Terms under the current serious deficiency process have led to confusion. The term ''fully and permanently corrected'' lacks clarity, particularly in cases where the same findings reoccur and the program operator's agreement is proposed to be terminated. The term ''permanent'' is contradictory as it assumes that the same findings cannot arise again, regardless of the amount of time that has passed since the initial findings. The term ''temporarily deferred'' is confusing and the existing process does not establish limits on the duration of the deferment after corrective actions have taken place. Instead, this proposed rule would create a path to full correction within a defined period of time. When achieved, the serious management problem would be vacated, not deferred. If the same finding occurs after full correction is achieved, it will not lead directly to proposed termination.

FNS recognizes that clearly defined terminology is essential to fully understand and correctly implement the serious deficiency process. FNS proposes to amend 7 CFR 226.2 to clarify existing terms, remove terms that are confusing, and add definitions to terms that had not previously been defined in the regulations. This proposed rule includes the following list of terms that relate to proposed modifications to the serious deficiency process described in this rulemaking:

- *Contingency plan* means the State agency's written process for the transfer of sponsored centers and day care homes that will help ensure that program meals for children and adult participants will continue to be available without interruption if a sponsoring organization's agreement is terminated.
- *Corrective action* means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.
- *Disqualified* means the status of an institution, facility, responsible principal, or responsible individual who is ineligible for participation in the program.
- *Fair hearing* means due process provided upon request to:
  - An institution that has been given notice by the State agency of an action that will affect participation or reimbursement under the program;
  - A principal or individual responsible for an institution's serious management problem and issued a notice of proposed termination and proposed disqualification from program participation; or
  - An individual responsible for a day care home or unaffiliated center's serious management problem and issued a notice of proposed disqualification from program participation.
- *Finding* means a violation of a regulatory requirement identified during a review.
- *Fiscal action* means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, or disallowance of funds for failure to take corrective action to meet program requirements.
- *Full correction* means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problem is identified in subsequent reviews, as described in proposed § 226.25(c).
- *Good standing* means the status of a program operator that meets its program responsibilities, is current with its financial obligations, and if applicable, has fully implemented all corrective actions within the required period of time.
- *Hearing official* means an individual who is responsible for conducting an impartial and fair hearing—as requested by an institution, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.
- *Lack of business integrity* means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.
- *Legal basis* means the lawful authority established in statute or regulation.
- *National Disqualified List* (NDL) means a system of records, maintained by the Department, of institutions, responsible principals, and responsible individuals disqualified from participation in the program.
- *Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by

facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to an institution's program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home or unaffiliated center's participation.

- *Program operator* means any entity that participates in one or more Child Nutrition Programs.
- *Responsible individual* means any individual employed by, or under contract with an institution or facility, or any other individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for an institution or facility's serious management problem.
- *Responsible principal* means any principal, as described in this section, who the State agency or FNS determined to be responsible for an institution's serious management problem.
- *Review cycle* means the frequency and number of required reviews of institutions and facilities.
- *Serious management problem* means the finding(s) that relates to an institution's inability to meet the program's performance standards or that affects the integrity of a claim for reimbursement or the quality of meals served in a day care home or center.
- *Seriously deficient* means the status of an institution or facility after it is determined that full corrective action will not be achieved and termination for cause is the only appropriate course of action.
- *State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on institutions and day care home providers or unaffiliated centers through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in proposed § 226.25(b).
- *Termination for cause* means the termination of a program agreement due to considerations related to an institution or a facility's performance of program responsibilities under the agreement between:
  - A State agency and the independent center,
  - A State agency and the sponsoring organization,
  - A sponsoring organization and the unaffiliated center, or
  - A sponsoring organization and the day care home.

Accordingly, this proposed rule would define additional terms under 7 CFR 226.2 by defining contingency plan, corrective action, fair hearing, finding, fiscal action, full correction, good standing, hearing official, lack of business integrity, legal basis, responsible individual, responsible principal, review cycle, and serious management problem. Definitions of disqualified, National Disqualified List, notice, seriously deficient, State agency list, and termination for cause that are currently listed under 7 CFR 226.2 would be amended. Definitions of administrative review, administrative review official, and the combined term, ''responsible principal or responsible individual'' would be removed from 7 CFR 226.2.

Current Requirements of the CACFP Serious Deficiency Process

Historically, the CACFP serious deficiency process established a systematic way for an administering agency—a State agency or sponsoring organization—to correct problems and protect program integrity. Serious deficiency, termination, and disqualification procedures already exist for institutions, day care homes, responsible principals, and responsible individuals in CACFP under section 17 of the NSLA, 42 U.S.C. 1766(d)(5), and codified in regulations at 7 CFR 226.6(c), 226.6(k), 226.6(l), and 226.16(l).

These procedures give institutions and day care homes the opportunity for corrective action and due process. They are also designed to help administering agencies (State agencies and sponsoring organizations) document the case to terminate and remove from CACFP any program operator that is unwilling or incapable of resolving serious deficiencies that place program integrity at risk. Current CACFP regulations allow only two possible outcomes of the serious deficiency process, either the correction of the serious deficiency to the administering agency's satisfaction within stated timeframes, or the administering agency's proposed termination of the agreement and disqualification of the program operator and its responsible principals and responsible individuals. However, even when the serious deficiency is corrected, it is still only temporarily deferred.

Current §§ 226.6(c) and 226.16(l) describe steps that start when the administering agency identifies a serious deficiency and end when that finding of serious deficiency has been resolved, either through corrective action or termination and disqualification. FNS has provided guidance for administering agencies on the serious deficiency process, including steps in the *Serious Deficiency, Suspension, and Appeals for State Agencies and Sponsoring Organizations* handbook. These steps include that the administering agency:

1. *Identify a finding that rises to the level of serious deficiency.* There are several factors to consider in deciding that a program finding is a serious deficiency, including the severity of the problem, the degree of responsibility attributable to the program operator, the program operator's past performance and training, the nature of the requirements that relate to the problem, and the degree to which the problem impacts program integrity.

2. *Issue a notice of a serious deficiency.* A formal notice must provide information to the program operator, responsible principals, and responsible individuals that explains all of the cited findings, describes the actions required to fully and permanently correct the serious deficiencies, and provide a definite and appropriate time limit for the corrective action to be implemented.

3. *Receive and assess a written corrective action plan.* The program operator must submit a corrective action plan that describes what actions and management controls have been implemented to address each serious deficiency. The administering agency must evaluate the plan to determine that actions taken to correct each serious deficiency are adequate and that management controls are in place to ensure that the serious deficiencies are fully and permanently corrected.

4. *Issue a notice of temporary deferral of the serious deficiency or a notice of proposed termination and disqualification.* If the program operator submits a corrective action plan that satisfactorily corrects the serious deficiencies within the allotted period of time, the serious deficiency determination is temporarily deferred. The administering agency issues a notice to advise the responsible principals and or responsible individuals that the corrective action is successful and the serious deficiency determination is temporarily deferred. If it is later, at any time, determined that the serious deficiency has recurred, the administering agency must immediately issue a new notice of proposed termination and disqualification. If no corrective action plan is submitted or if the corrective action is not permanent or not adequate, the administering agency

issues a notice of proposed termination for cause and disqualification with appeal rights and procedures.

5. *Provide an appeal of the proposed termination and disqualification if requested by the program operator.* An institution and its responsible principals and responsible individuals may request an in person hearing or an administrative review of documents to determine whether the State agency's actions comply with program requirements. A day care home also has the right to appeal a proposed termination through an administrative review of documents. The day care home may review the record on which the termination decision was based and refute the action in writing. The administrative review official is not required to hold a hearing.

6. *Issue a notice of final termination and disqualification or a notice of temporary deferral.* On the date when the time for requesting an appeal expires or the administrative review official upholds the proposed termination and disqualification, the administering agency immediately terminates the program operator's agreement, disqualifies the program operator and its responsible principals and responsible individuals, and adds their names to the National Disqualified List. If the administrative review official vacates the proposed termination, the administering agency issues a notice to withdraw the serious deficiency determination and temporarily defer the proposed termination.

Once on the National Disqualified List, an institution, day care home, responsible principal, or responsible individual is ineligible to participate in CACFP in any State as an institution, a facility under a sponsoring organization, or as part of a different institution or facility. FNS believes it is critical to the effectiveness of the serious deficiency process that these procedures are consistently applied when an institution or provider is declared seriously deficient. For example, if the serious deficiency process is not completed, an individual who was found responsible for the serious deficiency in one institution might simply re-incorporate under a new name and be admitted to participate in CACFP in another State.

Public comments on prior rulemaking have disclosed that implementation may vary widely. Respondents described weaknesses in existing regulations that created a process that they perceived to be unreasonable, ineffective, and punitive. This perception undermines the goal of the serious deficiency process to strengthen program compliance and integrity. FNS agrees that improvements to the serious deficiency process are needed to ensure its application is fair and fully implemented. To better serve State agencies and program operators, FNS is proposing modifications that will make the application of the serious deficiency process more consistent and more effective.

Proposed Changes to the CACFP Serious Deficiency Process

As noted earlier, FNS has carefully examined the serious deficiency process and the lessons learned through policy development and operational experience, to understand how to address and correct serious management problems in the CACFP. FNS's understanding is that the steps described above have been useful for administering agencies dealing with serious failure to perform, and not just for the worst examples of potential fraud. This proposed rule would maintain the steps that have been proven effective—basic procedures guiding administering agencies in identifying serious management problems, requiring corrective action, providing appeals, continuing payments of valid claims until the appeals are resolved, and taking actions on termination and disqualification. However, based on that examination, several key changes are proposed in this rule.

Currently, the administering agency identifies a serious deficiency violation, which is defined in regulation. For new institutions, current § 226.6(c)(1)(ii) provide that serious deficiencies include the submission of false information and concealment of a conviction during the past 7 years that indicates a lack of business integrity. Examples are provided in current regulation for offenses that indicate a lack of business integrity, with discretion allowed for the State to determine other offenses that may indicate a lack of business integrity or any other action affecting the institution's ability to administer the program in accordance with program requirements.

Under this proposed rule, a program finding identified during a review will no longer be considered a serious deficiency, but a serious management problem, if certain standards are met. This is a change in the terminology used to describe the process of identifying problems that needs correction. While FNS issued a CACFP handbook, *Serious Deficiency, Suspension, and Appeals for State Agencies and Sponsoring Organizations,* in February 2015, which recommends a framework to guide decision making, the current regulations are unclear about what standards apply to distinguish between errors and more serious findings.

Under this proposed rule, FNS is proposing to codify the criteria found in the CACFP handbook, *Serious Deficiency, Suspension, and Appeals for State Agencies and Sponsoring Organizations,* that the State agency must consider when determining whether a program violation is a serious management problem. This rulemaking also proposes several questions to assist the administering agency. In addition to inviting comments on this proposed rule in general, FNS specifically welcomes public comments on the following five criteria:

1. *The severity of the problem.* Is the noncompliance on a minor or substantial scale? Are the findings indicative of a systemic problem, or is the problem truly an isolated event? There is a point at which continued problems indicate serious mismanagement. Problems that initially appear manageable may become serious if not corrected within a reasonable period of time. Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once. For example, missing the recording of meal counts at the point of service for one day out of a month could be resolved with technical assistance. However, a second review with the same problem or an initial review with multiple days of incomplete point-of-service meal counts could rise to the level of a serious management problem.

2. *The degree of responsibility attributable to the program operator.* To the extent that evidence is available, can the administering agency determine whether the findings were inadvertent errors of an otherwise responsible institution or facility? Is there evidence of negligence or a conscious indifference to regulatory requirements or is there evidence of deception?

3. *The program operator's history of participation and training in CACFP.* Is this the first time the institution, day care home or unaffiliated center is having problems or has noncompliance occurred frequently at the same institution or facility?

4. *The nature of the requirements that relate to the problem.* Are the program operator's actions a clear violation of CACFP requirements? Has the program operator implemented new policies correctly?

5. *The degree to which the problem impacts program integrity.* Is the finding undermining the intent or purpose of the CACFP, such as misuse of program

funds, or is it simply an administrative error?

Current §§ 226.6(c)(3)(iii)(A) and 226.16(l)(3)(i) require the administering agency to issue a notice of the serious deficiency identified. The program operator must submit a corrective action plan to resolve the serious deficiency. Under this proposed rule, the administering agency would declare the program operator to be seriously deficient at the point of termination. A notice of proposed serious deficiency and proposed termination would be issued after the program operator has been provided an opportunity to correct serious management problems through a corrective action plan. If corrective action is not submitted, not approved, or not implemented, the administering agency would move to propose termination, with the opportunity to request a fair hearing. If the termination is upheld, the agreement is terminated for cause and the program operator is declared seriously deficient.

Current §§ 226.6(c)(3)(iii)(B) and 226.16(l)(3)(i)(B) require the corrective action plan to detail the program operator's response to the notice of serious deficiency. The program operator must submit a written plan that describes the internal controls that are being implemented to ensure that the serious deficiency is fully and permanently corrected. Under this proposed rule, the corrective action plan must address the root causes, *i.e.,* the underlying, true causes, of the serious management problem. By doing so, the corrective action plan should support elimination of the underlying challenges experienced by the program operator for long term program improvement. The program operator would be required to submit a written plan that describes the actions to be taken to correct the root causes of the identified problem, expected period of time for the corrective action to be put into place, and interim milestones for reaching implementation that would lead to full correction.

Under current § 226.6(c)(3)(iii)(C), a notice of proposed termination and disqualification specifies the same set of outcomes for all types of institutions—the institution is terminated for cause, disqualified, and placed on the National Disqualified List. FNS is considering alternatives for institutions that are school food authorities, including an option that would require termination of the program agreement allowing participation in CACFP, but would not subject the school food authority to disqualification and placement on the National Disqualified List. In the discussion of reciprocal disqualification in Child Nutrition Programs, under section II–D–3 of this preamble, FNS requests specific input on this proposal to implement an alternative to disqualification for program operators that are school food authorities. Public comments on this alternative will be critical as FNS develops the final rule.

Under current § 226.6(c)(1), if an applying institution does not meet all of the application requirements, the State agency must deny the application and initiate action through the serious deficiency process, which could lead to the disqualification of the new institution, the person who signs the application, and any other responsible principal or responsible individual. However, FNS recognizes that the intent of the serious deficiency process is to address program performance under a legally binding agreement. Under this rulemaking, at proposed § 226.6(c), a separate process—not the serious deficiency process—would provide applicants the opportunity to correct the application and request due process if the application is denied.

While current § 226.2 includes a combined term of ''responsible principal or responsible individual,'' this proposed rule would set out separate definitions. Each State agency determines which people are responsible for a program operator's serious management problem. In most cases, State agencies designate the executive director, director, and board chair as the positions that would represent the institution or sponsor and be held responsible for any serious management problem. For a for-profit organization, it would include the owner. For a public agency, a responsible principal might also include a supervisor or department head. FNS proposes to require any principals who fill positions that the State agency designates as responsible to certify their role as a responsible principal, as described in the definition.

Under current §§ 226.6(c)(3)(iii)(B)(*1*)(i) and 226.16(l)(3)(ii), if a corrective action plan is approved and implemented, the program operator's serious deficiency is temporarily deferred and the serious deficiency is considered fully and permanently corrected. If the same finding reoccurs at any time in the future, the serious deficiency process resumes and may lead to termination. Under this proposed rule, if the corrective action plan is approved and implemented within a defined period of time, the administering agency will provide increased oversight and conduct more frequent reviews, as described in proposed §§ 226.6(k)(2) and 226.16(d)(4)(iv) and (v). Corrective action would no longer be described as permanent. Instead, FNS proposes that the serious deficiency process provide program operators with the opportunity to correct serious management problems through a corrective action plan, which would occur within a defined period of time and result in full correction. When achieved, the serious management problem would be vacated, not deferred.

Temporary deferment would no longer be applicable, because this rulemaking proposes a path to full correction and changes the point at which a program operator is declared seriously deficient to occur at the point of termination. If the same serious management problem occurs after the time period under which full correction is achieved, it would not lead directly to proposed termination. ''Full correction'' would describe the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problems are identified in at least two full reviews occurring once every 2 years. Additionally, institutions would only achieve ''full correction'' if the first and last full review is at least 24 months apart and all review, including follow up reviews, in between the first and last full review reveal no new or repeat serious management problems.

Under proposed § 226.25(c)(3)(i), institutions may achieve full correction after at least two full reviews occurring in separate review cycles—with the first and last full review at least 24 months apart reveal no new or repeat serious management problems. A ''review cycle'' refers to the frequency and number of required reviews of institutions and facilities. The *Child Nutrition Program Integrity Final Rule* amended current § 226.6(m) to require State agencies to review program operators with serious management problems at least once every 2 years. FNS analyzed a large sample of serious deficiency notices and determined that most repeat serious deficiencies occurred within a 2-year period, with many repeat serious deficiencies reoccurring within just a matter of months. As a result, this rulemaking proposes a standard of ''two full reviews, occurring once every 2 years and at least 24 months apart'' for an institution to achieve full correction. FNS welcomes public comments on this standard.

To understand how the defined period of time for full correction of serious management problems would be determined, consider an example: a State agency cites a sponsoring

organization for a serious management problem in June 2020. The sponsoring organization is now subject to reviews at least once every 2 years. Subsequent full reviews took place in May 2021 and May 2023. Neither reviews revealed new or repeat serious management problems. The sponsoring organization achieved full correction in May 2023. The serious management problems are ''fully corrected'' if subsequent reviews result in no new or repeat serious management problems over a minimum of two full reviews occurring at least once every 2 years and with the first and last full review taking place at least 24 months apart. The State agency has discretion to conduct reviews more frequently and, in these cases, all reviews must result in no new or repeat serious management findings in order for the sponsoring organization to achieve full correction.

A second example: A State agency reviews a sponsoring organization in June 2020 and identifies a serious management problem. The sponsoring organization submits a corrective action plan that is approved by the State agency and the sponsoring organization enters a 2-year review cycle. The State agency does a follow up review in August 2020 to ensure the corrective action plan has been implemented. The State agency determines that the corrective action plan has been fully implemented. The State agency conducts the first full review in July 2021 and no new or repeat serious management problems are identified. The sponsoring organization is reviewed again in April 2022 and again, no new or repeat serious management problems are identified. Because 24 months have not passed (July 2021 and August 2022) between the first and last full review, the serious management problems are not considered fully corrected. The sponsoring organization receives a full review again in December 2023 and again, no new or repeat serious management problems are identified. At that point, full correction is achieved, *i.e.,* all the reviews revealed no new or repeat serious management problems and at least 24 months passed between the first and last full reviews.

Current §§ 226.6(c)(3)(iii)(B)*(3)* and 226.16(l)(3)(ii) establish that repeat serious deficiencies may lead directly to proposed termination. If it were discovered that the program operator's corrective action was not adhered to and the serious deficiency was repeated, the administering agency could resume the serious deficiency process by immediately issuing a notice of proposed termination and disqualification. Under this proposed rule, a serious management problem that occurs again, after full correction is achieved, would not be considered a repeat serious management problem and would not directly result in proposed termination. However, the recurrence of a serious management problem during the time before full correction is achieved would lead directly to proposed termination. If new serious management problems occur before an institution achieves full correction of its initial serious management problem, the institution would continue to be reviewed once every 2 years until at least two full reviews occurring at least 24 months apart reveal no new or repeat serious management problems.

For another example, consider that a State agency reviews an independent center in April 2021 and identifies a serious management problem. The independent center submits a corrective action plan that is approved by the State agency and the State agency does a follow up review in July 2021 to ensure the corrective action plan has been implemented. The State agency returns to conduct a full review in January 2023 and no new or repeat serious management problems are identified. The State agency conducts a second full review of the independent center in February 2025, the same serious management problem reoccurs. Because full correction was not achieved, this serious management problem is considered repeat. The State agency would propose to terminate the independent center. At this point, the independent center would have a right to a fair hearing.

Current regulations do not define good standing. Under the definition of ''good standing'' in this proposed rule, the proposed serious deficiency process in CACFP would impact an institution's good standing status. In the proposed serious deficiency process, identification of a serious management problem would move an institution out of good standing. An institution would need to fully implement all corrective actions and fully pay any debts owed to the program to return to good standing. Until these criteria are met, the institution would remain out of good standing. This proposed standard ensures that the institution is complying with requirements of the serious deficiency process and is working towards achieving full correction of its serious management problem. FNS welcomes public comments on this proposed standard of good standing in the serious deficiency process.

For example, let's say, a review in May 2022 of a sponsoring organization reveals a serious management problem that results in an overclaim. At this point, the sponsoring organization would not be in good standing. In June 2022, the State agency conducts a follow up review and determines that the corrective actions are fully implemented and the unearned reimbursement is fully repaid. At this point, at the State agency's discretion, the sponsoring organization returns to good standing. However, the serious management problem is not yet considered fully corrected.

2. Oversight and Implementation of the Serious Deficiency Process in Institutions

State agencies are responsible for oversight of institutions—*i.e.,* sponsoring organizations, independent child care centers, and independent adult day care centers that enter into agreements with the State agency to participate in CACFP. FNS is proposing to modify the serious deficiency process to improve State agency oversight efforts. FNS proposes to codify standards to help State agencies distinguish occasional administrative errors from systemic management problems, determine that corrective action plans are adequate, put in place a fair hearing process that is accessible and fair, and prepare well-written notices of actions throughout the course of the serious deficiency process.

Current program regulations describe serious deficiency notification procedures for participating institutions, responsible principals, and responsible individuals at 7 CFR 226.6(c)(3)(iii). This section includes requirements for the notice of serious deficiency at 7 CFR 226.6(c)(3)(iii)(A). Corrective action is described in 7 CFR 226.6(c)(3)(iii)(B) and (c)(4). Administrative review procedures for the provision of a fair hearing are found at 7 CFR 226.6(k). Termination is at 7 CFR 226.6(c)(3)(iii)(C) and (E) and (c)(4). Disqualification and placement on the National Disqualified List are at 7 CFR 226.6(c)(iii)(E) and (c)(7). FNS proposes to move these requirements from subpart C, State Agency Provisions, to a new subchapter addressing administrative actions under subpart G at 7 CFR 226.25.

This rulemaking proposes to codify standards, under proposed § 226.25(a)(3), to help State agencies distinguish occasional administrative errors from systemic management problems. These standards would guide the State agency's efforts in identifying systemic errors that reflect an institution's inability to effectively manage the program as required under

the regulations. The State agency would have to consider:

- The severity of the problem;
- The degree of responsibility attributable to the institution;
- The institution's history of CACFP participation and training;
- The nature of the requirements that relate to the problem; and
- The degree to which the problem impacts program integrity.

An institution would no longer be in good standing if the State agency determines that a finding rises to the level of a serious management problem. Information about the institution and its responsible principals and responsible individuals would be added to the State agency list, which State agencies are required to maintain and update through each step of the serious deficiency process. Requirements for the State agency list in current § 226.6(c)(8) would move to proposed § 226.25(b). Maintenance of this list allows the State agency to track the institution's progress towards resolving each serious management problem.

If the State agency determines that a program finding rises to the level of a serious management problem, the State agency would issue a written notice that is easy to understand, documenting each finding that must be addressed and corrected. The notice requirements in current § 226.6(c)(3)(iii)(A) would move to proposed § 226.25(a)(6)(i). The State agency would send the notice to the institution, the management officials who bear responsibility for the poor performance, and other responsible individuals, including nonsupervisory employees, contractors, and unpaid staff who have been directly involved in causing the serious management problem. A well-written notice will: provide a detailed explanation of each serious management problem; list appropriate regulatory citations to support the notice; identify the responsible principals and responsible individuals; provide a clear description of the actions required in order to correct the serious management problem; and provide a definite and appropriate time limit for the corrective action.

The assessment of corrective action in current § 226.6(c)(3)(iii)(B) would move to proposed § 226.25(c). This proposed rule would require the institution to take corrective action to address the root cause of each finding. At proposed § 226.25(c)(1), this rulemaking outlines the information that would guide the institution's development of a corrective action plan that demonstrates that the noncompliance is resolved. The State agency's approval of the corrective action plan would include a review of the institution's responses to these questions:

- What is the serious management problem and the action taken to address it?
- Who addressed the serious management problem?
- When was the action taken to address the serious management problem?
- Where is documentation of the corrective action plan filed?
- How were staff and providers informed of the new policies and procedures?

The timelines for corrective action, at proposed § 226.25(c)(2), with an emphasis on correcting problems quickly, remain unchanged from the requirements at current § 226.6(c)(4). Corrective action must be taken within reasonable timeframes established in the current regulations that ensure that each serious management problem is quickly addressed and corrected. The timeframe must fit the type of serious management problem found. The allotted time begins on the date the institution receives the notice—up to 30 days for a false claim or unlawful practice, up to 90 days for correction of other problems, and more than 90 days for management system or process changes, if the State agency determines that a longer time frame is needed. Although the institution may take corrective action at any point in the serious deficiency process, the State agency would issue a notice of proposed termination if any of the deadlines described in proposed § 226.25(c)(2)(ii) through (iv) are not met.

State agencies would have to prioritize monitoring resources to conduct more frequent reviews of institutions with serious management problems. FNS has recently published a final rule, *Child Nutrition Program Integrity,* 88 FR 57792, August 23, 2023, that requires State agencies to schedule reviews at least once every 2 years of institutions that have had serious management problems in previous reviews or are at risk of having serious management problems. This rulemaking would move this requirement from current § 226.6(m) to proposed § 226.6(k).

Current § 226.6(c)(3)(iii)(B)(*1*) requires the State agency to establish that corrective action is permanent. Proposed § 226.25(c)(3)(i) would take a different approach to the determination of full correction. This proposed rule would create a path to full correction for institutions with serious management problems if at least two full reviews, occurring once every 2 years and the first and last full review occurring at least 24 months apart demonstrate that the institution has the ability to operate CACFP with no new or repeat serious management problems. Once the State agency approves a corrective action plan, the institution must receive full reviews at least two times and at least once every 2 years before full correction is achieved.

If corrective actions are fully implemented, the State agency would issue a notice to advise the institution, responsible principals, and responsible individuals of successful corrective action. The notice requirements in current § 226.6(c)(3)(iii)(B) would move to proposed § 226.25(a)(6)(ii). The State agency would continue to provide oversight to ensure that the corrective actions to correct the serious management problem remain in place. If corrective action is complete for the institution but not for all the responsible principals and responsible individuals or vice versa, proposed § 226.25(a)(6)(ii)(A)(*2*) addresses partial achievement of corrective action.

If corrective action is not submitted, approved or implemented, the State agency proposes to terminate the institution. Current § 226.6(k) describes administrative review procedures for the provision of a fair hearing. Termination is described in current § 226.6(c)(3)(iii)(C) and (E) and (c)(4) and disqualification and placement on the National Disqualified List are described in current sections 7 CFR 226.6(c)(3)(iii)(E) and (c)(6). This rulemaking describes procedures the State agency should follow for fair hearings at proposed § 226.25(g), termination for cause at proposed § 226.25(d)(1), notice of serious deficiency status at proposed § 226.25(a)(6)(iii)(B), and placement on the National Disqualified List at proposed § 226.25(e)(2)(i).

Current § 226.6(k) addresses due process. In this rulemaking, proposed § 226.25(g) describes the institution's right to a fair hearing, parameters for conducting a fair hearing, and guidance on the role of the hearing official and the decision-making. The purpose of the fair hearing is limited to a determination by the hearing official that the State agency has complied with CACFP requirements in taking the actions that are under appeal. It is not to determine whether to uphold duly promulgated Federal and State program requirements.

State agencies must provide a fair hearing to institutions when they take actions affecting an institution's participation or its claim for reimbursement, such as application denial, claim denial, overpayment

demands. During the serious deficiency process, the State agency's issuance of a notice of proposed termination is the only action that is subject to administrative review. Although FNS proposes to replace the term ''administrative review'' with the term ''fair hearing,'' and move the requirements from current § 226.6(k)(5) to proposed § 226.25(g)(2), the provision of due process remains unchanged, which is:

- The State agency must give notice of the proposed termination and procedures for requesting a fair hearing to the institution, its executive director, board chair, owner, any other responsible principals and responsible individuals.
- The State agency's notice must specify the basis for proposing termination and the procedures under which the institution, responsible principals, or responsible individuals may request a fair hearing.
- The appellant must submit a written request for a fair hearing within 15 calendar days of receipt of State agency's notice of proposed termination. If the State agency's fair hearing procedures direct the appellant to send the request to the hearing official, then the procedures must identify which office will be responsible for acknowledging the appellant's request.
- The State agency must acknowledge receipt of the fair hearing request within 10 calendar days of receiving it.
- If a fair hearing is requested, the State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred until the hearing official issues a decision.
- Any information upon which the State agency based the proposed termination must be available to the appellants for inspection from the date of receipt of the hearing request.
- Appellants may contest the proposed termination in person or by submitting written documentation to the hearing official.
- Appellants may represent themselves, retain legal counsel, or be represented by another person.
- All documentation must be submitted prior to the beginning of the hearing. All parties, including the State agency, must submit written documentation to the hearing official within 30 calendar days of receipt of the notice of proposed termination.
- Hearing officials must be independent and impartial. Even if they are employees of the State agency, hearing officials cannot be involved in the action that is the subject of the fair hearing, cannot occupy any position which would potentially subject to them to undue influence from other State employees who are responsible for the State agency's action, or have any direct personal or financial interest in the outcome of the fair hearing.
- Hearing officials must issue decisions within 60 calendar days of the State agency's receipt of the appellants' hearing request, based solely on the information provided by the parties. To minimize the exposure of program funds to waste or abuse, State agencies must be able to resolve problems quickly and train hearing officials to meet the FNS deadline to promptly complete the fair hearing process.
- The hearing official's decision is the final administrative decision. Appellants may not administratively contest the hearing official's decision.

If the appellant prevails, the State agency would issue a notice that confirms that the proposed termination of the institution, responsible principals, and responsible individuals is vacated, as described in proposed § 226.25(a)(6)(iii)(A). However, the institution would still have to implement procedures and policies to fully correct the serious management problem.

If the hearing official upholds the State agency's proposed termination action, the State agency would immediately notify the institution, executive director, owner, board chair, and any other responsible principals and responsible individuals that the institution's agreement is terminated, as described in proposed § 226.25(a)(6)(iii)(B). It is at this point in the process that this rulemaking proposes to declare the institution seriously deficient. The State agency would issue a serious deficiency notice that informs the institution, responsible principals, and responsible individuals of their disqualification from CACFP participation. Termination of the agreement and disqualification described in current § 226.6(c)(3)(iii)(E) would move to proposed § 226.25(d) and proposed § 226.25(e), respectively. The State agency would provide a copy of the serious deficiency notice to FNS, with the mailing address and date of birth for each responsible principal and responsible individual, and the full amount of any determined debt associated with the institution, responsible principals, and responsible individuals, for inclusion on the National Disqualified List. Requirements at current § 226.6(c)(6) describing placement on the National Disqualified List would move to proposed § 226.25(e)(2).

Proposed § 226.25(h) addresses the State agency's responsibilities for the payment of valid claims found in current § 226.6(c)(5)(i)(D); collection of unearned payments found in current § 226.14(a); suspension of payments found in current § 226.6(c)(5)(ii)(E); and State liability for payments found in current § 226.6(h)(11). Requirements from current § 226.6(c)(iii)(6) for State agency action in response to the independent determination of a serious management problem by FNS would move to proposed § 226.25(i).

Accordingly, this proposed rule would amend CACFP regulations by removing the requirements describing termination of a participating institution's agreement, including serious deficiency notification procedures, successful corrective action, agreement termination, corrective action timeframes, administrative review, and State agency list, under 7 CFR 226.6(c) and (k). This rulemaking proposes to address all requirements for State agency oversight and implementation of the serious deficiency process in institutions under 7 CFR 226.25. Corresponding amendments are proposed at 7 CFR 226.2, 226.6(b)(1) and (2), 226.6(c), (k), and (m)(3), and 226.16(l).

3. Oversight and Implementation of the Serious Deficiency Process in Day Care Homes and Unaffiliated Sponsored Centers

Sponsoring organizations enter into agreements with day care homes, unaffiliated child care centers, and unaffiliated adult day care centers to oversee their participation and meal service operations. The sponsoring organization is financially responsible for any meals served incorrectly or served to ineligible children and adults, making it even more important that serious management problems are properly identified and corrected.

The serious deficiency process offers a clear way for sponsoring organizations to take actions guiding day care homes and unaffiliated centers to correct problems that affect the integrity of their meal service operations. It gives day care homes and centers the opportunity for improvement, technical assistance, and due process. For sponsoring organizations, it is a critical tool for resolving performance issues and correcting serious management problems at the operational level.

Current program regulations describe serious deficiency notification procedures for participating day care homes at 7 CFR 226.16(l)(3). This section includes requirements for the notice of serious deficiency at 7 CFR

226.16(l)(3)(i). Corrective action is described in 7 CFR 226.16(l)(3)(ii). Administrative review procedures for the provision of a fair hearing are found at 7 CFR 226.6(l). Termination and disqualification are described at 7 CFR 226.16(l)(3)(iii) and (v). FNS proposes to move these requirements of the serious deficiency process for day care homes to a new subchapter addressing administrative actions under subpart G at 7 CFR 226.25. This proposed rule would also require sponsoring organizations to follow these procedures to implement the serious deficiency process for unaffiliated centers.

Under this proposed rule, many of the sponsoring organization responsibilities and actions would be identical to the provisions outlined for State agencies. However, FNS is proposing key changes to not only recognize CACFP requirements that are simplified for day care homes, but also to distinguish between the center that participates directly under the State agency and the center that elects to participate through a sponsoring organization.

Part of a strong and sustained effort to ensure program integrity is the enhanced oversight that sponsoring organizations provide day care homes and unaffiliated centers. For example, while the State agency is generally required to conduct onsite reviews at least once every 2 or 3 years, depending on the size and circumstances of the institution being reviewed, a sponsoring organization will have conducted a minimum of six to nine reviews of each of its day care homes and unaffiliated centers during the same time period. The serious deficiency process that FNS proposes for day care homes and unaffiliated centers takes into account the additional monitoring, training, and technical assistance that sponsoring organizations must provide.

This rulemaking proposes to codify standards, under proposed § 226.25(a)(3), to help sponsoring organizations distinguish occasional administrative errors from systemic management problems. The sponsoring organization would have to consider:

- The severity of the problem;
- The degree of responsibility attributable to the day care home or unaffiliated center;
- The day care home or unaffiliated center's history of CACFP participation and training;
- The nature of the requirements that relate to the problem; and
- The degree to which the problem impacts program integrity.

Whenever a sponsoring organization identifies a serious management problem, the day care home or unaffiliated center can no longer be considered to be in good standing. The sponsoring organization must provide information to the State agency to keep the State agency list updated through each step of the serious deficiency process. Current § 226.6(c)(7) requires the State agency list to include information about institutions and day care homes that are seriously deficient. This proposed rule would expand the list to include information on any unaffiliated center that has a serious management problem, as described in proposed § 226.25(b).

Current § 226.16(l)(3)(i) addressing the notice of serious deficiency would move to proposed § 226.25(a)(7)(i). If the sponsoring organization determines that a program finding rises to the level of a serious management problem, the sponsoring organization would issue a notice documenting, in plain language, each serious management problem that must be corrected. The sponsoring organization would issue the notice to the day care home provider, center director, and any other responsible principals or responsible individuals who have been directly involved in causing the serious management problem. A well-written notice will: provide a detailed explanation of each serious management problem; list appropriate regulatory citations to support the notice; identify the responsible principals and responsible individuals; provide a clear description of the actions required in order to correct the serious management problem; and provide a definite time limit for the corrective action.

Corrective action described in current § 226.16(l)(3)(ii) would move to proposed § 226.25(c). Day care homes and unaffiliated centers would be required to take corrective action to address each serious management problem. The day care home or unaffiliated center would submit a written corrective action plan for the sponsoring organization to approve. The corrective action plan would have to address the root cause of each finding, with enough detail explaining the implementation—*i.e.,* what, how, when, and by whom—for the sponsoring organization to make an assessment regarding its effectiveness in fully correcting the serious management problem. It would also describe where the documentation of changes will be filed.

The emphasis of the timeline for corrective action is on correcting problems quickly, as described in current § 226.16(l)(3)(i)(C). Under proposed § 226.25(c)(2)(i), day care homes and unaffiliated centers would have up to 30 days to take corrective action that, in the sponsoring organization's judgment, will correct the serious management problem. Although corrective action may occur at any point in the serious deficiency process, the sponsoring organization would issue a notice of serious deficiency if the 30-day deadline is not met.

If the corrective action plan is accepted, the sponsoring organization would confirm that the corrective actions are fully implemented. Current § 226.16(l)(3)(ii) temporarily defers a determination of serious deficiency if the sponsoring organization establishes that corrective action is successful. This proposed rule would create a path to full correction if follow-up reviews, as described in current § 226.16(d)(4)(v), demonstrate that the day care home or unaffiliated center has the ability to operate CACFP with no new or repeat serious management problems. The day care home or unaffiliated center would be reviewed at the same frequency as existing regulations require, as described in current § 226.16(d)(4)(iii). Full correction is achieved when, after three consecutive reviews are complete, the day care home or unaffiliated center demonstrates that it has no new or repeat serious management problems, as described in proposed § 226.25(c)(3)(ii) and (iii). After full correction is achieved, any recurrence of the same serious management problem would require the sponsoring organization to issue a new notice to restart the serious deficiency process. Serious management problems that occur after full correction is achieved would not lead to an immediate proposal of termination. However, as described in proposed § 226.25(c)(3)(iv), the recurrence of a serious management problem before full correction is achieved would lead directly to proposed termination.

Successful corrective action is described in current § 226.16(l)(3)(ii). If corrective actions are fully implemented, the sponsoring organization would issue a notice of successful corrective action to the day care home, unaffiliated center, responsible principals, and responsible individuals of, as described in proposed § 226.25(a)(7)(ii)(A). The sponsoring organization would continue to provide oversight to ensure that the procedures and policies to fully correct the serious management problem are implemented.

Current § 226.16(l)(3)(iii) and (v) address the sponsoring organization's actions when full and permanent correction is not achieved. If the corrective action plan is not accepted or a repeat serious management problem occurs before full correction is achieved,

this proposed rule describes the procedures the sponsoring organization would follow for fair hearings at proposed § 226.25(g)(1)(ii) and (g)(2), termination for cause and notification of serious deficiency status at proposed § 226.25(a)(7)(iii), and placement on the National Disqualified List at proposed § 226.25(e)(2).

The sponsoring organization would issue a proposed termination notice, and a fair hearing would be offered. If a fair hearing is requested and the fair hearing upholds the proposal to terminate or the time frame for requesting a fair hearing has passed, the sponsoring organization would issue a notice of serious deficiency and termination. If the fair hearing vacates the proposed termination, the sponsoring organization would issue a notice to vacate the proposed termination as described in proposed § 226.26(c)(7)(iii)(A). However, the day care home or unaffiliated center must still implement procedures and policies to fully correct the serious management problem.

As described in current § 226.6(l)(1), the State agency will continue to have authority to decide whether a fair hearing will be heard by the state or by the sponsoring organization. As described in proposed § 226.25(g)(3), hearing officials, whether retained by the state or the sponsoring organization, must be independent, impartial, and have no involvement in the action that is the subject of the fair hearing. Their decisions must be based on a review of written submissions by all parties. They are not required to hold an in-person hearing for day care homes or unaffiliated centers.

If the hearing official upholds the proposed termination, the sponsoring organization would immediately notify the day care home provider, center director, owner, board chair, and any other responsible principals and responsible individuals that the agreement is terminated, as described in proposed § 226.25(c)(7)(iii)(B). This would also be the point in the process when the day care home or unaffiliated center would be declared seriously deficient. The sponsoring organization would issue a serious deficiency notice that informs the day care home, unaffiliated center, responsible principals, and responsible individuals of their disqualification from CACFP participation.

The sponsoring organization would provide a copy of the serious deficiency notice to the State agency, with the mailing address and date of birth for each responsible principal and responsible individual, and the full amount of any determined debt associated with the day care home or unaffiliated center. The State agency would continue to update the State agency list and provide this information to FNS for inclusion on the National Disqualified List.

Accordingly, this proposed rule would amend CACFP regulations by removing the requirements describing the termination of agreements for cause, including serious deficiency notification procedures, under 7 CFR 226.16(l). This rulemaking would address all requirements for sponsoring organization oversight and implementation of the serious deficiency process in day care homes and unaffiliated centers under 7 CFR 226.25.

B. Summer Food Service Program (SFSP)

1. Applying the Serious Deficiency Process to SFSP

Section 13 of the NSLA, at 42 U.S.C. 1761(q), requires the Secretary to establish procedures for the termination of SFSP sponsors for each State agency to follow. The procedures must include a fair hearing and prompt determination for any sponsor aggrieved by any action of the State agency that affects its participation or claim for reimbursement. The Secretary must also maintain a disqualification list for State agencies to use in approving or renewing sponsor applications.

Prior to enactment of the Healthy Hunger-Free Kids Act of 2010, SFSP regulations included provisions addressing corrective action, termination, and appeals. Current SFSP regulations specify:

- Criteria State agencies must consider when approving sites for participation; provide authority for the State agency to terminate sponsor participation, as described in 7 CFR 225.6(h);
- List the types of program findings that would be grounds for application denial or termination, as described in 7 CFR 225.11(c);
- Require State agencies to terminate participation of sites or sponsors for failure to correct program findings within timeframes specified in a corrective action plan as described in 7 CFR 225.11(f); and
- Set out procedures for sponsors to appeal adverse actions, including termination of a sponsor or site and denial of an application for participation, as described in 7 CFR 225.13.

However, the regulations do not provide explicit authority to FNS or State agencies to disqualify sponsors or any of the people who are responsible for the types of findings that weaken program management and integrity. Under the Healthy Hunger-Free Kids Act of 2010, Congress established requirements related to service institutions that were terminated, including maintaining a list of disqualified service institutions and individuals. To implement those requirements, in this proposed rule, specific steps are provided to establish a serious deficiency process in SFSP, building on the proposals outlined in the previous sections of this preamble. This rulemaking also proposes expansion of the National Disqualified List, establishment of State agency lists, and changes to termination and appeal procedures that would hold sponsors, responsible principals, and responsible individuals accountable for serious management problems in SFSP. These modifications are set out in the regulatory text section of this rulemaking in proposed § 225.18.

In applying the serious deficiency process to SFSP, this rulemaking would expand the list of defined terms under 7 CFR 225.2. This rulemaking proposes definitions of the following terms that relate to important aspects of program management and the serious deficiency process:

- *Contingency plan* means the State agency's written process for the transfer of sponsored site service area that will help ensure that Program meals for children will continue to be available without interruption if a sponsor's agreement is terminated.
- *Corrective action* means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.
- *Disqualified* means the status of a sponsor, responsible principal, or responsible individual who is ineligible for participation in the program.
- *Fair hearing* means due process provided upon request to:
  - A sponsor that has been given notice by the State agency of an action that will affect participation or reimbursement under the program;
  - A principal or individual responsible for a sponsor's serious management problems and issued a notice of proposed termination and proposed disqualification from Program participation; or
  - A sponsor that has been given notice of proposed termination.
- *Finding* means a violation of a regulatory requirement identified during a review.

• *Fiscal action* means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, disallowance of funds for failure to take corrective action to meet program requirements.

• *Full correction means* the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problems are identified in subsequent reviews, as described in proposed § 225.18(c)(3).

• *Good standing* means the status of a program operator that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

• *Hearing official* means an individual who is responsible for conducting an impartial and fair hearing—as requested by a sponsor, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.

• *Lack of business integrity* means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice.

• *Legal basis* means the lawful authority established in statute or regulation.

• *National Disqualified List* (NDL) means a system of records, maintained by the Department, of sponsors, responsible principals, and responsible individuals disqualified from participation in the program.

• *Notice* means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to a sponsor's program reimbursement or participation.

• *Principal* means any individual who holds a management position within, or is an officer of, a sponsor or a sponsored site, including all members of the sponsor's board of directors or the sponsored site's board of directors.

• *Program operator* means any entity that participates in one or more child nutrition programs.

• *Responsible individual* means any individual employed by, or under contract with a sponsor or an individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for a sponsor's serious management problems.

• *Responsible principal* means any principal, as described in this section, who the State agency or FNS determines to be responsible for a sponsor's serious management problems.

• *Review cycle* means the frequency and number of required reviews of sponsors and sites.

• *Serious management problem* means the finding(s) that relate to a sponsor's inability to meet the program's performance standards or that affect the integrity of a claim for reimbursement or the quality of meals served at a site.

• *Seriously deficient* means the status of a sponsor after it is determined that full correction has not been achieved and termination for cause is the only appropriate course of action.

• *State agency list* means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on sponsors through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in proposed § 225.18(b).

• *Termination for cause* means the termination of a Program agreement due to considerations related to a sponsor's performance of Program responsibilities under the agreement between the State agency and sponsor.

Accordingly, this proposed rule would amend 7 CFR 226.2 by adding definitions for contingency plan, corrective action, disqualified, fair hearing, finding, fiscal action, full correction, good standing, hearing official, lack of business integrity, legal basis, National Disqualified List, notice, principal, program operator, responsible individual, responsible principal, review cycle, serious management problem, seriously deficient, State agency list, and termination for cause.

2. Oversight and Implementation of the Serious Deficiency Process in SFSP

Sponsors that enter into agreements with the State agency to operate SFSP must be able to assume responsibility for the entire administration of the program at all their meal service sites. They are required to demonstrate that they have the necessary financial and administrative capability to comply with SFSP requirements. If a sponsor is unable to properly manage the program, the serious deficiency process provides a clear way for the State agency to identify and correct serious management problems and improve integrity of meal service operations at the local level.

Although SFSP and CACFP are autonomous programs with unique operational requirements, they are often administered by the same State agency. To facilitate consistent and equitable application of the serious deficiency process, within and across States, FNS proposes a set of procedures for SFSP that is similar to the modifications this rulemaking proposes to make in CACFP.

As in CACFP, the intent of the serious deficiency process for SFSP is to offer a systematic way for an administering agency to correct problems and protect program integrity. The process would include procedures to identify serious management problems—what 7 CFR part 225 refers to as significant operational problems—and provide opportunities for corrective action and due process. The steps of the serious deficiency process would also be designed to help the State agency document the case to terminate and remove any sponsor that is unwilling to or incapable of resolving serious management problems that place program integrity at risk.

This proposed rule would reorganize existing regulations into a new subchapter at 7 CFR 225.18, amend termination procedures, and establish a disqualification process similar to the process employed in CACFP, with modifications reflecting the shorter duration of meal service operations in SFSP. For example, the proposed maximum timeframe for which the corrective action plan may be implemented in SFSP would be up to 10 calendar days, whereas in CACFP the maximum timeframe could be up to 90 calendar days for institutions.

To examine how State agencies can minimize risk to SFSP integrity, this rulemaking proposes to codify standards under proposed § 225.18(a) to help State agencies distinguish occasional administrative errors from systemic management problems. These standards would guide the State agency's efforts in identifying systemic errors that reflect sponsor's inability to effectively manage the program as required under the regulations. The State agency would have to consider the following criteria, which FNS welcomes public comments on:

1. *The severity of the problem.* Is the noncompliance on a minor or substantial scale? Are the findings indicative of a systemic problem or is the problem truly an isolated event? There is a point at which continued problems indicate serious

mismanagement. Problems that initially appear manageable may become serious if not corrected within a reasonable period of time. Even minor problems may be serious if systemic. Some problems are serious even though they have occurred only once. For example, missing the recording of meal counts at the point of service for one day out of a month could be resolved with technical assistance. However, a second review with the same problem or an initial review with multiple days of incomplete point-of-service meal counts could rise to the level of a serious management problem.

2. *The degree of responsibility attributable to the sponsor.* To the extent that evidence is available, can the State agency determine whether the findings were inadvertent errors? Is there evidence of negligence or a conscious indifference to regulatory requirements, or even worse, is there evidence of deception?

3. *The sponsor's history of participation and training in SFSP.* Is this the first time the sponsor is having problems or has noncompliance occurred frequently?

4. *The nature of the requirements that relate to the problem.* Are the sponsor's actions a clear violation of SFSP requirements? Has the sponsor implemented new policies correctly?

5. *The degree to which the problem impacts program integrity.* Is the finding undermining program intent or purpose, such as misuse of program funds, or is it simply an administrative error?

When the State agency identifies a serious management problem, the sponsor can no longer be in good standing. At proposed § 225.18(b), this proposed rule would require the State agency to maintain a State agency list to track each sponsor's progress towards resolving each serious management problem. The State agency would add information about the sponsor and its responsible principals and responsible individuals to the list and keep the list updated through each step of the serious deficiency process.

If the State agency determines that a finding rises to the level of a serious management problem, the State agency would issue a notice documenting in plain language each problem that must be addressed and corrected, as described under proposed § 225.18(a)(6)(i). The State agency would send the notice to the sponsor, the management officials who bear responsibility for the poor performance, and other responsible principals and individuals, including nonsupervisory employees, contractors, and unpaid staff who have been directly involved in causing the serious management problem. A well-written notice will: provide a detailed explanation of each serious management problem; list appropriate regulatory citations to support the notice; identify the responsible principals and responsible individuals; provide a clear description of the actions required in order to fully correct the serious management problem; and provide a definite and appropriate time limit for the corrective action.

At proposed § 225.18(c)(1), this proposed rule outlines the information that would guide the sponsor's development of a corrective action plan that would address the root cause of each finding, while also demonstrating that the noncompliance is resolved. The State agency's approval of the corrective action plan would include a review of the sponsor's responses to these questions:

- What is the serious management problem and the action taken to address it?
- Who addressed the serious management problem?
- When was the action taken to address the serious management problem?
- Where is documentation of the corrective action plan filed?
- How were the sponsor's staff informed of the new policies and procedures?

The section on assessing corrective action at proposed § 225.18(c)(2), requires a short timeline to ensure that problems are corrected quickly, particularly given SFSP's brief period of operation. If corrective action cannot be achieved, the regulations describe procedures the State agency should follow for fair hearings, termination for cause, notices of serious deficiency status, and placement on the National Disqualified List. Although corrective action may occur at any point in the serious deficiency process, the State agency would issue a notice of proposed termination if the deadline described in proposed paragraph (c)(2) is not met.

If corrective action is fully implemented, the State agency would issue a notice to advise the sponsor, responsible principals, and responsible individuals of successful corrective action, as described in proposed § 225.18(a)(6)(ii)(A). The State agency would continue to provide oversight to ensure that the procedures and policies the sponsor implemented to fully correct the serious management problem are still in place. If corrective action is complete for some but not all of the serious management problems, proposed § 225.18(a)(6)(ii)(A)(*2*) addresses partial achievement of corrective action. If corrective actions are not implemented, this rulemaking describes procedures the State agency should follow for fair hearings in proposed § 225.18(f), notice of serious deficiency status in proposed § 225.18(a)(6)(iii)(B), termination for cause in proposed § 225.18(d), and placement on the National Disqualified List in proposed § 225.18(e)(2).

This proposed rule would create a path to full correction if at least two full reviews, occurring once every year—with the first and last full review occurring at least 12 months apart—demonstrate that the sponsor has the ability to operate SFSP with no new or repeat serious management problems. Additionally, all reviews in between the first and last full review, including follow up reviews, would need to demonstrate that the sponsor has no new or repeat serious management problems. As described under proposed § 225.18(c)(3), once the State agency approves a corrective action plan, the sponsor must be reviewed at least two times, at least once every year, before full correction is achieved. Current § 225.7(e)(4)(ii) requires the State agency to annually review every sponsor that has experienced significant operational problems in the prior year. This proposed rule would make a corresponding change to replace the term ''significant operational problem'' with the term ''serious management problem.'' Serious management problems would be considered fully corrected if two consecutive reviews—one full review each year for 2 years and at least 12 months apart—indicate no new serious management problems or no repeat of a serious management problem. FNS welcomes public comments on this standard.

For example, let's say a State agency reviews a sponsor in June 2022 and identifies a serious management problem. The sponsor submits a corrective action plan that is approved by the State agency and sponsor enters a once every year review cycle. The State agency does a follow up review in August of 2022 to ensure that actions are fully implemented. The State agency determines that the corrective action plan has been fully implemented and all debts owed to the program are fully repaid. At this point the sponsor returns to good standing. The State agency conducts a full review in June of 2023 and again in June of 2024. All reviews reveal no new or repeat serious management problems and the first and last full review are at least 12 months apart. At this point, the sponsor's serious management problem is

considered fully corrected and the sponsor has achieved full correction.

Under proposed § 225.18(c)(3)(iv), a serious management problem that occurs again, after full correction is achieved, would not be considered a repeat serious management problem and would not directly result in proposed termination. However, the recurrence of a serious management problem before full correction is achieved would be considered repeat and would lead directly to proposed termination. If new serious management problems occur before a sponsor achieves full correction of its serious management problems, the sponsor would continue to be reviewed at least once every year until at least two full reviews—with the first and last review occurring at least 12 months apart—reveal no new or repeat serious management problems.

State agencies must provide appeal rights when they take actions affecting a sponsor or site's participation, claim for reimbursement, request for advance payments, or registration of a food service management company, as described in current § 225.13(a). Appeal procedures, which are described in current § 225.13(b), would be replaced by the fair hearing procedures of the serious deficiency process, at proposed § 225.18(f). This section describes the sponsor's right to a fair hearing, parameters for conducting a fair hearing, and guidance on the role of the hearing official and the decision-making.

The purpose of the fair hearing is limited to a determination by the hearing official that the State agency has complied with SFSP requirements in taking the actions that are under appeal. As with CACFP, it is not to determine whether to uphold duly promulgated Federal and State program requirements. FNS welcomes comments on the following points at issue. As described in proposed § 225.18(f), this rulemaking proposes the following set of actions:

- The State agency must give notice of the proposed termination and procedures for requesting a fair hearing to the sponsor, its executive director, board chair, and any other responsible principals and responsible individuals.
- The State agency's notice must specify the basis for proposing termination and the procedures under which the sponsor, responsible principals, or responsible individuals may request a fair hearing.
- The appellant must submit a written request for a fair hearing within 10 calendar days after receipt of the State agency's notice of proposed termination. If the State agency's fair hearing procedures direct the appellant to send the request to the hearing official, then the procedures must identify which office will be responsible for acknowledging the appellant's request.
- The State agency must acknowledge receipt of the fair hearing request within 5 calendar days of receiving it.
- If a fair hearing is requested, the State agency must continue to pay any valid claims for reimbursement of eligible meals served until the hearing official issues a decision.
- Any information upon which the State agency based the proposed termination must be available to the appellants for inspection from the date of receipt of the hearing request.
- Appellants may contest the proposed termination in person or by submitting written documentation to the hearing official.
- Appellants may represent themselves, retain legal counsel, or be represented by another person.
- All documentation must be submitted prior to the beginning of the hearing. All parties, including the State agency, must submit written documentation to the hearing official within 20 calendar days after sponsor's receipt of the notice of proposed termination.
- Hearing officials must be independent and impartial. Even if they are employees of the State agency, hearing officials cannot be involved in the action that is the subject of the fair hearing, cannot occupy any position which would potentially subject to them to undue influence from other State employees who are responsible for the State agency's action, or have any direct personal or financial interest in the outcome of the fair hearing.
- Hearing officials must issue decisions within 30 calendar days of the State agency's receipt of the appellants' hearing request, based solely on the information provided by the parties. To minimize the exposure of program funds to waste or abuse, State agencies must be able to resolve problems quickly and train hearing officials to meet the FNS deadline to promptly complete the fair hearing process.
- The hearing official's administrative decision is final. Appellants may not administratively contest the hearing official's decision.

If the appellant prevails, the State agency would issue a notice that confirms the proposed termination of the sponsor, responsible principals, and responsible individuals is vacated, as described in proposed § 225.18(a)(6)(iii)(A). However, the sponsor would still have to implement procedures and policies to fully correct the serious management problem.

If the hearing official upholds the State agency's proposed termination action, the State agency would immediately notify the sponsor, executive director, board chair, and any other responsible principals and responsible individuals that the sponsor's agreement is terminated, as described in proposed § 225.18(a)(6)(iii)(B). As with CACFP, it is at this point in the process that this rulemaking proposes to declare the sponsor seriously deficient. The State agency would issue a serious deficiency notice that informs the sponsor, responsible principals, and responsible individuals of their disqualification from SFSP participation. This proposed rule describes termination of the agreement at proposed § 225.18(d) and disqualification at proposed § 225.18(e).

The State agency would provide a copy of the serious deficiency notice to FNS, with the mailing address and date of birth for each responsible principal and responsible individual, and the full amount of any determined debt associated with the sponsor, responsible principals, and responsible individuals, for inclusion on the National Disqualified List. Requirements at proposed § 226.25(e)(2) describe placement on the National Disqualified List. Extension of the National Disqualified List to SFSP would make a list of disqualified sponsors and individuals available to State agencies to use in approving or renewing sponsor applications.

Proposed § 225.18(g) addresses the State agency's responsibilities for the payment of valid claims and the collection of unearned payments. Requirements for State agency action in response to the independent determination of a serious management problem by FNS is described in proposed § 225.18(h).

Accordingly, this proposed rule would establish a serious deficiency process to address serious management problems in SFSP. This rulemaking would address State agency oversight and implementation of the serious deficiency process under 7 CFR 225.18. Corresponding amendments are proposed at 7 CFR 225.2, 225.6(b)(9), 225.11(c), and 225.13.

C. Suspension

Section 17 of the NSLA, at 42 U.S.C. 1766(d)(5), recognizes that there are circumstances that may require the immediate suspension of program operations, where continued participation in CACFP is inappropriate because health, safety, or program

integrity are at risk. Current §§ 226.6(c)(5)(i) and 226.16(l)(4) describe a set of actions that an administering agency must implement if a program operator's participation poses an imminent threat to the health or safety of children, adult participants, or the public. Under current § 226.6(c)(5)(ii), the regulations outline administrative procedures when a State agency determines a false or fraudulent claim is submitted. There is no corresponding statute or regulations for suspension of participation in SFSP.

Suspension requirements would move to proposed § 226.25(f). FNS does not propose any procedural changes for administering agencies when there is an imminent threat to health and safety through the suspension process. However, FNS is proposing to strengthen requirements for State agency action when a program operator knowingly submits a false or fraudulent claim. Proposed § 226.25(f)(2) would require State agencies to exercise their authority to suspend CACFP participation when it is determined that a claim for reimbursement is fraudulent or cannot be verified with required documentation.

This rulemaking also includes technical amendments to correspond with the proposed changes in terminology and reorganization of the serious deficiency process regulations. Under proposed § 226.25(f), a suspension would remain in effect until the serious management problem is corrected, as in the case of a suspension based on a false or fraudulent claim, or a fair hearing of the proposed termination is completed. Although the agreement is not formally terminated, a program operator cannot participate in CACFP during the period of suspension.

Suspension for Health or Safety Threat

CACFP participation must be suspended if an imminent threat is identified that places the health or safety of children, adult participants, or the public at risk. The suspension is immediate and cannot be appealed. The administering agency must notify the program operator, responsible principals, and responsible individuals that participation and payments are suspended and termination and disqualification are proposed. The notice must identify the serious management problem and include procedures for requesting a fair hearing of the proposed termination and disqualification, as described in current §§ 226.6(c)(5)(i)(B) and 226.16(l)(4)(ii). Proposed § 226.25(f)(1)(i)(A) would address the notice of suspension of an institution and proposed § 226.25(f)(1)(ii)(A) would address the notice of suspension of a day care home or an unaffiliated center.

The administering agency is prohibited from offering an appeal prior to the commencement of the suspension and payments will remain suspended until the fair hearing is concluded. If the hearing official overturns the suspension, the program operator may claim reimbursement for eligible meals served during the suspension. Current § 226.6(c)(5)(i)(C), which addresses termination of the agreement by the program operator and placement on the National Disqualified List, would move to proposed § 226.25(f)(1)(i)(B) and (f)(1)(ii)(B). If a program operator voluntarily terminates its agreement after receiving the notice of proposed termination, the program operator will still be terminated for cause and disqualified.

Proposed Suspension for Fraud or Fraudulent Claim

Submission of a false claim for reimbursement in facilities is a serious management problem that must be addressed through the serious deficiency process. However, an institution is subject to suspension for the submission of a false claim for reimbursement. Current § 226.6(c)(5)(ii), authorizes State agencies to suspend participation, at their discretion, if the State agency determines that a claim for reimbursement is fraudulent or cannot be verified with required documentation. Under proposed § 226.25(f)(2) of this rulemaking, FNS would require State agencies to suspend participation of institutions in all cases of false or fraudulent claims. Suspension stops the flow of payments to those institutions and provides protection against misuse of program funds.

Suspension for false or fraudulent claims is not immediate. At the time suspension is proposed, the State agency must initiate action to terminate the agreement to disqualify the institution, responsible principals, and responsible individuals. Suspension for false or fraudulent claims becomes effective if the institution does not appeal the proposed termination and disqualification or, if a suspension review is requested, the hearing official upholds the State agency's proposed action. If a suspension for submission of a false or fraudulent claim is overturned, the serious deficiency process to address the institution's serious management problems would still continue.

All of the requirements for suspending an institution for submitting a fraud or fraudulent claim that are found in current § 226.6(c)(5)(ii) would move to proposed § 226.25(f)(2). Suspension of payments would move from current §§ 226.6(c)(5)(i)(D), 226.6(c)(5)(ii)(E), and 226.16(l)(4)(iv) to proposed § 226.25(h)(2). When the State agency proposes to suspend an institution's participation, including program payments for the submission of a false or fraudulent claim, the State agency must issue a combined notice of serious management problems and proposed suspension, which would include a description of the serious management problem and the State agency's fair hearing procedures for suspension and termination. The institution has the right to request a suspension review as well as a fair hearing of the proposed termination and disqualification action.

The suspension is implemented if the institution does not appeal the action or, if an appeal is filed, the hearing official upholds the action proposed by the State agency. If the suspension review official overturns the proposed suspension, the institution may claim reimbursement for eligible meals served during the proposed suspension. A State agency must not reimburse an institution for that portion of a claim that the State agency knows to be invalid. Voluntary termination of the institution's agreement with the State agency after having received the notice would still result in termination for cause and placement on the National Disqualified List.

Suspension of participation and suspension of payments add strong integrity protections against the submission of false and fraudulent claims in CACFP. FNS is concerned that there are similar circumstances in SFSP where continuing program operations is inappropriate, yet there are no corresponding requirements authorizing the State agency to suspend participation and payments. FNS recognizes that additional public input is needed to consider the use of suspension to protect against the submission of false or fraudulent claims in SFSP. Public comments on the following proposed options will be critical as FNS develops the final rule:

1. Option 1 of this proposed rule would require the State agency to apply the serious deficiency process when it determines that a sponsor in SFSP has submitted a false or fraudulent claim. The serious deficiency process would provide the sponsor the opportunity for corrective action and a fair hearing, with no suspension of participation. The sponsor would be eligible to continue to participate in SFSP and receive

payments for all valid claims that are submitted to the State agency for reimbursement.

2. Option 2 would require the State agency to propose suspension based on a sponsor's submission of a false or fraudulent claim, at the same time that the serious deficiency process is implemented. The suspension would remain in effect until the false or fraudulent claim is corrected or a fair hearing of the suspension completed. Although there would be no formal termination of the agreement, the sponsor would not be eligible to participate in SFSP during the period of suspension. All payments of claims for reimbursement would be suspended. If a fair hearing overturns the suspension, the sponsor would be eligible for retroactive reimbursement.

Accordingly, this rulemaking proposes to make corresponding changes to 7 CFR 226.2 and 226.25 to align the proposed amendments to the serious deficiency process. This proposed rule would move State agency actions to suspend participation if health or licensing officials cite an institution for serious health or safety violations from 7 CFR 226.6(c)(5)(i) through 226.25(f)(1). Requirements for the State agency to exercise its authority to suspend participation if it determines that an institution knowingly submitted a claim for reimbursement that is fraudulent or that cannot be verified with required documentation would move from 7 CFR 226.6(c)(5)(ii) to 226.25(f)(2). Fair hearing procedures at 7 CFR 226.6(k) and (l) would move to § 226.25(g). Sponsoring organization actions to suspend participation of day care homes that are currently found at 7 CFR 226.16(l)(4) would move to § 226.25(f). Requirements for the suspension of payments would move from 7 CFR 226.6(c)(5)(i)(D), 226.6(c)(5)(ii)(E), and 226.16(l)(4)(iv) to 226.25(h)(2).

D. Disqualification and the National Disqualified List

1. Termination for Cause and Disqualification

The serious deficiency process gives program operators the opportunity for corrective action and due process. The administering agency can accept corrective action at any point up until the program agreement is terminated. If the administering agency determines that the program operator, whose ability to manage the program has already been called into question, fails to take successful corrective action, the program agreement must be terminated for cause. Under this proposed rule, the administering agency would declare the program operator to be seriously deficient at the point of termination, which would be followed by disqualification.

Termination for Cause

The *Child Nutrition Program Integrity Final Rule* amended CACFP and SFSP regulations to allow a program operator to terminate an agreement for convenience for considerations unrelated to its program performance, at current §§ 225.6(i) and 226.6(b)(4)(ii). In the serious deficiency process, due to a program operator's inability to properly perform its responsibilities under its program agreement, termination must always be for cause, not convenience. Current § 226.16(l) also addresses a sponsoring organization's actions to terminate a day care home's agreement for cause. There are no regulations describing the termination for cause of a CACFP institution or unaffiliated center or an SFSP sponsor's agreement related to the performance of program requirements.

To strengthen management practices and eliminate gaps that put program integrity at risk, FNS proposes to amend current §§ 225.2 and 226.2 to include definitions of ''Termination for cause'' to describe the administering agency's action to end an agreement with a sponsor, an institution, an unaffiliated center, or a day care home for reasons related to proper performance of program responsibilities. This proposed rule would also require action by the State agency to:

- Terminate an agreement whenever a sponsor's participation in SFSP or an institution's participation in CACFP ends at proposed §§ 225.6(i) and 226.6(b)(4)(iii), respectively;
- Terminate an agreement for cause, as described under the serious deficiency process proposed §§ 225.18(d)(1) and 226.25(d)(1); and
- Terminate an agreement for cause if a program operator, responsible principal, or responsible individual is on the National Disqualified List, at proposed §§ 225.18(e)(1) and 226.25(e)(1).

Disqualification

The National Disqualified List was established to prevent a disqualified institution or day care home from being approved to participate in CACFP or any other Child Nutrition Program. As described in the next section of this preamble, FNS proposes to amend 7 CFR 210.9(d), 215.7(g), 220.7(i), 225.6(b)(13), and 226.6(b)(1)(xiii), to establish a reciprocal disqualification process that would prohibit State agencies from approving an application for any program operator that is terminated for cause and placed on a National Disqualified List.

In CACFP, if a new institution's application does not meet program requirements under 7 CFR 226.6(b), 226.15(b), or 226.16(b), the State agency must deny the application and disqualify the applicant institution, the person who signed the application, and any other responsible principals or responsible individuals, as described in proposed § 226.6(c). The State agency must ensure that participating institutions annually certify that neither the institution nor its principals are on the National Disqualified List. The State agency must also ensure that participating sponsoring organizations annually certify that no sponsored facility or facility principal is on the National Disqualified List.

When a new application is denied, current § 226.6(c)(1) requires the State agency to follow the procedures for implementing the serious deficiency process. However, FNS recognizes that the intent of the serious deficiency process is to address program performance under a legally binding agreement. It may be more appropriate to address the denial of a program application through a remedial application process, instead of the serious deficiency process. This rulemaking would amend 7 CFR 226.6(c)(1) to propose a separate set of procedures that would provide applicants the opportunity to correct the application and request due process if the application is denied. Similarly, the serious deficiency process would not apply to a denial of a sponsor's application for SFSP, as described in 7 CFR 225.11(c).

2. Reciprocal Disqualification in Child Nutrition Programs

Section 12(r) of the NLSA, 42 U.S.C. 1760(r), specifies that any school, institution, service institution, facility, or individual that is terminated from any Child Nutrition Program and that is on a list of institutions and individuals disqualified from participation in SFSP or CACFP may not be approved to participate in or administer any Child Nutrition Program. FNS proposes requiring State agencies to deny the application for any Child Nutrition Program if the applicant has been terminated for cause from any Child Nutrition Program and the applicant is on the National Disqualified List for CACFP or SFSP. This process is called ''reciprocal disqualification.''

The establishment of a reciprocal disqualification process supports

integrity when it is determined that a program operator currently participating in a Child Nutrition Program is terminated for cause from another Child Nutrition Program and placed on the National Disqualified List. Proposed § 226.6(b)(1)(xiii) would prohibit State agencies from approving an application for participation in any Child Nutrition Program for any program operator that is terminated for cause and placed on the National Disqualified List. Current § 226.6(c)(1)(iii)(C)(*3*) and proposed §§ 226.6(c)(6)(iii) and 226.25(g)(1)(i)(A) provide the right to a fair hearing to program operators whose applications are denied. The right to a fair hearing of an application denial for program operators based on the National Disqualified List is solely granted to contest the accuracy of the information on the National Disqualified List or the match to the National Disqualified List. The basis for denial, termination for cause, and placement on the National Disqualified List, is not subject to an additional hearing. The right to a fair hearing already would have been provided prior to termination and disqualification.

Proposed § 226.25(e)(1) would apply reciprocal disqualification for termination and placement on a National Disqualified List for program operators with an existing program agreement. This rulemaking would also apply termination procedures, under 7 CFR 210.25, 215.16, 220.19, 225.11, 226.6, and 226.16, when it is determined that a program operator currently participating in a Child Nutrition Program is terminated for cause from another Child Nutrition Program and placed on a National Disqualified List. The State agency would have to make an effort to ensure that eligible children and adult participants continue to have access to important nutrition benefits. For example, if a CACFP sponsoring organization is terminated and disqualified, the State agency should have a contingency plan for the transfer of homes or unaffiliated centers. A contingency plan, as defined in proposed §§ 225.2 and 226.2, and further described in proposed §§ 225.18(d)(2) and 226.25(d)(2), would help ensure that meal services continue to be available, without interruption.

This proposed rule would require the State agency to follow the same procedures to address serious management problems through corrective action and due process for all types of program operators. However, at the point when a proposed termination action is upheld and the program operator is declared seriously deficient, as described in proposed § 226.25(a)(6)(iii)(B) and (d)(1), FNS has determined that there are circumstances that may warrant an alternative to disqualification for institutions or sponsors that are also school food authorities. FNS recognizes that school food authorities are responsible to safeguard school meal benefits to children. Additional public input is needed to consider a different procedure when a school food authority that is also an institution or sponsor operating CACFP or SFSP, respectively, is declared seriously deficient. Public comments on the following options will be critical as FNS develops the final rule:

1. Option 1 would require the State agency to terminate, disqualify, and place on the National Disqualified List any school food authority that is declared seriously deficient, just like any other type of institution or sponsor that is operating CACFP and SFSP. If a school food authority is determined to be seriously deficient, the school food authority's agreement to operate CACFP or SFSP would be terminated, and it would be disqualified and placed on the National Disqualified List, as described under proposed §§ 225.18(e) and 226.25(e). Placement on the National Disqualified List would prohibit the school food authority from operating the National School Lunch Program, School Breakfast Program, or any other Child Nutrition Program. The responsible principals and responsible individuals would also be disqualified from program participation and placed on the National Disqualified List.

2. Option 2 would require the State agency to terminate the school food authority's agreement to operate CACFP or SFSP. In this case, the responsible principals and responsible individuals would be disqualified from program participation, placed on the National Disqualified List, and ineligible to participate in any Child Nutrition Program. However, the State agency would have discretion to disqualify and place the school food authority, itself, on the National Disqualified List. If the State agency determines that the school food authority should not be subject to disqualification and placement on the National Disqualified List, there would be no impact on the school food authority's ability to operate other Child Nutrition Programs, including the National School Lunch and School Breakfast Programs.

This rulemaking would not affect the eligibility of a school food authority that only operates the National School Lunch, School Breakfast, or Special Milk Programs to continue to participate in those programs. FNS does not anticipate that it will impact most school food authorities that operate CACFP or SFSP. With their experience managing the school nutrition programs, school food authorities are well-positioned to successfully operate CACFP and SFSP.

There may also be circumstances when a school food authority may be a meal vendor for a program operator that has been placed on the National Disqualified List. If the school food authority is not otherwise connected to the management of CACFP or SFSP, the school food authority would continue to be eligible to participate in the Child Nutrition Programs, because it would not be responsible for program operations. School food authorities, sponsors, and institutions are only responsible for the schools, sites, and facilities identified in their State agency agreements.

Accordingly, this proposed rule would amend 7 CFR 225.2 and 226.2 to include definitions of termination for cause and contingency plan. Additional amendments to 7 CFR 210.9(d), 215.7(g), 220.7(i), 225.6(b)(13), 225.18(d) and (e), 226.6(b)(1)(xiii) and (b)(2)(iii)(D), and 226.25(d) and (e) would prohibit State agencies from approving an application for participation in any Child Nutrition Program for a program operator that is terminated for cause and that is listed on a National Disqualified List. This rulemaking would also amend 7 CFR 225.11(c) and 226.6(c) to ensure that the appropriate procedures are followed for a denial of a sponsor's or institution's application.

3. Legal Requirements for Records Maintained on Disqualified Individuals

The National Disqualified List is a Federal computer matching program that uses a Computer Matching and Privacy Protection Act system of records of information on institutions and individuals who are disqualified from participation in CACFP. This is a mandatory collection under section 243(c) of Public Law 106–224, the Agricultural Risk Protection Act of 2000, which amended section 17 of the Richard B. Russell National School Lunch Act, at 42 U.S.C. 1766(d)(5)(E)(i) and (ii), and under 7 CFR 226.6(c)(7)(i). This proposed rule would expand the National Disqualified List to include the records of sponsors, sites, responsible principals, and responsible individuals who have been disqualified from SFSP, in compliance with section 13 of the NSLA, at 42 U.S.C. 1761(q)(3), and the Computer Matching Act, at 5 U.S.C. 552a. The Computer Matching Act applies when a Federal agency conducts

a computer match of two or more personally identifiable information records for establishing or verifying eligibility under a Federal benefit program. The Computer Matching Act also applies when a non-Federal agency compares information with a Federal system of records to determine eligibility for a Federal benefit program. A computer match takes information provided by a Federal source and compares it to a State record, using a computer to perform the comparison.

The National Disqualified List supports program integrity by preventing institutions whose program agreements were terminated for cause and disqualified in one State from being approved for participation in another State. It prevents disqualified responsible principals from continuing to be involved in program administration by forming a new corporate entity and entering the program under a different organizational name. It also prevents day care home providers and responsible individuals who have been terminated and disqualified by one sponsoring organization from re-entering the program under the auspices of a different sponsoring organization. Once disqualified, program participation is prohibited for 7 years from the effective date of the disqualification and until any debt is paid.

The records of institutions, responsible principals, and responsible individuals who have been disqualified from participation in CACFP are part of the National Disqualified List. As FNS described in the notice, *Privacy Act of 1974; System of Records Revision,* 86 FR 48975, September 1, 2021, many of the steps of the serious deficiency process align with requirements of the Computer Matching Act. For example, the State agency initiating a National Disqualified List search must independently verify records to determine accuracy before taking adverse action against a program applicant or participant. FNS uploads every certified notice of serious deficiency into the system, which the State agency may use to verify that the match is correct. After records are verified, the State agency must notify the disqualified program applicant or participant of the match findings. However, current § 226.6(c)(6) describing the National Disqualified List does not address procedures or protections for data disclosure and privacy specified for records maintained on any person in a computer matching program under the Computer Matching Act.

This proposed rule would close the gap by codifying the responsibilities of administering agencies in implementing systems of records, as described in the Computer Matching Act. Under proposed §§ 225.18(e)(3) and 226.25(e)(3), each State agency would enter into a written matching agreement with FNS to address procedures and protections for disclosure and privacy of personally identifiable information records on the National Disqualified List. Additional amendments would advise State agencies on the use of matching agreements, independent verification of matching information, use of disqualification data, and safeguards to protect individuals who may be incorrectly placed on the National Disqualified List through human error or technical lapses in the system. Before a CACFP or an SFSP application is denied, the State agency would also have to notify any individual whom the application identifies as being placed on the National Disqualified List. The State agency must provide an opportunity for the individual to ensure that the record is accurate.

Current CACFP regulations at 7 CFR 226.6(b)(1)(xii) and (b)(2)(iii)(C) require State agencies and sponsoring organizations to verify that applicants are not on the National Disqualified List prior to approval or annual certification of participation. Similarly, before hiring, CACFP sponsoring organizations must check the National Disqualified List to verify that any new employee whose position will be supported by program funds or who will be working in CACFP is not on the National Disqualified List. Proposed § 226.25(e)(3)(i)(C) would require the State agency initiating a computer match to verify the disqualification before taking adverse action against a program applicant, participant, or employee. The State agency could contact the originating administering agency or check the certified notices that are uploaded to the system to verify the disqualification.

The serious deficiency process requires three types of certified notices that are uploaded to the system, which administering agencies may use to independently verify the accuracy of a computer match. This rulemaking would also amend the definition of ''notice'' under 7 CFR 226.2 and address the content and delivery requirements for all of the notifications that are transmitted as part of the serious deficiency process at proposed § 226.25(a)(5).

This proposed rule would also expand the National Disqualified List to include the records of sponsors, sites, responsible principals, and responsible individuals who have been disqualified from SFSP, as required under section 13 of the NSLA, at 42 U.S.C. 1761(q)(3). FNS proposes to amend SFSP regulations to address termination for cause at proposed § 225.18(d)(1); disqualification and placement on the National Disqualified List at proposed § 225.18(e)(2); and the State agency's responsibilities under the Computer Matching Act at proposed § 225.18(e)(3).

Accordingly, this proposed rule would amend 7 CFR 225.18(e)(3) and 226.25(e)(3) to address compliance with the Computer Matching Act's protections for data disclosure and privacy specified for records maintained on any person on the National Disqualified List. This rulemaking would also amend the definition of ''notice'' under 7 CFR 225.2 and 226.2 and further amend 225.18(a)(5) and (e)(3)(v), and 226.25(a)(5) and (e)(3)(v) to address the content and delivery requirements for serious deficiency process notifications and independent verification of a computer match.

E. Multi-State Sponsoring Organizations (MSSO)

A sponsoring organization is a type of public or private nonprofit institution that is entirely responsible for the administration of CACFP in any day care home, unaffiliated public or private nonprofit center, or affiliated for-profit center. Day care homes are required to participate in CACFP through a sponsoring organization. Although centers may enter into an agreement directly with the State agency, many centers find it is easier to participate in CACFP under an existing sponsoring organization. As a growing number of sponsoring organizations expand to serve multiple types of facilities in multiple States, State agencies are faced with unique challenges, particularly when serious management problems arise. Without regulated practices, assignment of State agency responsibilities and protocol of communication, State agencies dealing with multi-state sponsoring organizations (MSSOs) could duplicate each other's efforts and could be unaware of potential serious management problems occurring in another State. In SFSP, FNS understands there are an increasing number of sponsors operating summer meal programs at sites in more than one State.

FNS is taking this opportunity to propose regulations to strengthen State agency administration when a sponsoring organization operates the program in more than one State. This

proposed rule addresses provisions to facilitate the State agency's review of administrative budgets and allocation of shared costs, performance of monitoring and audit-related activities, and oversight when procurement standards vary from State to State. FNS recognizes that improved information sharing, collaboration, and coordination among administering agencies are also essential to ensure that participation of MSSOs is administered properly, with less duplication and burden.

At 7 CFR 226.2, FNS proposes to define an MSSO as a sponsoring organization that operates CACFP in more than one State. This proposed rule would define an MSSO as a sponsor that operates SFSP in more than one State, under 7 CFR 225.2. An MSSO enters into a written agreement with the administering agency in each State where it is approved to provide CACFP or SFSP meal services. An independently owned or franchised organization operating multiple centers, day care homes, or sites in a single State would not be an MSSO. However, a franchise operating multiple centers, day care homes, or sites in more than one State would be an MSSO. A for-profit organization is an MSSO when the parent corporation operates multiple affiliated centers or affiliated sites in more than one State.

The State agency must determine if program operations will be provided in more than one State, as part of the application process. Proposed §§ 225.6(c)(5), 226.6(b)(1)(xix), and 226.6(b)(2)(iii)(L) would require the State agency to ask all applicants if they are approved or intend to submit an application to participate in any other State. The application of a potential MSSO would have to provide: additional information on the number of affiliated and unaffiliated facilities or sites it operates; its use of program funds for administrative expenses; and its nonprofit or for-profit status. The application would also have to include a comprehensive budget that provides the sum of all costs to be incurred, identifies costs that attribute directly to operations within each State, and sets out a cost allocation plan for costs benefiting more than one State.

For program purposes, a cognizant agency is any State agency or FNS Regional office that is responsible for oversight of CACFP or SFSP in the State where the MSSO's headquarters is located. The location of the MSSO's headquarters is the determining factor in assigning the role of the cognizant agency. This rulemaking proposes to add definitions of Cognizant State agency and Cognizant Regional office, under 7 CFR 225.2 and 226.2, to recognize the roles that these administering agencies have when an MSSO participates in CACFP or SFSP. These terms are currently not defined in regulation. By assigning responsibilities to the Cognizant State agency and Cognizant Regional office, this will eliminate a duplication of effort and increase program integrity by increasing awareness of the MSSO's performance in other States. FNS seeks input on how MSSO's headquarters are identified.

Over the years, FNS has issued CACFP guidance to clarify responsibilities—particularly with regard to participation of franchises and for-profit organizations, review of administrative budgets, allocation of shared costs, availability of records, performance of monitoring and audit-related activities, and procurement actions—for agencies that assume cognizance. This set of guidance includes FNS Instruction 788–5, *Approval of Administrative Budgets for Multi-State Sponsoring Organizations of Family Day Care Homes—Child Care Food Program,* October 25, 1982; FNS Instruction 788–16, *Administrative Procedures for Multi-State Sponsoring Organization—Child Care Food Program,* October 19, 1983; FNS Instruction 788–6, Revision 2, *Availability of Institutions' Records to Administering Agencies,* November 1, 1991; FNS Instruction 796–2, Revision 4, *Financial Management—Child and Adult Care Food Program,* December 11, 2013; and the memorandum, *Applicability of FNS Instruction 788–16 to Multi-State Proprietary CACFP Sponsors,* June 25, 2003.

FNS proposes to amend CACFP regulations at 7 CFR 226.6(q) to address the responsibilities of the administering agency in all States where MSSOs operate and describe the unique role of the cognizant agency in the State where the MSSO is headquartered. This proposed rule would add similar amendments to SFSP regulations under 7 CFR 225.6(n).

This rulemaking would require all CACFP State agencies and SFSP State agencies to:

- *Determine if an applicant is an MSSO.* As part of the application process, the State agency must ask all applicants if their organization operates in more than one State.
- *Obtain administrative and financial information from each MSSO.* The following information must be obtained initially on the MSSO's application and annually certified or updated:

☐ The number of affiliated facilities or sites it operates, by State;

☐ The number of unaffiliated facilities or sites it operates, by State;

☐ The names, addresses, and phone numbers of the organization's headquarters and the official who has administrative responsibility;

☐ The names, addresses, and phone numbers of the financial records center and the official who has financial responsibility; and

☐ The organization's decision whether or not to use program funds for administrative expenses.

- *Approve the administrative budgets of any MSSOs operating within their respective States.* The State agency is responsible for approving budget line items that are directly attributable to operations within the State. The State agency must notify the cognizant State agency of any CACFP administrative costs that exceed the 15 percent limit, as described in current § 226.6(f)(1)(iv). In SFSP, the State agency must notify the cognizant State agency if it has determined that the ratio of administrative to operating costs is high or that the net cash resources of an MSSO's nonprofit food service exceeds the limits that are described in 7 CFR 225.7(m).
- *Enter into a permanent written agreement with each MSSO operating within the State.* Each MSSO must enter into an agreement with the State agency to assume final administrative and financial responsibility for program management in each State in which it operates.
- *Track State-specific costs.* The State agency is responsible for approving State-specific costs, which include the State agency's portion of budget line item costs that are shared among other administering agencies, as well as costs that attribute directly to program operations within the State.
- *Conduct oversight of MSSO operations within the State.* State agencies must comply with SFSP and CACFP monitoring and program assistance requirements under proposed §§ 225.6(n)(2) and 226.6(q), respectively, to conduct reviews, training, and other oversight activities of MSSOs operating within their respective States. The review cycle would be based on the number of sites or facilities operating within the State. To reduce administrative burden, the State agency may use information from the cognizant State agency's monitoring activities to assess compliance in areas where the scope of review overlaps, during the same review cycle. In those circumstances, the State agency may choose to only review those aspects of CACFP or SFSP that are outside the scope of the cognizant agency's review,

such as implementation of additional State agency requirements or financial records to support State-specific administrative costs. Summaries of reviews conducted within each State must be provided to the cognizant State agency. The State agency may also choose to conduct a full review at the MSSO headquarters and financial records center, by requesting the necessary records from the cognizant State agency.

- *Conduct audit resolution activities.* State agencies are responsible for reviewing audit reports, addressing audit findings, and implementing corrective actions to resolve audits of any MSSOs operating within their respective States. MSSOs must make audit reports available to the State agencies in all of the States in which they have program operations.
- *Make available copies of notices of termination and disqualification.* The State agency conducting the oversight activities must notify all other administering agencies that have agreements with the MSSO of termination and disqualification actions. If a State agency holds an agreement with an MSSO that is disqualified by another administering agency and placed on the National Disqualified List, the State agency must terminate the MSSO's agreement, effective no later than 30 calendar days of the date of the MSSO's disqualification. This requirement is 45 days in CACFP regulations at current § 226.6(c)(2)(i). In SFSP, this proposed rule would require the State agency to terminate the MSSO's agreement, effective no later than 15 calendar days of the date of the MSSO's disqualification.

FNS also proposes requirements for the cognizant State agency administering CACFP or SFSP. This rulemaking would require the cognizant State agency to:

- *Determine if there will be shared administrative costs among the States in which the MSSO operates and how the costs will be allocated.* The cognizant agency has the authority to approve cost levels for cost items that must be allocated. The cognizant State agency must approve the allocation method that the MSSO uses for shared costs. The method must allocate the cost based on the benefits received, not the source of funds available to pay for the cost. If the MSSO operates CACFP centers, the cognizant agency must also ensure that administrative costs are capped at 15 percent on an organization-wide basis. In SFSP, the cognizant agency must ensure that the net cash resources of an MSSO's nonprofit food service do not exceed the limits that are described in 7 CFR 225.7(m).
- *Coordinate monitoring.* The cognizant State agency's monitoring activities must include a full review at the MSSO headquarters and financial records center. The cognizant State agency must coordinate the timing of reviews and make copies of monitoring reports and findings available to all other administering agencies that have agreements with the MSSO, as described in proposed §§ 225.6(n)(2)(iii) and § 226.6(q)(2)(iii).
- *Ensure that organization-wide audit requirements are met.* Each MSSO must comply with audit requirements, as described under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. Since their operations are often large and complex, MSSOs should have annual audits. If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.
- *Oversee audit funding and costs.* Audit funding is a shared responsibility. The share of organization-wide audit costs may be based on a percentage of each State's expenditure of CACFP and SFSP funds and the MSSO's expenditure of Federal and non-Federal funds during the audited fiscal year. The cognizant State agency should review audit costs as part of the overall budget review and make audit reports available to the other administering agencies that have agreements with the MSSO.
- *Ensure compliance with procurement requirements.* Procurement actions involving MSSOs must follow the requirements under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. If the procurement action benefits all States in which the MSSO operates, the procurement standards of the State that are the most restrictive apply. If the procurement action only benefits a single State's program, the procurement standards of that State agency apply.

Accordingly, this rule proposes to amend 7 CFR 226.2, 226.6(b)(1) and (2), and 226.6(q) to address State administrative responsibilities when MSSOs participate in CACFP. Amendments to 7 CFR 225.2, 225.6(c)(5), and 225.6(n) would make similar changes to address State administrative responsibilities when MSSOs participate in SFSP.

F. Summary of Regulatory Provision Proposals

This rulemaking reflects FNS' commitment to work with State administrators, program operators, and other stakeholders to develop strategies to ensure that Child Nutrition Program requirements are effective, practical, and fair. FNS has proposed important modifications to the serious deficiency process that, when codified in the regulations, are designed to strengthen administrative oversight, improve operational performance, and protect Child Nutrition Programs from mismanagement, abuse, and fraud. The serious deficiency process described in this proposed rule includes procedures for corrective action, termination, disqualification, and due process that emphasize fairness and consistency for all types of program operators in CACFP and SFSP. This proposed rule addresses statutory requirements and policy improvements that would:

- Extend the serious deficiency process to unaffiliated centers in CACFP.
- Establish a serious deficiency process in SFSP.
- Make improvements to the serious deficiency process by:
  - Defining terms that would encourage a clear understanding and improve implementation of the serious deficiency process;
  - Including measures for identifying a serious management problem and determining the effectiveness of corrective action;
  - Offering a path to full correction of a serious management problem and the removal of the determination of serious deficiency;
  - Establishing timelines with an emphasis on correcting serious management problems quickly; and
  - Consolidating all regulatory requirements for oversight and implementation of the serious deficiency process, including due process, termination, and disqualification, in a single subchapter, at 7 CFR 225.18 and 226.25.
- Direct each SFSP State agency to establish a list of sponsors, responsible principals, and responsible individuals with serious management problems.
- Require action by the State agency to terminate a CACFP or SFSP agreement for cause through the serious deficiency process.
- Expand the National Disqualified List to include disqualified SFSP sponsors, responsible principals, and responsible individuals on the National Disqualified List.
- Direct the State agency to exercise its authority to suspend CACFP participation when a false or fraudulent claim is alleged.
- Require compliance with the Computer Matching Act's protections for data disclosure and privacy specified

for records maintained on any person on the National Disqualified List.

• Propose requirements to strengthen State agency administration when a program operator participates in CACFP or SFSP in more than one State.

Public input and assessment, with an opportunity to examine CACFP and SFSP operations and consider improvements related to this proposed rule, are essential elements of the rulemaking process. FNS invites the public to submit comments to help FNS gain a better understanding of both the possible benefits and any negative impacts associated with the proposed regulatory changes. FNS requests specific input on a proposal to allow an alternative to disqualification for program operators that are school food authorities. Specific public input is also requested on the requirement that State agencies exercise their authority to suspend CACFP participation when a false or fraudulent claim is alleged and to extend this authority to State agencies administering SFSP. Public comments on these amendments will be critical as FNS develops the final rule.

III. Procedural Matters

A. Executive Orders 12866, 13563 and 14094

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rulemaking was determined to be not significant under section 3(f) of E.O. 12866, as amended by E.O. 14094, and therefore no Regulatory Impact Analysis is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. The FNS Administrator has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This rulemaking codifies provisions designed to increase program operators' accountability and operational efficiency, while improving the ability of FNS and State agencies to address severe or repeated violations of program requirements. While this rulemaking will affect State agencies and local organizations operating the Child and Adult Care Food Program and Summer Food Service Program, any economic effect will not be significant.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of UMRA, FNS 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 UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, under the regulatory provisions of title II of UMRA, for State, local, and Tribal governments, or the private sector, of $100 million or more in any one year. Therefore, this rulemaking is not subject to the requirements of sections 202 and 205 of UMRA.

D. Executive Order 12372

The Child and Adult Care Food Program is listed in the Assistance Listings under the Catalog of Federal Domestic Assistance Number 10.558. The Summer Food Service Program is listed under No. 10.559. The National School Lunch, Special Milk, and School Breakfast Programs are listed under Nos. 10.555, 10.556, and 10.553, respectively. All are subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Since these programs are State-administered, FNS has formal and informal discussions with State and local officials, including representatives of Indian tribal organizations, on an ongoing basis regarding program requirements and operations. This provides FNS with the opportunity to receive regular input from State administrators and local program operators, which contributes to the development of feasible requirements.

E. Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section 6(b)(2)(B) of Executive Order 13132. FNS has determined that this proposed rule does not have federalism implications. This rulemaking does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary is not required.

F. Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rulemaking is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rulemaking is not intended to have retroactive effect. Prior to any judicial challenge to the application of the provisions of this rulemaking, all applicable administrative procedures must be exhausted.

G. Civil Rights Impact Analysis

FNS has reviewed the proposed rule, in accordance with Departmental Regulation 4300–004, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the proposed rule might have on participants based on age, race, color, national origin, sex, and disability. Due to the unavailability of data, FNS is unable to directly determine whether this proposed rule will have an adverse or disproportionate impact on protected classes among entities that administer and participate in Child Nutrition Programs.

The proposed serious deficiency rule includes strategies to ensure that the serious deficiency process is implemented fairly and evenly across states and among institutions. By codifying the criteria for identifying when a finding is a serious management problem, the process is more standardized. The new serious deficiency process also provides an opportunity for institutions to correct serious management problems, a

significant departure from the current process in which a serious deficiency is only temporarily deferred and never fully corrected. Importantly, the proposed rule aligns the ''seriously deficient'' designation with proposed termination rather than determining an institution is seriously deficient at the beginning of the process and then deferring that status unless or until there is a repeat finding. This step, in particular, responds to commenters concerns about a seriously deficient status and its effect on an institution's reputation which could, in turn, encourage more participation in CN programs.

FNS will also develop materials for program operators in formats for individuals with limited English proficiency and for individuals with disabilities, that describe the serious deficiency process and program operators' rights and responsibilities. States are also required to have contingency plans to ensure meals remain available in the event a sponsor is terminated.

FNS Civil Rights Division finds that the current mitigation and outreach strategies outlined in the regulations and this Civil Rights Impact Analysis (CRIA) provide ample consideration to applicants' and participants' abilities to participate in the CACFP and SFSP. The promulgation of this proposed rule will affect CACFP institutions and facilities and SFSP sponsors. FNS expects that the proposed changes, *e.g.,* defining key terms, outlining clear steps in the review process, and providing a path to full correction, will be an overall positive change for CACFP and SFSP program operators. Finally, FNS is looking forward to the opportunity to review public comments on the proposed rule.

H. Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Tribal representatives were informed about this rulemaking during a consultation on May 23, 2023, FNS anticipates that this rulemaking will have no significant cost and no major increase in regulatory burden on Tribal organizations.

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

In accordance with the Paperwork Reduction Act of 1995, this proposed rule is revising existing information collection requirements, which are subject to review and approval by OMB. This rulemaking proposes new reporting, recordkeeping, and public disclosure requirements for State agencies and sponsoring organizations that administer the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), and the National Disqualified List (NDL). The rule also proposes new regulatory citations for some of the existing requirements in these collections.

FNS is submitting for public comment the information collection burdens that will result from adoption of the new reporting, recordkeeping, and public disclosure requirements and the changes in regulatory citations for some of the existing requirements which are proposed in the rulemaking. The establishment of the proposed collection of information requirements are contingent upon OMB approval. Since this rulemaking impacts three separate information collections: OMB Control Number 0584–0280 7 CFR part 225, *Summer Food Service Program;* OMB Control Number 0584–0055 *Child and Adult Care Food Program (CACFP),* and OMB Control Number 0584–0584 *Child and Adult Care Food Program (CACFP) National Disqualified List.* This rulemaking contains three separate PRA sections to capture the burden impact that this proposed rule is estimated to have on these existing collections.

Comments on the information collection in this proposed rule must be received by May 21, 2024.

Comments may be sent to: Program Integrity and Innovation Division, 1320 Braddock Place, Alexandria, VA 22314. Comments will also be accepted through the Federal eRulemaking Portal. Go to *https://www.regulations.gov* and follow the online instructions for submitting comments electronically.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this document will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Title: 7 CFR part 225, Summer Food Service Program.

Form Number: FNS–843 and FNS–844.

OMB Control Number: 0584–0280.

Expiration Date: 09/30/2025.

Type of Request: Revision.

Abstract: This revision adds new requirements and revises existing requirements in the currently approved information collection for OMB Control Number 0584–0280. Below is a summary of the changes in the proposed rule and the impact that it will have on the reporting, recordkeeping, and public disclosure requirements for the state/local/tribal government agencies, non-profit institutions, and camps.

State agencies have a responsibility for the monitoring and oversight of institutions in the Child and Adult Care Food Program (CACFP). To maintain program integrity and ensure compliance with program requirements, FNS established the serious deficiency process to address mismanagement, abuse, and fraud by institutions and facilities participating in the program. The serious deficiency process establishes a structured series of steps to identify serious deficiencies, take corrective action, and suspend, terminate, and disqualify institutions and responsible principals and responsible individuals that undermine the integrity of the program. State agencies also have a similar responsibility to monitor and provide oversight of the Summer Food Service Program (SFSP).

Currently, the SFSP does not have a defined process to address serious management problems threatening the integrity of the program. SFSP regulations specify that state agencies must consider specific criteria before approving sites for participation. Regulations also provide authority for State agencies to terminate sponsor

participation and establish procedures for sponsors to appeal adverse actions, but they do not provide authority for FNS or state agencies to disqualify an individual from participating in SFSP, or in any other Child Nutrition Program or being placed on the National Disqualified List. This proposed rule would extend the serious deficiency process to SFSP to address potential serious management problems threatening the integrity of the program.

This proposed rule would amend 7 CFR 225.6 and 225.18 to extend the serious deficiency process to SFSP. State agencies would be required to implement a serious deficiency process; provide appeal procedures to sponsors, annually and upon request; specify the types of adverse actions that cannot be appealed in SFSP; establish a list of sponsors, responsible principals, and responsible individuals declared seriously deficient; terminate agreements whenever a program operator's participation ends; and take action to terminate an agreement for cause, through the serious deficiency or placement on the National Disqualified List. This will strengthen management practices and eliminate gaps that put program integrity at risk.

Reporting

State/Local/Tribal Government Agencies

The changes proposed in this rule will add additional reporting requirements to the requirements currently approved under OMB Control Number 0584–0280 for State/Local/Tribal Government Agencies. It will also change the regulatory cite for one of the existing reporting requirements in the collection. All of these changes will be considered program changes since they are due to the proposed rule.

The proposed rule will add additional reporting requirements in 7 CFR 225.6 that apply the Serious Deficiency Process to MSSOs operating the Program.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.6(c)(5) that a state agency must determine if a sponsoring organization operates in more than one state. USDA expects each state agency will collect and report information from 3 MSSOs and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 total responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n) that State agencies must determine if a sponsoring organization is an MSSO, and assume the role of a Cognizant State agency (CSA) if the MSSOs center of operations is located within the State. USDA estimates that the 53 State agencies will be required to make 3 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(i) that State agencies must enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4). USDA expects that the 53 State agencies will be required to make 3 permanent agreements each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(ii) that State agencies must approve the MSSOs administrative budget. USDA estimates that the 53 State agencies will be required to approve 3 administrative budgets each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(iii) that State agencies must conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4). USDA expects that the 53 State agencies will be required to monitor 3 MSSOs each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(iii)(C) that State agencies provide summaries of the MSSO reviews that are conducted to the CSA. USDA estimates that the 53 State agencies will be required to submit 3 MSSO review summaries to the CSA annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(iv) that State agencies must conduct audit resolution activities. USDA estimates that the 53 State agencies will be required to conduct 3 audit resolution activities each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(1)(v) that State agencies must notify all other State agencies that have an agreement with an MSSO that their agreement has been terminated and have taken disqualification actions against that MSSO. USDA expects that the 53 State agencies will be required to make 3 notifications a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(2) that State agencies must determine if an MSSOs center of operations are located within the State and assume the role of the CSA. USDA estimates that the 53 State agencies will be required to make 3 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(2)(iii) that the CSA must conduct a full review at the MSSO headquarters and financial records center, coordinate the timing of the reviews, and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA expects that the 53 State agencies will be required to conduct a full review of 3 MSSO headquarters and financial records centers annually and that it takes approximately 20 hours to complete this requirement; which is estimated to add 3,180 annual burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the new requirement at 7 CFR 225.6(n)(2)(iv) that, if an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements. USDA estimates that the 53 State agencies will be required to establish audit thresholds and requirements for for-profit MSSOs annually and that it takes approximately 1 hour to complete

this requirement; which is estimated to add 53 annual burden hours and responses to the collection.

The proposed rule will add additional requirements in 7 CFR 225.13 to establish fair hearing procedures for the extended serious deficiency process in SFSP.

USDA expects that 53 state agencies will be required to fulfill the new requirement at 7 CFR 225.13(a) that state agencies must establish a procedure to be followed by an applicant appealing for a fair hearing. USDA expects each state agency will need to establish a procedure for a fair hearing annually and that it will take approximately 1 hour to complete this requirement; which is estimated to add 53 burden hours and responses to this collection.

The proposed rule will add additional reporting requirements in 7 CFR 225.18 that extends the Serious Deficiency Process to SFSP.

USDA estimates that 53 state agencies will be required to fulfill the new requirement at 7 CFR 225.18(a)(2)(i) and (a)(3) that state agencies identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the sponsor or facility's ability to meet Program requirements. USDA estimates each state agency will be required to develop a set of standards to identify serious management problems, taking approximately 1 hour to complete this requirement; which is estimated to add 53 burden hours and responses to this collection.

USDA estimates that 53 state agencies will be required to fulfill the reporting requirement at 7 CFR 225.18(a)(2)(ii) and (a)(6)(i) that state agencies notify a sponsor's executive director, chairman of the board of directors, responsible principals, and responsible individuals that serious management problems have been identified, must be addressed, and must be corrected. USDA estimates each state agency will be required to notify 3 sponsors of the serious management problems and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the new requirement at 7 CFR 225.18(a)(2)(iii) and (c)(2)(ii) that state agencies must receive and approve a submitted corrective action plan within 15 days from the date the sponsor received the notice and monitor the full implementation of the corrective action plan. USDA expects each state agency will be required to receive and approve 3 corrective action plans and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 total responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(iv) and (a)(6)(ii) that state agencies notify a sponsor's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the serious management problem(s) have been corrected and vacated or, if corrective action has not been taken or fully implemented, that the state agency proposes to terminate the sponsor's agreement and proposes to disqualify the sponsor, responsible principals, and responsible individuals. USDA expects each state agency will be required to notify 3 sponsors of their successful corrective action or proposes termination and disqualification and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(v) and (f)(1)(iii)(E) that State agencies must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving notice of the action. USDA estimates that each state agency will have to provide documentation to 3 fair hearings annually and that it takes approximately 2 hours to complete this requirement; which is estimated to add 318 annual burden hours and 159 total responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(v) and (f)(2) that hearing official must hold hearing, in addition to a review of written information upon written request for a fair hearing by the sponsor, responsible principals, or responsible individuals, to determine whether the State agency or sponsor followed Program requirements in taking action under appeal. USDA expects that each state agency will be required to provide 3 fair hearings annually and that it will take approximately 4 hours to complete this requirement; which is estimated to add 636 burden hours and 159 total responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(a)(2)(vi) and (a)(6)(iii) that state agencies notify a sponsor's executive director and chairman of the board of directors that serious management problems have been vacated and advise the institution that procedures and policies must be implemented to fully correct the serious management problem if the sponsor's appeal is upheld. If the sponsor's appeal is denied, the sponsor must be notified that the program agreement is terminated and declared seriously deficient. USDA estimates each state agency will be required to notify 3 sponsors of the fair hearing determination and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(c)(3) that state agencies must conduct and prioritize follow-up reviews and more frequent full reviews of sponsors with serious management problems, including one full review, at least once every year. USDA estimates each state agency will be required to review 3 sponsors and that it takes approximately 20 hours to complete this requirement; which is estimated to add 3,180 hours and 159 responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(d)(2) that state agencies are required to develop a contingency plan to ensure that eligible participants continue to have access to meal service. USDA expects each state agency will be required to develop 3 contingency plans and that it takes approximately 2 hours to complete this requirement; which is estimated to add 318 burden hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(e)(2)(iii) that, if all serious management problems have been corrected and all debts have been repaid, state agencies may elect to remove a sponsor, responsible principals, and responsible individuals from the National Disqualified List, and must submit all requests for early removals to the appropriate Food and Nutrition Service Regional Office (FNSRO). USDA estimates each state agency will remove 3 sponsors from the National Disqualified List and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 burden hours and 159 responses to the collection.

USDA estimates that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.18(e)(3)(ii)

that State agencies enter into written agreements with FNS in order to participate in a matching program involving a FNS Federal system of records. USDA estimates that 53 State agencies will enter into a CMA written agreement annually and that it will take 1 hour to complete this requirement; which is estimated to add of 53 annual burden hours and responses to the collection.

USDA expects that 53 State agencies will be required to fulfill the requirement at 7 CFR 225.18(e)(3)(iii)(B) that State agencies may request FNS to waive the two-step independent verification and notice requirement of the CMA. USDA expects that the 53 State agencies will request a waiver annually and that it will take an hour to complete this requirement; which is estimated to add 53 annual burden hours and responses to the collection.

USDA expects that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(g)(2) that state agencies must send a necessary demand letter for the collection of unearned payments, including any assessment of interest and refer the claim to the appropriate State authority for pursuit of the debt payment. USDA estimates each state agency will send 3 demand letters and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 hours and 159 responses to the collection.

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(h)(2)(i) that state agencies must terminate for cause the program agreement no later than 45 days after the date of the sponsor's disqualification by FNS. This requirement is listed in the currently approved collection at 7 CFR 225.18(b)(2), but the proposed rule is changing the regulatory citation to 7 CFR 225.18(h)(2)(i). USDA estimates that each state agency will still be required to terminate 5 sponsors' agreements and that it will still take approximately 1 hour to complete this requirement. With the change in citation, USDA still expects this requirement to have 265 burden hours and 265 responses so no additional hours or responses will be added to the collection.

USDA expects that 933.33 local government sponsors will be required to fulfill the requirement at 7 CFR 225.18(c)(1) that sponsors must describe and document the action taken to correct each serious management problem in a corrective action plan and submit it to the state agency. USDA expects 933.3 local government sponsors will be required to submit a corrective action plan and that it takes approximately 15 minutes (.25 hours) to complete this requirement; which is estimated to add 233.33 hours and 933 responses to the collection.

Non-Profit Institutions and Camps (Businesses)

USDA expects that 133 sponsoring organizations will be required to fulfill the requirement at 7 CFR 225.6(c)(5) that sponsoring organizations that are approved to operate the Program in more than one State must provide information concerning the sites and the officials who have administrative and financial responsibility. USDA expects that 133 sponsoring organizations will operate in more than one state and will collect and report information to FNS annually and that it takes approximately one hour and 15 minutes (1.25 hours) to complete this requirement; which is estimated to add 166.25 burden hours and 133 responses to the collection.

USDA estimates that 477 non-profit institutions and camps will be required to fulfill the requirement at 7 CFR 225.18(c)(1) to describe and document the actions taken to correct each serious management problem in a corrective action plan and submit it to the state agency. USDA estimates each non-profit institutions will be required to submit a corrective action plan and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 119.25 burden hours and 477 responses to the collection.

Recordkeeping

State/Local/Tribal Government Agencies

USDA estimates that 53 state agencies will be required to fulfill the requirement at 7 CFR 225.18(b) that a state agency maintain a state agency list that includes information on each sponsor that are determined to have a serious management problem and be updated as they move through the serious deficiency process. As a part of the recordkeeping requirement, state agencies will be required to maintain records on the FNS–843 Report of Disqualification from Participation: Institution and Responsible Principals/Individuals and the FNS–844 Report of Disqualification from Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider forms, which must be updated if a sponsor has been declared seriously deficient as a part of the seriously deficient process. USDA estimates each state agency will be required to maintain 145 records of sponsors with serious management problems and that it takes approximately 5 minutes (0.08 hours) to complete this requirement; which is estimated to add 641.70 burden hours and 7,685 responses to the collection.

Public Disclosure

State Agencies

The proposed rule will add an additional public disclosure requirement at 7 CFR 225.6(n)(2)(iii) as a part of the new review process for Multi-State Sponsoring Organizations (MSSOs).

USDA estimates that 53 State agencies will fulfill the requirement at 7 CFR 225.6(n)(2)(iii) that the Cognizant State Agency (CSA) must conduct a full review at the MSSO headquarters and financial records center, must coordinate the timing of the reviews, and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA estimates that the 53 State agencies will each disclose the findings of 3 MSSO reviews to other State agencies annually and that it takes 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 39.75 annual burden hours and 159 responses to the collection.

As a result of the proposals outlined in this rulemaking, FNS estimates that the proposals resulting from this rule will have 1,463 respondents, 13,097 total annual responses, and 9,959 total burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow. Based on these estimates, FNS estimates that this proposed rule will increase the burden for OMB Control Number 0584–0280 by 12,673 responses and by 9,694 burden hours, to an estimated 404,468 responses and 472,392 burden hours for the entire collection.

Reporting

Respondents (Affected Public): Businesses; and State, Local, and Tribal Government. The respondent groups include non-profit institutions and camps, and State agencies.

Estimated Number of Respondents: 1,463.

Estimated Number of Responses per Respondent: 3.59.

Estimated Total Annual Responses: 5,253.

Estimated Time per Response: 1.77.

Estimate Total Annual Burden on Respondents: 9,277.

Recordkeeping

Respondents (Affected Public): State, Local, and Tribal Government. The

respondent groups include State agencies.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 145.

Estimated Total Annual Responses: 7,685.

Estimated Time per Response: 0.08.

Estimate Total Annual Burden on Respondents: 642.

Public Disclosure

Respondents (Affected Public): State, Local, and Tribal Government.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Responses: 159.

Estimated Time per Response: 0.25.

Estimated Total Annual Burden on Respondents: 40.

ESTIMATED ANNUAL BURDEN FOR SFSP

[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Governments.	The SA must determine if a sponsoring organization operates in more than one State.	225.6(c)(5)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must determine if a sponsoring organization is an MSSO, as described in paragraphs (b)(1)(xv) and (b)(2)(iii)(L). SAs must assume the role of the CSA, if the MSSOs center of operations is located within the State. Each SA that approves an MSSO must follow the requirements described in paragraph (i).	225.6(n)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4).	225.6(n)(1)(i)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must approve the MSSOs administrative budget.	225.6(n)(1)(ii)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4). The SA should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The SA may base the review cycle on the number of facilities operating within the State.	225.6(n)(1)(iii)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must provide summaries of the MSSO reviews that are conducted to the CSA. If the SA chooses to conduct a full review, the SA should request the necessary records from the CSA.	225.6(n)(1)(iii)(C)	53	3	159	0.25	39.75	0	39.75	39.75

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Governments.	SAs must conduct audit resolution activities. The SA must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.	225.6(n)(1)(iv)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i).	225.6(n)(1)(v)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	If it determines that an MSSOs center of operations is located within the State, the SA must assume the role of the CSA.	225.6(n)(2)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	225.6(n)(2)(iii)	53	3	159	20	3,180	0	3,180	3,180
State/Local/ Tribal Governments.	If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.	225.6(n)(2)(iv)	53	1	53	1	53	0	53	53
State/Local/ Tribal Governments.	SAs must establish a procedure to be followed by an applicant appealing for a fair hearing.	225.13(a)	53	1	53	1	53	0	53	53
State/Local/ Tribal Governments.	SAs must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the sponsor or facility's ability to meet Program requirements.	225.18(a)(2)(i) and 225.18(a)(3).	53	1	53	1	53	0	53	53

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Governments.	SAs must notify a sponsor's executive director and chairman of the board of directors, and RPIs, that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instructions, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action. At the same time, the SA must add the sponsor and RPIs to the SA list and provide a copy of the notice to the appropriate FNSRO.	225.18(a)(2)(ii) and 225.18(a)(6)(i).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must receive and approve the corrective action plan within 15 days from the date the sponsor received the notice and monitor the full implementation of the corrective action plan.	225.18(a)(2)(iii) and 225.18(c)(2)(ii).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	If corrective action has been taken to fully correct each serious management problem, SAs must notify a sponsor's executive director and chairman of the board of directors, and RPIs, that the serious management problem has been vacated. If corrective action has not been taken or fully implemented, the SA must notify the sponsor of its proposed termination and disqualification. The notice must inform the sponsor, responsible principals, and responsible individuals of the right and procedures for seeking a fair hearing.	225.18(a)(2)(iv) and 225.18(a)(6)(ii).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.	225.18(a)(2)(v) and 225.18(f)(1)(iii)(E).	53	3	159	2	318	0	318	318

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Governments.	Hearing official must hold hearing, in addition to a review of written information upon written request for a fair hearing by the sponsor, responsible principals, or responsible individuals, to determine that the SA or sponsor followed Program requirements in taking action under appeal. State agencies must be allowed to attend, respond to testimony, and answer questions posed by the hearing official.	225.18(a)(2)(v) and 225.18(f)(2).	53	3	159	4	636	0	636	636
State/Local/ Tribal Governments.	SAs must notify a sponsor's executive director and chairman of the board that serious management problems have been vacated and advise the institution that procedures and policies must be fully implemented to correct the serious management problem if the sponsor's appeal is upheld. If the sponsor's appeal is denied, the sponsor must be notified that the program agreement is terminated and declared seriously deficient.	225.18(a)(2)(vi) and 225.18(a)(6)(iii).	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must conduct and prioritize follow-up reviews and more frequent full reviews of sponsors with serious management problems, including one full review occurring at least once every year.	225.18(c)(3)	53	3	159	20	3180	0	3180	3180
State/Local/ Tribal Governments.	SAs must develop a contingency plan in place to ensure that eligible participants continue to have access to meal service.	225.18(d)(2)	53	3	159	2	318	0	318	318
State/Local/ Tribal Governments.	If all serious management problems have been corrected and all debts have been repaid, SAs may elect to remove a sponsor and RPIs from the National Disqualified List, and must submit all requests for early removals to the appropriate FNSRO.	225.18(e)(2)(iii)	53	3	159	0.25	39.75	0	39.75	39.75

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/ Tribal Governments.	SAs must enter into written agreements with FNS, consistent with 5 U.S.C. 552a(o) of the CMA, in order to participate in a matching program involving a FNS Federal system of records.	225.18(e)(3)(ii)	53	1	53	1	53	0	53	53
State/Local/ Tribal Governments.	SAs may request FNS to waive the two-step independent verification and notice requirement of the CMA.	225.18(e)(3)(iii)(B) ..	53	1	53	1	53	0	53	53
State/Local/ Tribal Governments.	SAs must send a necessary demand letter for the collection of unearned payments, including any assessment of interest, as described in § 225.12(b), and refer the claim to the appropriate State authority for pursuit of the debt payment. SAs must assess interest on sponsors' debts established on or after July 29, 2002, based on the Current Value of Funds Rate, which is published annually by Treasury in the Federal Reserve and is available from the FNSRO, and notify the sponsor that interest will be charged on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment.	225.18(g)(2)	53	3	159	0.25	39.75	0	39.75	39.75
State/Local/ Tribal Governments.	SAs must terminate for cause the Program agreement upon no later than 45 days after the date of the sponsor's disqualification by FNS.	225.18(h)(2)(i)	53	5	265	1	265	265	0	0
State/Local/ Tribal Governments.	Sponsors must describe and document the action taken to correct each serious management problem in a corrective action plan and submit it to the SA.	225.18(c)(1)	933.3	1	933.3	0.25	233.33	0	233.33	233.33
Total State/Local/Tribal Government Reporting			986	4.71	4,643	1.94	8,991.58	265	8,726.58	8,726.58

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
Businesses (Non-profit Institutions and Camps).	Sponsoring organizations that are approved to operate the Program in more than one State must provide: The number of affiliated sites it operates, by State; The number of unaffiliated sites it operates; the names, addresses, and phone numbers of the organization's headquarters and the officials who have administrative responsibility; and the names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility.	225.6(c)(5)	133	1	133	1.25	166.25	0	166.25	166.25
Businesses (Non-profit Institutions and Camps).	Sponsors must describe and document the actions taken to correct each serious management problem in a corrective action plan and submit it to the SA.	225.18(c)(1)	477	1	477	0.25	119.25	0	119.25	119.25
Total Businesses (Non-profit Institutions and Camps)			477	1.28	610	0.47	285.5	0	285.5	285.5
Total Reporting			1,463	3.59	5,253	1.77	9,277.08	265	9,012.08	9,012.08
State/Local/Tribal Governments.	SAs must maintain a SA list and must include the following information: (1) Names and mailing addresses of each sponsor that is determined to have a serious management problem; (2) Names, mailing addresses, and dates of birth of each responsible principals and responsible individuals (RPIs); and (3) The status of the sponsor as it progresses through the stages of corrective action, termination, suspension, and disqualification, as applicable. (Forms FNS–843 and FNS–844.).	225.18(b)	53	145	7,685	0.08	641.70	0	641.70	641.70
Total State/Local/Tribal Government Recordkeeping			53	145	7,685	0.08	641.70	0	641.70	641.70
Total Recordkeeping			53	145	7,685	0.08	641.70	0	641.70	641.70

ESTIMATED ANNUAL BURDEN FOR SFSP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Currently approved burden hours	Program changes	Total difference in burden
State/Local/Tribal Governments.	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	225.6(n)(2)(iii)	53	3	159	0.25	39.75	0	39.75	39.75
Total State/Local/Tribal Government Public Disclosure ..			53	3	159	0.25	39.75	0	39.75	39.75
Total Public Disclosure			53	3	159	0.25	39.75	0	39.75	39.75
Total Burden			1,463.30	8.95	13,097.3	0.76	9,958.52	265	9,963.52	9,963.52

SUMMARY OF BURDEN
[OMB #0584–0280]

Total No. Respondents	63,942
Average No. Responses per Respondent	6.33
Total Annual Responses	404,468.31
Average Hours per Response ..	1.17
Total Burden Hours	472,392.25
Current OMB Approved Burden Hours	462,699
Adjustments	0
Program Changes	9,693.52
Total Difference in Burden	9,693.52

Title: Child and Adult Care Food Program (CACFP).

Form Number: FNS–843 and FNS–844.

OMB Control Number: 0584–0055.

Expiration Date: 08/31/2025.

Type of Request: Revision.

Abstract: This is a revision of requirements in the information collection under OMB Control Number 0584–0055 that are being impacted by this rulemaking. USDA proposes to improve the serious deficiency process in the CACFP. This proposed rule impacts information reporting at the state/local/tribal government level, reporting at the business level (sponsoring organizations and facilities), and monitoring requirements for State agencies. Under this rule, USDA is proposing to codify into regulations provisions from the *Final Rule: Child Nutrition Program Integrity* to clarify provisions of the serious deficiency process, and to extend the process to unaffiliated centers participating in the CACFP. Furthermore, FNS published a notice, *Request for Information: The Serious Deficiency Process in the Child and Adult Care Food Program,* 84 FR 22431, May 17, 2019, to gather information to help FNS understand firsthand the experiences of State agencies and program operators.

This rulemaking intends to revise the serious deficiency process to codify provisions from the Final Rule*: Child Nutrition Program Integrity* and to respond to comments from State agencies and participating institutions. The revisions will replace the term ''serious deficiencies'' that apply to program violations with the term ''serious management problems'', as found in the National School Lunch Act (NSLA). They will also change the point at which a serious deficiency determination is made. Previously, the discovery of program violations would immediately lead to a serious deficiency declaration. The new process will move the serious determination near the end of the process, where the State agency will propose termination for failing to correct an institution's serious management problems. Finally, the rulemaking will create a path to full correction defined by a timeframe and number of reviews. By incorporating all these program changes, FNS intends to reduce ambiguity navigating the serious deficiency process, remove stigma associated with the ''serious deficiency'' term, and improve program integrity by implementing a simpler process. The burden related to these proposals is reflected in the burden estimates for OMB Control Number 0584–0055. All of these changes are program changes.

Reporting

State Agencies

The changes proposed in this rule will impact the existing reporting requirements currently approved under OMB Control Number 0584–0055 for State agencies.

USDA estimates that 56 State agencies will develop a process to share information on any institution, facility, responsible principals, or responsible individuals not approved to administer or participate in the Program to fulfill the requirement at 7 CFR 226.6(b)(2)(iii)(D)*(2).* USDA estimates that 56 State agencies would be required to develop an information-sharing process and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 annual burden hours and responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.6(b)(2)(iii)(L) that State agencies report up-to-date information on multi-state sponsoring organizations (MSSOs) operations. USDA expects that 56 state agencies would be required to update 23 MSSO records per year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

The proposed rule will change the citations in 7 CFR part 226 that will change the Serious Deficiency Process from 7 CFR 226.6 to 226.25. As a part of these changes, the rule will create separate citations for applying institutions and for participating institutions. The currently approved collection combines the burden of applying institutions and participating institutions into a single citation per burden item. The following reporting requirements will remove reporting burden associated with participating

institutions from the preexisting citations, which will be added back into the collection with new citations at 7 CFR 226.25. Overall, no new burden will be added to the collection as a result of these citation changes.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(A) to 7 CFR 226.6(c)(4). USDA estimates that 56 State agencies will be required to fulfill the existing requirement that SAs notify an institution's executive director and chairman of the board of directors that the institution's application has been determined seriously deficient. When the notice is issued, the State agency must add the institution to the State agency list, with the reason for the serious deficiency determination, and provide a copy of the notice to the appropriate FNSRO. USDA estimates that 56 State agencies will be required to submit 5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(A) is currently approved with 560 responses and 140 burden hours. USDA estimates that 70 burden hours and 280 responses of these estimates are associated with the participating institutions, with the rest of the estimates associated with the applying institutions. USDA estimates that 70 annual burden hours and 280 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(B) to 7 CFR 226.6(c)(5)(i)(A). USDA expects that 56 State agencies will be required to fulfill the existing requirement that State Agencies submit a copy of a notice that an institution's corrective action has been successful to the appropriate FNSRO for new, renewing, and participating institutions. USDA expects that 56 State agencies will be required to submit 3.5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(B) is currently approved with 392 responses and 98 burden hours. USDA estimates that 49 burden hours and 196 responses of these estimates are associated with participating institutions, with the rest associated with the applying institutions. USDA estimates that 49 burden hours and 196 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(C) to 7 CFR 226.6(c)(6). USDA estimates that 56 State agencies will be required to fulfill the existing requirement that State agencies submit a copy of the application denial and proposed disqualification notice to FNSRO. USDA estimates that 56 State agencies will be required to submit 1.5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(C) is currently approved with 168 responses and 42 burden hours. USDA estimates that 84 responses and 21 burden hours of these estimates are associated with the participating institutions, with the rest associated with the applying institutions. USDA estimates that 21 burden hours and 84 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(c)(1)(iii)(E) to 7 CFR 226.6(c)(8). USDA expects that 56 State agencies will be required to fulfill the existing requirement that SAs submit copies of disqualification notices to the FNSRO for new, renewing, and participating institutions. USDA expects that 56 State agencies will be required to submit 1.5 notices each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(1)(iii)(E) is currently approved with 168 responses and 42 burden hours. USDA estimates that 84 responses and 21 burden hours of these estimates are associated with participating institutions, with the remaining estimates associated with the applying institutions. USDA estimates that 21 burden hours and 84 responses will be subtracted from this existing requirement.

The proposed rule will change the requirement at 7 CFR 226.6(p) for State agencies to develop and provide the use of a standard form of a written permanent agreement (which must specify the rights and responsibilities of both parties) between sponsoring organizations and day care homes, unaffiliated centers, outside-school-hours-care centers, at-risk afterschool care centers, emergency shelters, or adult day care centers for which the State agency has responsibility for Program operations to 7 CFR 226.6(n)(1). USDA expects that 15 State agencies will be required to develop and provide a standard form a year and that it takes approximately 6 hours per response to complete this requirement. The existing requirement at 7 CFR 226.6(p) has a total of 90 annual burden hours and 15 responses. The proposed rule is changing the regulatory citation for this requirement but otherwise has no further impact on the requirement or its burden so no additional burden hours or responses will be added to this requirement.

The proposed rule will add additional reporting requirements that apply the Serious Deficiency Process to MSSOs operating the Program.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q) that State agencies must determine if a sponsoring organization is an MSSO and assume the role of a Cognizant State agency (CSA) if the MSSOs center of operations is located within the State. USDA estimates that the 56 State agencies will be required to make 23 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(i) that State agencies must enter into a permanent written agreement with the MSSO. USDA expects that the 56 State agencies will be required to make 23 permanent agreements each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(ii) that State agencies must approve the MSSOs administrative budget. USDA estimates that the 56 State agencies will be required to approve 23 administrative budgets each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(iii) that State agencies must conduct monitoring of MSSO Program operations within the State. USDA expects that the 56 State agencies will be required to monitor 23 MSSOs each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(iii)(C) that State agencies provide summaries of the MSSO reviews that are conducted to the CSA and if the State agency conducts a full review, the State agency

should request the necessary records from the CSA. USDA estimates that the 56 State agencies will be required to submit 23 MSSO review summaries to the CSA annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(iv) that State agencies must conduct audit resolution activities. USDA estimates that the 56 State agencies will be required to conduct 5 audit resolution activities each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 70 annual burden hours and 280 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(1)(v) that State agencies must notify all other State agencies that have an agreement with an MSSO that their agreement has been terminated and disqualification actions taken against that MSSO. USDA expects that the 56 State agencies will be required to make 23 notifications a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(2) that State agencies must determine if an MSSOs center of operations are located within the State and assume the role of the CSA. USDA estimates that the 56 State agencies will be required to make 23 MSSO determinations each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(2)(iii) that the CSA must conduct a full review of the MSSOs headquarters and financial records center, must coordinate the timing of the reviews, and make copies of the monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA expects that the 56 State agencies will be required to conduct full reviews of 23 MSSO headquarters and financial records centers annually and that it takes approximately 20 hours to complete this requirement; which is estimated to add 25,760 annual burden hours and 1,288 responses to the collection.

UDSA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.6(q)(2)(iv) that, if an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements. USDA estimates that the 56 State agencies will be required to establish audit thresholds and requirements for 6 for-profit MSSOs annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 336 annual burden hours and responses to the collection.

The proposed rule will change the requirement at 7 CFR 226.6(r) to 7 CFR 226.6(p), which requires State agencies to provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC income eligibility guidelines to participating institutions. USDA estimates that 56 State agencies will be required to fulfill the requirements each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(r) has a total of 14 annual burden hours and 56 responses. The proposed rule is changing the regulatory citation for this requirement, but otherwise has no further impact on the requirement or its burden so no additional burden hours or responses will be added to the collection.

As a part of the Serious Deficiency Process, the proposed rule will be adding a requirement at 7 CFR 226.25(a)(2)(i) and (a)(3) that State agencies must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem. USDA expects that 56 State agencies will be required to define a set of standards to identify serious management problems a year and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 burden hours and responses to the collection.

As a part of the changes to 7 CFR 226.6, the proposed rule subtracts burden from currently approved requirements to create separate citations for applying institutions and participating institutions. The burden associated with applying institutions remain in 7 CFR 226.6 while the burden associated with participating institutions is subtracted from the old citations and added to new citations in 7 CFR 226.25. Overall, no new burden will be added to the collection as a result of the following changes.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(i) that State agencies notify a participating institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals that serious problems have been identified, must be addressed, and corrected. USDA estimates that 56 State agencies will notify 5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 70 burden hours and 280 responses for the participating institutions which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(A) (originally approved with 560 responses and 140 burden hours for both the applying and participating institutions; it is now estimated that the applying institutions now have 70 burden hours and 280 responses). Therefore, USDA estimates that 70 hours and 280 responses will be added back to the collection.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(ii)(A) that State agencies notify a participating institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals that the serious management problem has been vacated, update the State agency list, and provide a copy of the notice to the appropriate FNSRO. USDA expects that 56 State agencies will notify 3.5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 49 burden hours and 196 responses for the participating institutions, which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(B) (originally approved with 98 burden hours and 392 responses for both the applying and participating institutions; it is now estimated that the applying institutions will have 49 burden hours and 196 responses). Therefore, USDA estimates that 49 hours and 196 responses will be added back to the collection.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(ii)(B) that State agencies notify a participating institution's executive director and chairman of the board of directors,

responsible principals, and responsible individuals that the State agency proposes to terminate the institution's agreement and disqualify the institution, the responsible principals and responsible individuals. USDA estimates that 56 State agencies will notify 1.5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 21 burden hours and 84 responses for the participating institutions, which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(C) (originally approved with 42 burden hours and 168 responses for both the applying and participating institutions; it is now estimated that the applying institutions will have 21 burden hours and 84 responses). Therefore, USDA estimates that 21 hours and 84 responses will be added back to the collection.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(6)(iii)(A) and (B) that State agencies notify a participating institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals of the appeal determination, and whether the institution's agreement is terminated, issue a notice of serious deficiency if the institution's agreement is terminated, update the State agency list, and provide a copy to the appropriate FNSRO. USDA expects that 56 State agencies will notify 1.5 institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement at the regulatory citations noted above adds back a total of 21 burden hours and 84 responses for the participating institutions, which was subtracted from the old citation of 7 CFR 226.6(c)(1)(iii)(E) (originally approved with 42 burden hours and 168 responses for both the applying and participating institutions; it is now estimated that the applying institutions will have 21 burden hours and 84 responses). Therefore, USDA estimates that 21 hours and 84 responses will be added back to the collection.

The proposed rule will add additional requirements to 7 CFR 226.25 regarding the placement of institutions, day care homes, and unaffiliated centers that have been determined to have serious management problems.

USDA estimates that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.25(b) that State agencies maintain a State agency list, made available to FNS upon request. USDA estimates that the 56 State agencies will each make 10,570 updates annually ((6,843 Independent Child Care Centers + 89,853 Family Day Care Homes + 21,692 Unaffiliated Centers)/56 State Agencies) × 5 Steps in the Serious Deficiency Process = 10,570) and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 147,973.75 annual burden hours and 591,895 responses to this collection.

The proposed rule will add additional requirements to 7 CFR 226.25 regarding corrective action plans and monitoring requirements of State agencies.

USDA estimates that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.25(c)(2)(iv)(C) that State agencies receive and approve submitted corrective action plans within 90 days from the date the institution received the notice and that the State agency monitor the full implementation of the corrective action plan. USDA estimates that the 56 State agencies will review 3 corrective action plans a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 42 annual burden hours and 168 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the requirement at 7 CFR 226.25(c)(3)(i) and 226.6(k)(2) that State agencies conduct and prioritize follow-up reviews and more frequent full reviews of institutions with serious management problems. USDA expects that the 56 State agencies will have to conduct reviews of 39 participating institutions a year and that it takes approximately 20 hours to complete this requirement; which is estimated to add 43,680 annual burden hours and 2,184 responses to the collection.

The proposed rule will change the currently approved requirement at 7 CFR 226.6(c)(6)(ii)(G) to 7 CFR 226.25(d)(1). Under this requirement, State agencies are required to terminate for cause the Program agreement with a participating institution upon declaration of the facility or institution of being seriously deficient. USDA estimates that 56 State agencies will terminate 3 participating institutions each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The existing requirement at 7 CFR 226.6(c)(6)(ii)(G) has a total of 42 annual burden hours and 168 responses. The proposed rule is changing the regulatory citation for this requirement, but otherwise has no further impact on the requirement or its burden so no additional hours or responses will be added to the collection as a result of this proposed rule.

The proposed rule will add additional requirements for State agencies to follow after terminating an agreement with a participating institution.

USDA estimates that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.25(d)(2) that State agencies develop a contingency plan for the transfer of facilities if a sponsoring organization is terminated or disqualified to ensure that eligible participants continue to have access to meals. USDA estimates that the 56 State agencies will develop 3 contingency plans each year and that it takes approximately 2 hours to complete this requirement; which is estimated to add 336 annual burden hours and 168 responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirement at 7 CFR 226.25(e)(2)(iii) that, if all serious management problems have been corrected and all debts have been repaid, State agencies may elect to remove an institution, responsible principals, and responsible individuals from the National Disqualified List, and must submit all requests for early removals to the appropriate FNSRO. USDA expects that the 56 State agencies will remove up to 3 institutions from the National Disqualified List each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 42 annual burden hours and 168 responses to the collection.

USDA estimates that 56 State agencies will be required to fulfill the new requirements at 7 CFR 226.25(e)(3)(ii) that State agencies must enter into written agreements with FNS, in order to participate in a matching program involving a FNS Federal system of records. USDA estimates that the 56 State agencies will enter into a CMA written agreement annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 annual burden hours and responses to the collection.

USDA expects that 56 State agencies will be required to fulfill the new requirements at 7 CFR 226.25(e)(3)(iii)(B) that State agencies may request FNS to waive the two-step independent verification and notice requirement of the CMA. USDA expects that the 56 State agencies will submit a waiver request annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 56 annual burden hours and responses to the collection.

The proposed rule will change the remaining citations belonging to the

Serious Deficiency Process in 7 CFR 226.6 to 7 CFR 226.25. As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(f)(1)(i)(A) and (f)(2)(i)(A) that State agencies initiate action for termination and disqualification upon determination of an imminent threat to the health and safety of participants or that the institution knowingly submitted a false or fraudulent claim, submit a combined notice of suspension, proposed termination, and proposed disqualification to the institution, and notify the appropriate FNSRO. USDA estimates that the 56 State agencies will take action for termination and disqualification against these participating institutions once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(c)(5)(i)(A) and (B), (c)(5)(ii)(A) and (B), (c)(5)(ii)(D) and (c)(6)(ii)(B), so this requirement still has a total of 14 annual burden hours and 56 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g) that State agencies annually submit administrative review (appeals) procedures to all institutions. USDA expects that the 56 State agencies will submit annual administrative procedures to 21,840 institutions a year and that it takes approximately 1 minute (0.02 hours) to complete this reporting requirement for each record. The number of annual burden hours and responses from this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(4)(i), so this requirement still has a total of 364.73 annual burden hours and 21,840 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(1) that State agencies must submit administrative review (appeal) procedures when applicable action is taken. USDA estimates that the 56 State agencies will submit procedures 5 times a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(4)(ii), so it still has a total of 70 annual burden hours and 280 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(1)(iii) that State agencies notify the institution's executive director and chairman of the board of directors, responsible principals, and responsible individuals that action is being taken against them, the basis for the action, and the procedures to be followed to request an administrative review (appeal) of the action. USDA estimates that the 56 State agencies will notify 3 participating institutions a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(i), so this requirement still has a total of 42 annual burden hours and 168 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(1)(iv)(E) that State agencies submit written documentation to a hearing official prior to the beginning of an administrative hearing, within 30 days after receiving the notice of action. USDA expects that the 56 State agencies will submit written documentation to a hearing official 3 times a year and that it takes approximately 2 hours to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(v), so this requirement still has a total of 336 annual burden hours and 168 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(2) that State agencies provide participating institutions advanced notification at least 5 days in advance of the time and place of the hearing. USDA estimates that the 56 State agencies will notify 3 participating institutions a year and that it takes approximately 5 minutes (0.08 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(ii), so this requirement still has a total of 14.03 annual burden hours and 168 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(2) that State agencies participate in a hearing to determine that the State agency followed Program requirements in taking action under appeal. USDA estimates that the 56 State agencies will participate in 3 hearings a year and that it takes approximately 4 hours to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(vi), so this requirement still has a total of 672 annual burden hours and 168 responses.

USDA estimates that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(g)(5)(i) and (ii) that participating institutions, responsible principals, and responsible individuals are informed of the decision made by the hearing official within 60 days of the date the State agency received the appeal request. USDA estimates that the 56 State agencies will notify 3 participating institutions a year and that it takes approximately 30 minutes (0.5 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.6(k)(5)(ix) and (k)(9), so it still has a total of 84 annual burden hours and 168 responses.

USDA expects that 56 State agencies will be required to fulfill the changed requirement at 7 CFR 226.25(h)(3)(i) that State agencies send a necessary demand letter for the collection of unearned payments, including any assessment of interest, and refer the claim to the appropriate State authority for the pursuit of the debt payment. USDA estimates that the 56 State agencies will send 39 necessary demand letters a year and that it takes approximately 1minute (0.02 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.14(a), so it still has a total of 36.47 annual burden hours and 2,184 responses.

Local Government Agencies

The changes proposed in this rule will impact the existing requirements currently approved under OMB Control Number 0584–0055 for local government agencies.

USDA estimates that 3 local government agencies will be required to fulfill the requirement at 7 CFR 226.6(b)(1)(xix) that sponsoring organizations approved to participate in the Program that operate in more than one state must provide the State with additional information about their operations. USDA estimates that 3 local government agencies will need to report on their operations once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 45 annual burden minutes (0.75 hours) and 3 responses to the collection.

USDA expects that 3,257 local government agencies will be required to fulfill the requirement at 226.25(a)(2)(i) and 226.25(a)(3) that sponsoring

organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements. USDA expects that 3,257 local government agencies will develop a set of standards annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 3,257 annual burden hours and responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(l)(3)(i) to 226.25(a)(2)(ii), (a)(5) and (a)(7)(i). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 83 local government agencies will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5) and (a)(7)(i) that sponsoring organizations notify day care homes or unaffiliated centers that serious management problems have been identified, must be addressed, and corrected. USDA estimates that 83 local government agencies will send a notice each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement remains unchanged from its currently approved citation at 7 CFR 226.16(l)(3)(i), with a total of 20.75 annual burden hours and 83 responses.

The proposed rule requirements for the Serious Deficiency Process in 7 CFR 226.25 that affect local government agencies extend the Serious Deficiency Process to day care homes and unaffiliated centers and reflect the added requirements for local government agencies.

USDA expects that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(ii)(A) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the serious management problems have been vacated. USDA expects that the 3,257 local government agencies will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. Therefore, USDA estimates that a total of 814.25 annual burden hours and 3,257 responses will be added to the collection.

USDA estimates that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR (a)(2)(ii), (a)(5), and (a)(7)(ii)(B) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that corrective action has not fully corrected each serious management problem and that the sponsoring organization proposes to terminate the institution's agreement and disqualify the institution, responsible principals, and responsible individuals. USDA estimates that the 3,257 local government agencies will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

USDA expects that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(iii)(A) and (B) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals of the appeal determination, and, if the appeal is denied, notify them that the institution's agreement is terminated and declare the institution or facility seriously deficient. USDA expects that the 3,257 local government agencies will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

USDA estimates that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(c)(1) that the institution, unaffiliated center, or day care home must submit, in writing, what corrective actions have been taken to correct each serious management problem. USDA estimates that the 3,257 local government agencies will submit a written record of corrective actions taken and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

USDA expects that 3,257 local education agencies will be required to fulfill the at 7 CFR 226.25(c)(3)(ii) that sponsoring organizations conduct follow-up reviews and more frequent full reviews to confirm that serious management problems are corrected. USDA expects that the 3,257 local government agencies will conduct a follow-up review and that it takes approximately 20 hours to complete this requirement; which is estimated to add 65,140 annual burden hours and 3,257 responses to the collection.

USDA estimates that 3,257 local education agencies will be required to fulfill the requirement at 7 CFR 226.25(d)(1) that sponsoring organizations terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient. USDA estimates that the 3,257 local government agencies will terminate an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 814.25 annual burden hours and 3,257 responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(d)(4)(viii) to 7 CFR 226.25(f)(1)(ii)(A) and 7 226.25(f)(2)(ii)(A). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 814 local government agencies will be required to fulfill the changed requirement at 7 CFR 226.25(f)(1)(ii)(A) and (f)(2)(ii)(A) that sponsoring organizations initiate action for termination and disqualification upon determination of an imminent threat to the health and safety of participants or that the institution knowingly submitted a false or fraudulent claim and submit a combined notice of suspension, proposed termination, and proposed disqualification to the day care home provider or unaffiliated center. USDA estimates that the 814 local government agencies will take action for termination and disqualification against these participating institutions once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses from this requirement remains unchanged from its older citation at 7 CFR 226.16(d)(4)(viii), with a total of 203.5 annual burden hours and 814 responses. As a part of the revised serious deficiency process, the proposed rule will require State agencies to develop a contingency plan in place for the transfer of facilities if a sponsoring organization is terminated or disqualified. The added requirement, at § 226.25(d)(2), is necessary to ensure that eligible participants in the program do not lose meal access as a result of a State agency action against an institution with serious management problems. The burden for the 56 State agencies is estimated at 42 (for 0.25 hours and for 168 total annual responses), an increase of 42 annual

burden hours from the current collection. The new requirement to develop a contingency plan is included as a line item in the ICR associated with the rulemaking.

The proposed rule will also relocate the requirements for suspension in the event of an imminent threat to health and safety or the presence of false or fraudulent claims from § 226.25(c)(5) and (6) to a new home in § 226.25(f)(1)(i)(A) and 226.25(f)(2)(i)(A). The burden for the 56 State agencies is estimated to remain unchanged from the previous collection at 14 (for 0.25 hours and for 56 total annual responses). The burden for institutions, however, is expected to change due to adjustments accounting for FY2020 CACFP participation data. The burden for an estimated 728 local government agencies is expected to increase to 182 (for 0.25 hours and for 728 total annual responses), an increase of 161.25 hours from the current collection. Meanwhile, the burden for an estimated 4,154 business-level institutions is expected to decrease to 1,039 (for 0.25 hours and for 4,154 total annual responses), a decrease of 124 annual burden hours from the current collection. The moved suspension requirements have been included as line items in the ICR associated with this rulemaking.

As a part of the proposed rule, requirements regarding the appeals process will be relocated to § 226.25(g). State agencies will still need to acknowledge the receipt of a request for a fair hearing, submit written documentation to the hearing official, provide a fair hearing, and inform the sponsor, responsible principals, and responsible individuals of the hearing official's final decision. The burden for the 56 State agencies will still be 1,106.028 (for 6.5835 hours and for 168 total annual responses). As such, the burden is expected to remain unchanged from the previous collection. The fair hearing requirements are listed as line items in the ICR associated with this rulemaking.

Along with the reporting requirements of the serious deficiency rule, State agencies will be required to maintain a State agency list that collects information on each institution and facility determined to have serious management problems; the names, mailing addresses, and dates of birth for each responsible principal and responsible individual, as well as the institution or facility's status as it progresses through the serious deficiency process. The recordkeeping requirements already existed in the previous collection, but the proposed rule will be moving the State agency list requirements to § 226.25(b) to group the requirement with the other provisions of the serious deficiency process for participating institutions. The burden for the 56 State agencies is estimated at 1,400 (for 5 hours and for 280 total annual responses), resulting in no change from the current collection.

The proposed rule will be offering an opportunity for institutions, responsible principals, and responsible individuals to be removed from the National Disqualified List earlier than the seven-year timetable, at State agency discretion. The disqualified institutions, responsible principals, and responsible individuals must correct all serious management problems and repay any outstanding debts due to unearned payments. Offering this new opportunity will incentivize institutions and the responsible individuals and principals to correct their serious management problems after they have been disqualified by allowing them to exit the National Disqualified List and reapply for participation in the Program. Under the proposed rule, FNS will be amending the regulations at § 226.25(e)(2)(iv), to give State agencies the ability to remove an institution and the responsible principals and individuals from the National Disqualified List and require the State agency to submit all early removals to the appropriate FNSRO.

The burden associated with requests for early removals for the 56 State agencies is estimated at 42 (0.25 hours and for 168 total annual respondents). Overall, the burden is expected to increase the burden to 42 annual burden hours, an increase of 42 hours from the current collection. The requirement to submit all requests for early removal from the National Disqualified List is included as a line item in the ICR associated with this collection.

Similarly, the burden associated with sending a necessary demand letter for the collection of unearned payments remains the same as the prior collection. The only difference is that the citation has moved from § 226.14(a) to § 226.25(h)(3)(i). The burden for the 56 State agencies is estimated 42 (for 0.25 hours and for 168 total annual responses). Overall, FNS expects that the burden associated with sending the necessary demand letter remains unchanged from the current collection. The burden associated with this requirement will be included as a line item in the ICR associated with this rulemaking.

At the conclusion of the serious deficiency process, the proposed rule requires that the State agency terminate an institution's agreement no later than 45 days after the date of the institution's disqualification by FNS. The termination requirement has moved from § 226.6 to § 226.25(i)(2)(A). By consolidating this requirement with other serious deficiency requirements for participating institutions should improve the readability of the CACFP regulations for State agencies. FNS estimates that the burden for the 56 State agencies will remain at 42 (for 0.25 hours and for 168 total annual responses), unchanged from the current collection.

Other requirements that have changed their citations, such as the development of a standard form of written permanent agreement and provide information on Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to participants, from their previous citations in the current collection. The development of a standard form of written permanent agreement has moved from § 226.6(p) to § 226.6(n)(1). The burden for the 56 State agencies is estimated as 90 (for 6 hours and for 15 total annual responses), unchanged from the current collection. Meanwhile, the requirement to provide WIC information moved from § 226.5(r) to § 226.6(p) and is estimated to have a burden of 14 (for 0.25 hours and for 56 total annual respondents. The estimated burden for the WIC information requirements is expected to remain unchanged from the current collection as well. The burden associated with this requirement will be included as a line item in the ICR associated with this rulemaking. To address comments from State agencies, the proposed rule will be amending § 226.6(b)(1)(xix), (b)(2)(iii)(D)(2), (b)(2)(iii)(L), and (q) to add specific requirements regarding Multi-State Sponsoring Organizations (MSSOs). Prior to the proposed rule, the application process for MSSOs was extremely complicated. State agencies asked for guidance on how to approach MSSOs during the application process, but the existing FNS guidance was outdated and conflicted with the regulations in 2 CFR part 200. The new requirements provide a clear process as to how State agencies will approach MSSOs applying to participate in the CACFP.

Under the new requirements, sponsoring organizations approved to operate in more than one state will be required to submit more information than is required in the application process, State agencies will be required to develop a process to share that information with other Child Nutrition Program State agencies, and ensure that

the information on MSSO operations are up to date. Furthermore, State agencies will be required to determine if a sponsoring organization qualifies as an MSSO during their application, enter permanent written agreements with the MSSO, approve the MSSO administrative budget, conduct monitoring of the MSSOs program operations, conduct audit resolution activities, notify other State agencies that have an agreement with the MSSO after termination and disqualification actions, and assume the role of a Cognizant State Agency (CSA) if the MSSOs center of operations is located within the State. Adding the additional process should provide a clear process for State agencies to follow and eliminate any ambiguity under the current collection regarding MSSOs.

The burden for the 56 State agencies determining whether an applying institution operates in more than one state is estimated at 294 (for 0.25 hours and for 1,176 total annual responses. Developing the required process to share MSSO information is estimated at 56 (for 1 hour and for 56 total annual responses) while ensuring that MSSO operations are up to date is estimated at 294 (for 0.25 hours and for 1,176 total annual responses). The burden for the 56 State agencies to review participating MSSOs is estimated at 1,834 (for 1.75 hours and 7,336 total annual responses). FNS expects the overall burden regarding the new MSSO requirements to increase burden to 2,478 annual burden hours, an increase of 2,478 hours.

Meanwhile, the burden hours for institutions is expected to increase to comply with the submission of additional information to the appropriate State agency. The burden for the estimated 3 local government agencies is expected at 0.75 (for 0.25 hours and 3 total annual responses), increasing the burden to 0.75 annual burden hours, an increase of 0.75 hours. Business-level institutions must also comply with the new requirement. An estimated 997 business-level institutions are expected to have an estimated burden at 249 (for 0.25 hours and for 997 total annual responses), increasing the burden to 249 annual burden hours. The new MSSO requirements have been included as line items in the ICR associated with this rulemaking.

The proposed rule will be extending the serious deficiency process to unaffiliated centers. While family day care homes and independent centers were included in the serious deficiency process, the current regulations exclude unaffiliated centers from the serious deficiency process. Excluding unaffiliated centers from the serious deficiency process created ambiguity between State agencies and unaffiliated centers as there was no defined process on how to treat unaffiliated centers in the CACFP. By extending the process to unaffiliated centers, the proposed rule formalizes the relationship between State agencies and unaffiliated centers and establishes a process for accountability for complying with program requirements, protecting the program integrity of the CACFP. The proposed rule amends regulations at § 226.17(e) and (f), 226.17a(f)(2)(i) and (ii), 226.19(d), and 226.19a(d) to separate out unaffiliated centers from independent centers and extend the serious deficiency process to unaffiliated centers.

The burden for an estimated 28,175 business-level institutions is estimated at 5,423.124 (for 0.25 hours and for 21,692) for unaffiliated child care centers; 1,710.8665 (for 0.25 hours and for 6,843 total annual responses) for independent child care centers; 5,423.124 (for 0.25 hours and for 21,692) for unaffiliated afterschool child care centers; 1,710.8665 (for 0.25 hours and for 6,843 total annual responses) for independent afterschool child care centers; 5,423.124 (for 0.25 hours and for 21,692) for unaffiliated outside-school-hours child care centers; and 1,710.8665 (for 0.25 hours and for 6,843 total annual responses) for independent outside-school-hours child care centers. FNS expects the burden to increase overall to 21,401.9715 annual burden hours, an increase of 21,401.9715, for these requirements.

The burden for an estimated 28,535 business-level facilities is estimated at 5,423.12 (for 0.25 hours and for 21,692 total annual responses) for unaffiliated child care centers; 1,710.87 (for 0.25 hours and for 6,843 total annual responses) for independent child care centers; 5,423.12 (for 0.25 hours and for 21,692 total annual responses) for unaffiliated afterschool child care centers; 1,710.87 (for 0.25 hours and for 6,843 total annual responses) for independent afterschool child care centers; 5,423.12 (for 0.25 hours and for 21,692 total annual responses) for unaffiliated outside-school-hours child care centers; and 1,710.87 (for 0.25 hours and for 6,843 total annual responses) for independent outside-school-hours child care centers. FNS expects the burden to increase overall to 28,535 annual burden hours, an increase of 28,535, for these requirements. The requirements for unaffiliated centers will be included as line items in the ICR associated with this rulemaking. The current approved burden for OMB Control # 0584–0055 is 4,213,210.887 hours. This rulemaking is expected to increase burden by 523,837.943 hours to account for the new requirements. In addition, the burden is expected to decrease by 446,677 hours due to adjustments accounting for CACFP participation data collected from FY2022. Taking account of decreases in the number of sponsoring organizations, facilities, and participating households in the SFSP, the burden is expected to increase by 77,170.390 hours, resulting in a revised total burden of 4,290,381.277 hours.

This rulemaking will add clarity to the serious deficiency process by defining key terms, establish a timeline for full correction, and establish criteria for determining when the serious deficiency process must be implemented. In addition, this rulemaking would also define procedures for termination for cause and disqualification, implement legal requirements for records maintained on individuals on the National Disqualified List, and incorporate additional procedures to account for the participation of multi-State sponsoring organizations. The proposed rule is intended to improve the integrity of the CACFP.

Institutions

The changes proposed in this rule will introduce new reporting requirements to the existing requirements currently approved under OMB Control Number 0584–0055 for business level institutions.

USDA estimates that 1,116 institutions will be required to fulfill the requirement at 7 CFR 226.6(b)(1)(xix) that institutions approved to participate in the Program that operate in more than one state must provide the State with additional information about their operations. USDA estimates that 1,116 institutions will need to report on their operations once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 279 annual burden hours and 1,116 responses to the collection.

USDA expects that 21,692 institutions will be required to fulfill the requirement at 7 CFR 226.17(e) that sponsoring organizations must enter into a permanent written agreement, which specifies the rights and responsibilities of both parties, with an unaffiliated sponsored child care center participating in the Program. USDA expects that 21,692 institutions will have to enter into an agreement annually and that it takes approximately

15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 institutions will be required to fulfill the requirement at 7 CFR 226.17(f) that independent child care centers must enter into a permanent written agreement, which specifies the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 institutions will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(i) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored afterschool child care center participating in the Program. USDA expects that 21,692 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 annual burden hours and 21,692 responses to the collection.

USDA estimates that 6,843 institutions will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(ii) that independent afterschool child care centers must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 institutions will be required to fulfill the requirement at 7 CFR 226.19(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored outside-school-hours child care centers participating in the Program. USDA expects that 21,692 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 institutions will be required to fulfill the requirement at 7 CFR 226.19a(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored adult day care centers participating in the Program. USDA estimates that 6,843 institutions will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 18,601 institutions will be required to fulfill the requirement at 226.25(a)(2)(i) and 226.25(a)(3) that sponsoring organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements. USDA expects that 18,601 institutions will develop a set of standards annually and that it takes approximately 1 hour to complete this requirement; which is estimated to add 18,601 annual burden hours and responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(l)(3)(i) to 7 CFR 226.25(a)(2)(ii), (a)(5) and (a)(7)(i). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 540 institutions will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5) and (a)(7)(i) that sponsoring organizations notify day care homes or unaffiliated centers that serious management problems have been identified, must be addressed, and corrected. USDA estimates that 540 institutions will send a notice each year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The proposed requirement remains unchanged from its currently approved citation at 7 CFR 226.16(l)(3)(i), with a total of 135 annual burden hours and 540 responses.

The proposed rule requirements for the Serious Deficiency Process in 7 CFR 226.25 that affect institutions extend the Serious Deficiency Process to day care homes and unaffiliated centers, and reflect the added requirements for institutions.

USDA expects that 18,601 institutions will be required to fulfill the reporting requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(ii)(A) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the serious management problems have been vacated. USDA expects that the 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(ii)(B) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the sponsoring organization proposes to terminate the institution's agreement and disqualify the institution, responsible principals, and responsible individuals. USDA estimates that the 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirements at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(iii)(A) that sponsoring organizations notify an institution's executive director, chairman of the board of directors, responsible principals, and responsible individuals of the appeal determination. USDA estimates that 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA expects that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(a)(2)(ii), (a)(5), and (a)(7)(iii)(B) that sponsoring organizations must notify the day care home or unaffiliated center's executive director, chairman of the board of directors, responsible principals, and responsible individuals that the agreement is terminated and declare that the institution or facility is seriously deficient. USDA expects that the 18,601 institutions will send a notification annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(c)(1) that the institution, unaffiliated center, or

day care home must submit, in writing, what corrective actions have been taken to correct each serious management problem. USDA estimates that the 18,601 institutions will submit a written record of corrective actions taken and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

USDA expects that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(c)(3)(ii) that sponsoring organizations must conduct reviews to confirm that the serious management problems are corrected. USDA expects that the 18,601 institutions will conduct a follow-up review and that it takes approximately 20 hours to complete this requirement; which is estimated to add 372,020 annual burden hours and 18,601 to the collection.

USDA estimates that 18,601 institutions will be required to fulfill the requirement at 7 CFR 226.25(d)(1) that sponsoring organizations terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient. USDA estimates that the 18,601 institutions will terminate an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 4,650.25 annual burden hours and 18,601 responses to the collection.

The proposed rule will change the following citation belonging to the Serious Deficiency Process in 7 CFR 226.16(d)(4)(viii) to 7 CFR 226.25(f)(1)(ii)(A) and (f)(2)(ii)(A). As these are changes only to citations, no new burden will be added to the collection.

USDA estimates that 4,650 local government agencies will be required to fulfill the changed requirement at 7 CFR 226.25(f)(1)(ii)(A) and 226.25(f)(2)(ii)(A) that sponsoring organizations initiate action for termination and disqualification upon determination of an imminent threat to the health and safety of participants or that the institution knowingly submitted a false or fraudulent claim. USDA estimates that the 4,650 local government agencies will take action for termination and disqualification against these participating institutions once a year and that it takes approximately 15 minutes (0.25 hours) to complete this requirement. The number of annual burden hours and responses for this requirement remains unchanged from its older citation at 7 CFR 226.16(d)(4)(viii), with a total of 1,162.50 annual burden hours and 4,650 responses.

Facilities

The changes proposed in this rule will introduce new reporting requirements to the existing requirements that are currently approved under OMB Control Number 0584–0055 for business level facilities.

USDA expects that 21,692 facilities will be required to fulfill the requirement at 7 CFR 226.17(e) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored child care center participating in the Program. USDA expects that 21,692 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement' which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 facilities will be required to fulfill the requirement at 7 CFR 226.17(f) that independent child care centers must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 facilities will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(i) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored afterschool child care center participating in the Program. USDA expects that 21,692 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 annual burden hours and 21,692 responses to the collection.

USDA estimates that 6,843 facilities will be required to fulfill the requirement at 7 CFR 226.17a(f)(2)(ii) that independent afterschool child care centers must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with the State agency. USDA estimates that 6,843 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

USDA expects that 21,692 facilities will be required to fulfill the requirement at 7 CFR 226.19(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored outside-school-hours child care center participating in the Program. USDA expects that 21,692 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 5,423.12 hours and 21,692 responses to the collection.

USDA estimates that 6,843 facilities will be required to fulfill the requirement at 7 CFR 226.19a(d) that sponsoring organizations must enter into a permanent written agreement, specifying the rights and responsibilities of both parties, with an unaffiliated sponsored adult day care center participating in the Program. USDA estimates that 6,843 facilities will have to enter into an agreement annually and that it takes approximately 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 1,710.87 annual burden hours and 6,843 responses to the collection.

Recordkeeping

State Agencies

The proposed rule will change the recordkeeping requirement at 7 CFR 226.6 to 7 CFR 226.25(b), which requires State agencies to collect and maintain on file CACFP agreements (Federal/State and State/Institutions), records received from applicant and participating institutions, National Disqualified Lists/State Agency Lists, and documentation of any administrative review (appeals), Program assistance, activities, results, and corrective actions.

USDA estimates that 56 State agencies will fulfill the requirement at 7 CFR 226.25(b). As a part of the requirement, USDA estimates that the 56 State agencies will maintain 5 sets of records and that it takes approximately 5 hours to complete this recordkeeping requirement for each record. The FNS–843 Report of Disqualification from Participation: Institution and Responsible Principals/Individuals and the FNS–844 Report of Disqualification from Participation—Individually Disqualified Responsible Principal/Individual or Day Care Home Provider forms are included among the records associated with this requirement. The

proposed requirement does not change from the existing requirement at 7 CFR 226.6 in the currently approved collection, so this requirement still has a total of 1,400 annual burden hours and 280 responses.

USDA expects that 56 State agencies will fulfill the requirement at 7 CFR 226.25(c) that State agencies must collect and maintain on file corrective action plans submitted by institutions, unaffiliated centers, or day care homes, in writing, which must discuss what corrective actions have been taken to correct each serious management problem. USDA expects that the 56 State agencies will each keep 3 records for submitted corrective action plans annually and that it takes 1 hour and 30 minutes (1.5 hours) to complete this requirement; which is estimated to add 252 annual burden hours and 168 responses to the collection.

Public Disclosure

State Agencies

The proposed rule will add an additional public disclosure requirement at 7 CFR 226.6(q)(2)(iii) as a part of the new review process for Multi-State Sponsoring Organizations (MSSOs).

USDA estimates that 56 State agencies will fulfill the requirement at 7 CFR 226.6(q)(2)(iii) that the Cognizant State Agency (CSA) must conduct a full review at the MSSO headquarters and financial records center, must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO. USDA estimates that the 56 State agencies will each disclose the findings of 23 MSSO reviews to other State agencies annually and that it takes 15 minutes (0.25 hours) to complete this requirement; which is estimated to add 322 annual burden hours and 1,288 responses to the collection.

FNS estimates that the burden estimates for the proposals outlined in this rulemaking, will have 79,040 respondents, 985,507 total annual responses, and 760,711 total burden hours. Therefore, FNS estimates that as a result of this proposed rulemaking, OMB Control Number 0584–0055 will have 3,852,077 respondents, 17,165,505 responses and 4,968,899 burden hours, an increase of approximately 57,128 respondents, 952,412 responses, and 755,688 burden hours. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Reporting

Respondents (Affected Public): Businesses; and State, Local, and Tribal Government. The respondent groups identified includes institutions, facilities, State agencies, and Local government agencies.

Estimated Number of Respondents: 78,984.

Estimated Number of Responses per Respondent: 12.455.

Estimated Total Annual Responses: 983,771.

Estimated Time per Response: 0.77.

Estimate Total Annual Burden on Respondents: 758,737.

Recordkeeping

Respondents (Affected Public): State, Local, and Tribal Government. The respondent groups identified include State agencies.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Responses: 448.

Estimated Time per Response: 3.69.

Estimate Total Annual Burden on Respondents: 1,652.

Public Disclosure

Respondents (Affected Public): State, Local, and Tribal Government. The respondent groups identified include State agencies.

Estimated Number of Respondents: 56.

Estimated Number of Responses per Respondent: 23.

Estimated Total Annual Responses: 1,288.

Estimated Time per Response: 0.250.

Estimated Total Annual Burden on Respondents: 322.

ESTIMATED ANNUAL BURDEN FOR CACFP
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must develop a process to share information on any institution, facility, or RPIs not approved to administer or participate in the programs as described under paragraph (b)(2)(iii)(A)*(1)* of this section. The SA must work closely with any other Child Nutrition Program SA within the State to ensure information is shared for program purposes and on a timely basis. The process must be approved by FNS.	226.6(b)(2)(iii)(D)*(2)*	56	1.000	56.000	1.000	56.000	0.000	56.000	56.000
State Agencies	SA must ensure that the MSSOs operations, as described in paragraph (b)(1)(xviii), are up-to-date. If the MSSO has facilities not previously reported to the SA, as described in paragraph (b)(1)(xviii), the MSSO must update the information.	226.6(b)(2)(iii)(L)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	SAs must notify an institution's executive director and chairman of the board of directors that the institution has been determined to be seriously deficient. At the same time the notice is issued, the SAs must add the institution to the SA list, along with the basis for the serious deficiency determination, and provide a copy of the notice to the appropriate FNS Regional Office (FNSRO).	226.6(c)(4)	56	5.000	280.000	0.250	70.000	140.000	−70.000	−70.000
State Agencies	SAs must submit a copy of successful corrective action (temporary deferment or serious deficiency determination) notices to FNSRO for new, renewing, and participating institutions.	226.6(c)(5)(i)(A)	56	3.500	196.000	0.250	49.000	98.000	−49.000	−49.000
State Agencies	SAs must submit a copy of application denial and proposed disqualification notice to FNSRO.	226.6(c)(6)	56	1.500	84.000	0.250	21.000	42.000	−21.000	−21.000
State Agencies	SAs must submit copies of disqualification notices to the FNSRO for new, renewing, and participating institutions.	226.6(c)(8)	56	1.500	84.000	0.250	21.000	42.000	−21.000	−21.000
State Agencies	SAs must develop and provide for the use of a standard form of written permanent agreement between each sponsoring organization and day care home or unaffiliated centers, outside-school-hours-care centers, at-risk afterschool care centers, emergency shelters, or adult day care centers for which it has the responsibility for Program operations. The agreement must specify the rights and responsibilities of both parties.	226.6(n)(1)	15	1.000	15.000	6.000	90.000	90.000	0.000	0.000
State Agencies	SAs must determine if a sponsoring organization is an MSSO, as described in paragraphs (b)(1)(xv) and (b)(2)(iii)(L). SAs must assume the role of the CSA, if the MSSOs center of operations is located within the State. Each SA that approves an MSSO must follow the requirements described in paragraph (i).	226.6(q)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	SAs must enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4).	226.6(q)(1)(i)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	SAs must approve the MSSOs administrative budget.	226.6(q)(1)(ii)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4). The SA should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The SA may base the review cycle on the number of facilities operating within the State.	226.6(q)(1)(iii)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	SAs must provide summaries of the MSSO reviews that are conducted to the CSA. If the SA chooses to conduct a full review, the SA should request the necessary records from the CSA.	226.6(q)(1)(iii)(C)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	SAs must conduct audit resolution activities. The SA must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.	226.6(q)(1)(iv)	56	5.000	280.000	0.250	70.000	0.000	70.000	70.000
State Agencies	SAs must notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i).	226.6(q)(1)(v)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	If it determines that an MSSOs center of operations is located within the State, the SA must assume the role of the CSA.	226.6(q)(2)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	226.6(q)(2)(iii)	56	23.000	1,288.000	20.000	25,760.000	0.000	25,760.000	25,760.000
State Agencies	If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.	226.6(q)(2)(iv)	56	6.000	336.000	1.000	336.000	0.000	336.000	336.000
State Agencies	SAs must provide information on the importance and benefits of the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and WIC income eligibility guidelines to participating institutions.	226.6(p)	56	1.000	56.000	0.250	14.000	14.000	0.000	0.000
State Agencies	SAs must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements.	226.25(a)(2)(i) and 226.25(a)(3).	56	1.000	56.000	1.000	56.000	0.000	56.000	56.000

State Agencies	SAs must notify an institution's executive director and chairman of the board of directors, and RPIs, that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instruction, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action. At the same time, the SA must add the institution and RPIs to the SA list and provide a copy of the notice to the appropriate FNSRO.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(i).	56	5.000	280.000	0.250	70.000	0.000	70.000	70.000
State Agencies	If corrective action has been taken to fully correct each serious management problem, SAs must notify an institution's executive director and chairman of the board of directors, and RPIs, that the serious management problem has been vacated. At the same time, the SA must update the SA list and provide a copy of the notice to the appropriate FNSRO.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(iii)(A).	56	3.500	196.000	0.250	49.000	0.000	49.000	49.000
State Agencies	If corrective action has not fully corrected each serious management problem, SAs must notify an institution's executive director and chairman of the board of directors, and RPIs, that the SA proposes to terminate the institution's agreement and disqualify the institution and RPIs. SA must notify the institution of the procedures for seeking a fair hearing in accordance with paragraph f of the proposed termination and proposed disqualifications. At the same time, the SA must update the SA list and provide a copy of the notice to the appropriate FNSRO.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(iii)(B).	56	1.500	84.000	0.250	21.000	0.000	21.000	21.000
State Agencies	If appeal is upheld, SAs must notify the institution and facility that confirms the serious management problem is vacated and advise the institution and facility that procedures and policies must be implemented to fully correct the serious management problem. If the fair hearing is denied, SAs must notify the institution's executive director and chairman of the board of directors, and RPIs, that the agreement is terminated and declare the institution or facility seriously deficient. SAs must issue a serious deficiency notice that informs the institution, facility, and RPIs of their disqualification from Program participation. At the same time, the SA must update the SA list and provide a copy of the notice to the appropriate FNSRO.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(6)(iii)(A) and (B).	56	1.500	84.000	0.250	21.000	0.000	21.000	21.000
State Agencies	The State agency must maintain a State agency list, made available to FNS upon request, and must include the following information: Names and mailing addresses of each institution, day care home or unaffiliated center that is determined to have a serious management problem; Names, mailing addresses, and dates of birth of each responsible principal and responsible individual; The status of the institution, day care home or unaffiliated center, as it progresses through the stages of corrective action, termination, suspension, and disqualification, full correction, as applicable. Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide FNS with the information as described in paragraph (b)(1)(A) and (B) of this section.	226.25(b)	56	10,570	591,895.000	0.250	147,973.750	0.000	147,973.750	147,973.750

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must receive and approve the corrective action plan within 90 days from the date the institution received the notice and monitor the full implementation of the corrective action plan.	226.25(c)(2)(iv)(C) ..	56	3.000	168.000	0.250	42.000	0.000	42.000	42.000
State Agencies	SAs must conduct and prioritize follow-up reviews and more frequent full reviews of institutions with serious management problems, as described in 7 CFR 226.6(k)(6)(ii). An institution must have at least two full reviews occurring once every 2 years and at least 24 months apart that reveal no new or repeat serious management problems to achieve full correction.	226.25(c)(3)(i) and 226.6(k)(2).	56	39.000	2,184.000	20.000	43,680.000	0.000	43,680.000	43,680.000
State Agencies	SAs must terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient.	226.25(d)(1)	56	3.000	168.000	0.250	42.000	42.000	0.000	0.000
State Agencies	SAs must develop a contingency plan in place for the transfer of facilities if a sponsoring organization is terminated or disqualified to ensure that eligible participants continue to have access to meal service.	226.25(d)(2)	56	3.000	168.000	2.000	336.000	0.000	336.000	336.000
State Agencies	If all serious management problems have been corrected and all debts have been repaid, SAs may elect to remove an institution and RPIs from the National Disqualified List, and must submit all requests for early removals to the appropriate FNSRO.	226.25(e)(2)(iii)	56	3.000	168.000	0.250	42.000	0.000	42.000	42.000
State Agencies	SAs must enter into written agreements with FNS, consistent with 5 U.S.C. 552a(o) of the CMA, in order to participate in a matching program involving a FNS Federal system of records.	226.25(e)(3)(ii)	56	1.000	56.000	1.000	56.000	0.000	56.000	56.000
State Agencies	SAs may request FNS to waive the two-step independent verification and notice requirement of the CMA.	226.25(e)(3)(iii)(B) ..	56	1	56	1	56	0	56	56

State Agencies	If the SA or sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The SA or sponsoring organization must initiate action for termination and disqualification. The SA must notify the institution's executive director and chairman of the board of directors that the institution's participation has been suspended and that the SA proposes to terminate the institution's agreement and to disqualify the institution and the RPIs. The notice must identify the RPIs and must be sent to those persons as well. If the SA determines that an institution has knowingly submitted a false or fraudulent claim, the SA must initiate action to suspend the institution's participation and must initiate action to terminate the institution's agreement and initiate action to disqualify the institution and the RPIs. The SA must notify the institution's executive director and chairman of the board of directors that the SA proposes to suspend the institution's participation. At the same time this notice is sent, the SA must add the institution and the RPIs to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO.	226.25(f)(1)(i)(A) & 226.25(f)(2)(i)(A).	56	1.000	56.000	0.250	14.000	14.000	0.000	0.000
State Agencies	SAs must annually submit administrative review (appeal) procedures to all institutions.	226.25(g)	56	390.000	21,840.000	0.017	364.728	364.728	0.000	0.000
State Agencies	Each SA must submit administrative review (appeal) procedures when applicable action is taken.	226.25(g)(1)(i)	56	5.000	280.000	0.250	70.000	70.000	0.000	0.000
State Agencies	SAs must notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review (appeal) of the action.	226.25(g)(1)(iii)	56	3.000	168.000	0.250	42.000	42.000	0.000	0.000
State Agencies	SAs must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.	226.25(g)(1)(iv)(E) ..	56	3.000	168.000	2.000	336.000	336.000	0.000	0.000
State Agencies	If a hearing is requested, the sponsor, the responsible principals, and responsible individuals must be provided with at least 5 days advance notice of the time and place of the hearing.	226.25(g)(2)	56	3.000	168.000	0.084	14.03	14.030	0.000	0.000
State Agencies	Hearing official must hold hearing to determine that the SA followed Program requirements in taking action under appeal.	226.25(g)(2)	56	3.000	168.000	4.000	672.000	672.000	0.000	0.000
State Agencies	Hearing official must inform the SA, sponsor, responsible principals, and responsible individuals of the decision within 60 days of the date the SA received the appeal request.	226.25(g)(5)(i) and (ii).	56	3.000	168.000	0.500	84.000	84.000	0.000	0.000

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
State Agencies	SAs must send a necessary demand letter for the collection of unearned payments, including any assessment of interest, as described in § 226.14(a), and refer the claim to the appropriate State authority for pursuit of the debt payment. SAs must assess interest on institutions' debts established on or after July 29, 2002, based on the Current Value of Funds Rate, which is published annually by Treasury in the Federal Reserve and is available from the FNSRO, and notify the institution that interest will be charged on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment.	226.25(h)(3)(i))	56	39.000	2,184.000	0.017	36.473	36.473	0.000	0.000
State Agencies Total			56	11,316.821	633,742.000	0.35	223,140.98	2,101.23	221,039.750	221,039.750
Local Government Agencies.	Sponsoring organizations approved to participate in the Program in more than one State must provide: the number of affiliated centers it sponsors, by State; the number of unaffiliated centers it sponsors, by State; the number of day care homes it sponsors, by State; the names, addresses, and phone numbers of the organization's headquarters and the official(s) who have administrative responsibility; the names, addresses, and phone numbers of the financial records center and the official(s) who has financial responsibility; and the organization's decision on whether to use program funds for administrative expenses.	226.6(b)(1)(xix)	3	1.000	3.000	0.250	0.750	0.000	0.750	0.750
Local Government Agencies.	Sponsoring organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements.	226.25(a)(2)(i) and 226.25(a)(3).	3,257	1.000	3,257.000	1.000	3,257.000	0.000	3,257.000	3,257.000
Local Government Agencies.	Sponsoring organizations must notify the day care home or unaffiliated center that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instruction, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(i).	83	1.000	83.000	0.250	20.750	20.750	0.000	0.000
Local Government Agencies.	If corrective action has been taken to fully correct each serious management problem, sponsoring organizations must notify an institution's executive director and chairman of the board of directors, and RPIs, that the serious management problem has been vacated.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(A).	3,257	1.000	3,257.000	0.250	814.250	0.000	814.250	814.250

Local Government Agencies.	If corrective action has not fully corrected each serious management problem, sponsoring organizations must notify an institution's executive director and chairman of the board of directors, and RPIs, that the sponsoring organizations proposes to terminate the institution's agreement and disqualify the institution and RPIs. SA must notify the institution of the procedures for seeking a fair hearing in accordance with paragraph g of the proposed termination and proposed disqualifications.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(B).	3,257	1.000	3,257.000	0.250	814.250	0.000	814.250	814.250
Local Government Agencies.	If appeal is upheld, sponsoring organizations must notify the institution and facility that confirms the serious management problem is vacated and advise the institution and facility that procedures and policies must be implemented to fully correct the serious management problem. If the fair hearing is denied, sponsoring organizations must notify the institution's executive director and chairman of the board of directors, and RPIs, that the agreement is terminated and declare the institution or facility seriously deficient. Sponsoring organizations must issue a serious deficiency notice that informs the institution, facility, and RPIs of their disqualification from Program participation.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(iii)(A) and (B).	3,257	1.000	3,257.000	0.250	814.250	0.000	814.250	814.250
Local Government Agencies.	In response to the notice of serious management problems, the institution, unaffiliated center, or day care home must submit, in writing, what corrective actions it has taken to correct each serious management system. The corrective action plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome.	226.25(c)(1)	3,257	1.000	3,257.000	0.250	814.250	0.000	814.250	814.250
Local Government Agencies.	Sponsoring organizations must conduct reviews, as described in § 226.16(d)(4) to confirm that the serious management problem(s) is corrected. A follow-up review must be conducted to confirm that the serious management problem is corrected. Full reviews occurring 3 times a year, as described in § 226.16(d)(4). Full correction is achieved when three consecutive reviews indicate no new serious management problems or no new repeat serious management problem(s).	226.25(c)(3)(ii)	3,257	1.000	3,257.000	20.000	65,140.000	0.000	65,140.000	65,140.000
Local Government Agencies.	Sponsoring organizations must terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient.	226.25(d)(1)	3,257	1.000	3,257.000	0.250	814.250	0.000	814.250	814.250

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
Local Government Agencies.	If the sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The sponsoring organization must initiate action for termination and disqualification. The sponsoring organization must submit a combined notice of suspension, proposed termination, and proposed disqualification to the day care home provider or unaffiliated center and the RPIs. The notice must identify the RPIs and must be sent to those persons as well. If the sponsoring organization determines that a day care home or unaffiliated center has knowingly submitted a false or fraudulent claim, the sponsoring organization must initiate action to suspend the day care home or unaffiliated center's participation and must initiate action to terminate the day care home or unaffiliated center's agreement and initiate action to disqualify the institution and the RPIs. The SA must submit a combined notice of suspension, proposed termination, and proposed disqualification to the day care home provider or unaffiliated center and the RPIs. At the same time this notice is sent, the SA must add the day care home or unaffiliated center and the RPIs to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO.	226.25(f)(1)(ii)(A) & 226.25(f)(2)(ii)(A).	814	1.000	814.000	0.250	203.500	203.500	0.000	0.000
Local Government Agencies Total			3,257	7.276	23,699.00	3.067	72,693.250	224.250	72,469.000	72,469.000
State/Local/Tribal Governments Total			3,313	198.443	657,441.000	0.450	295,834.23	2,325.48	293,508.750	293,508.750
Institutions	Sponsoring organizations approved to participate in the Program in more than one State must provide: the number of affiliated centers it sponsors, by State; the number of unaffiliated centers it sponsors, by State; the number of day care homes it sponsors, by State; the names, addresses, and phone numbers of the organization's headquarters and the official(s) who have administrative responsibility; the names, addresses, and phone numbers of the financial records center and the official(s) who has financial responsibility; and the organization's decision on whether to use program funds for administrative expenses.	226.6(b)(1)(xix)	1,116	1.000	1,116.000	0.250	279.000	0.000	279.000	279.000

Institutions	Unaffiliated sponsored child care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section. The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).	226.17(e)	21,692	1.000	21,692.496	0.250	5,423.124	0.000	5,423.124	5,423.124
Institutions	Independent child care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section. The SA may terminate this agreement for cause as described in § 226.25(a).	226.17(f)	6,843	1.000	6,843.466	0.250	1,710.867	0.000	1,710.867	1,710.867
Institutions	Unaffiliated sponsored afterschool care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the applicable provisions set forth in this section. The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).	226.17a(f)(2)(i)	21,692	1.000	21,692.496	0.250	5,423.124	0.000	5,423.124	5,423.124
Institutions	Independent afterschool child care centers must enter into a written permanent agreement with the SA. The agreement must specify the rights and responsibilities of both parties as required by § 226.6(b)(4). At a minimum, the agreement must include the applicable provisions set forth in this section. The SA may terminate this agreement for cause as described in § 226.25(a).	226.17a(f)(2)(ii)	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Institutions	Unaffiliated sponsored outside-school-hours care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section. The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).	226.19(d)	21,692	1.000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124
Institutions	Unaffiliated sponsored adult day care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in paragraph (b) of this section. The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).	226.19a(d)	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Institutions	Sponsoring organizations must identify serious management problems and define a set of standards to help measure the severity of a problem to determine what rises to the level of a serious management problem and how it affects the institution or facility's ability to meet Program requirements.	226.25(a)(2)(i) and 226.25(a)(3).	18,601	1.000	18,601.000	1.000	18,601.000	0.000	18,601.000	18,601.000

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
Institutions	Sponsoring organizations must notify a day care home or unaffiliated center that serious management problems have been identified, must be addressed, and corrected. The notice must identify all aspects of the serious management problem; reference specific regulatory citations, instruction, or policies; name all of the RPIs; describe the action needed to correct the serious management problem; and set a deadline for completing the corrective action.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(i).	540	1.000	540.000	0.250	135.000	135.000	0.000	0.000
Institutions	If corrective action has been taken to fully correct each serious management problem, sponsoring organizations must notify the day care home or unaffiliated center that the serious management problem has been vacated.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(A).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions	If corrective action has not fully corrected each serious management problem, sponsoring organizations must notify the day care home or unaffiliated center that the sponsoring organizations proposes to terminate the institution's agreement and disqualify the institution and RPIs. SA must notify the institution of the procedures for seeking a fair hearing in accordance with paragraph g of the proposed termination and proposed disqualifications.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(ii)(B).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions	If appeal is upheld, sponsoring organizations must notify the day care home or unaffiliated center that confirms the serious management problem is vacated and advise the institution and facility that procedures and policies must be implemented to fully correct the serious management problem.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(iii)(A).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions	If the fair hearing is denied, sponsoring organizations must notify the day care home or unaffiliated center that the agreement is terminated and declare the institution or facility seriously deficient. Sponsoring organizations must issue a serious deficiency notice that informs the institution, facility, and RPIs of their disqualification from Program participation.	226.25(a)(2)(ii), 226.25(a)(5), and 226.25(a)(7)(iii)(B).	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions	In response to the notice of serious management problems, the institution, unaffiliated center, or day care home must submit, in writing, what corrective actions it has taken to correct each serious management system. The corrective action plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome.	226.25(c)(1)	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250

Institutions	Sponsoring organizations must conduct reviews that assess whether the facility has corrected the serious management problems, as described in §226.16(d)(4). Follow-up reviews must be conducted to confirm that the serious management problem is corrected. A day care home or unaffiliated center must be reviewed at the same frequency as described in §226.16(d)(4). Full correction is achieved when three consecutive reviews indicate no new serious management problems or no repeat of a serious management problem.	226.25(c)(3)(ii)	18,601	1.000	18,601.000	20.000	372,020.000	0.000	372,020.000	372,020.000
Institutions	Sponsoring organizations must terminate for cause the Program agreement upon declaration of the institution or facility to be seriously deficient.	226.25(d)(1)	18,601	1.000	18,601.000	0.250	4,650.250	0.000	4,650.250	4,650.250
Institutions	If the sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The sponsoring organization must initiate action for termination and disqualification. The sponsoring organization must notify the day care home provider or unaffiliated center's principals that the day care home or unaffiliated center's participation has been suspended and that the SA proposes to terminate the day care home or unaffiliated center's agreement and to disqualify the day care home or unaffiliated center and the RPIs. The notice must identify the RPIs and must be sent to those persons as well. If the sponsoring organization determines that an day care home or unaffiliated center has knowingly submitted a false or fraudulent claim, the sponsoring organization must initiate action to suspend the day care home or unaffiliated center's participation and must initiate action to terminate the day care home or unaffiliated center's agreement and initiate action to disqualify the institution and the RPIs. The SA must notify the day care home provider or unaffiliated center's principals that the sponsoring organization proposes to suspend the day care home or unaffiliated center's participation. At the same time this notice is sent, the SA must add the day care home or unaffiliated center and the RPIs to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO.	226.25(f)(1)(ii)(A) & 226.25(f)(2)(ii)(A).	4,650	1.000	4,650.000	0.250	1,162.500	1,162.500	0.000	0.000
Institutions Total			41,136	5.107	240,721.886	1.83	441,500.97	1,297.500	440,203.47	440,203.47
Facilities	Unaffiliated sponsored child care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.17(e)	21,692	1.000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124

ESTIMATED ANNUAL BURDEN FOR CACFP—Continued
[Reporting]

Respondent type	Burden activities	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Annual burden hours current approved burden hours	Program changes	Total difference in burden
Facilities	Independent child care centers must enter into a written permanent agreement with the State agency. The agreement must specify the rights and responsibilities of both parties as required by §226.6(b)(4). At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section. The SA may terminate this agreement for cause as described in §226.25(a).	226.17(f)	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Facilities	Unaffiliated sponsored afterschool child care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the applicable provisions set forth in this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.17a(f)(2)(i)	21,692	1.000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124
Facilities	Independent afterschool child care centers must enter into a written permanent agreement with the SA. The agreement must specify the rights and responsibilities of both parties as required by §226.6(b)(4). At a minimum, the agreement must include the applicable provisions set forth in this section. The SA may terminate this agreement for cause as described in §226.25(a).	226.17a(f)(2)(ii)	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Facilities	Unaffiliated sponsored outside-school-hours care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must include the provisions set forth in paragraph (b) of this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.19(d)	21,692	1.000	21,692	0.250	5,423.124	0.000	5,423.124	5,423.124
Facilities	Unaffiliated sponsored adult day care centers must enter into a written permanent agreement with the sponsoring organization. The agreement must specify the rights and responsibilities of both parties. At a minimum, the agreement must address the provisions set forth in paragraph (b) of this section. The sponsoring organization may terminate this agreement for cause as described in §226.25(a).	226.19a(d)	6,843	1.000	6,843	0.250	1,710.867	0.000	1,710.867	1,710.867
Facilities Total			28,535	3.000	85,607.886	0.250	21,401.97	0.000	21,401.97	21,401.972
Business Total			75,671	4.312	326,329.772	1.42	462,902.94	1,297.500	461,605.44	461,605.44
Reporting Total			78,984	12.455	983,770.772	0.77	758,737.17	3,622.98	755,114.19	755,114.19

State Agencies	SAs must collect and maintain on file CACFP agreements (Federal/State and State/Institutions), records received from applicant and participating institutions, National Disqualified List/State Agency Lists, and documentation of administrative review (appeals) and Program assistance activities, results, and corrective actions.	226.25(b)/FNS–843 & FNS–844.	56	5.000	280.000	5.000	1,400.000	1,400.000	0.000	0.000
State Agencies	SAs must collect and maintain on file corrective action plans submitted by institutions, unaffiliated centers, or day care homes, in writing, what corrective actions have been taken to correct each serious management problem.	226.25(c)	56	3.000	168.000	1.500	252.000	0.000	252.000	252.000
State Agencies Total			56	8.000	448.000	3.688	1,652.000	1,400.000	252.000	252.000
State/Local/Tribal Governments Total			56	8.000	448.000	3.688	1,652.000	1,400.000	252.000	252.000
Recordkeeping Total			56	8.000	448.000	3.688	1,652.000	1,400.000	252.000	252.000
State Agencies	The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of the reviews and make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.	226.6(q)(2)(iii)	56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State Agencies Total			56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
State/Local/Tribal Governments Total			56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
Public Disclosure Total			56	23.000	1,288.000	0.250	322.000	0.000	322.000	322.000
Total Burden			79,040	12.468	985,507.772	0.772	760,711.172	5,022.981	755,688.190	755,688.190

SUMMARY OF BURDEN
[OMB #0584–0055]

Total No. Respondents	3,852,077
Average No. Responses per Respondent	4.456
Total Annual Responses	17,165,505
Average Hours per Response	0.289
Total Burden Hours	4,968,899
Current OMB Approved Burden Hours	4,213,211
Adjustments	0
Program Changes	755,688
Total Difference in Burden	755,688

Title: Child and Adult Care Food Program (CACFP) National Disqualified List.

Form Number: FNS–843 & FNS–844.

OMB Control Number: 0584–0584.

Expiration Date: 09/30/2026.

Type of Request: Revision.

Abstract: This is a revision of requirements in the information collection under OMB Control Number 0584–0584 that are being impacted by this rulemaking. USDA proposes to extend the serious deficiency process to the SFSP. As such, this proposed rule impacts reporting requirements for State agencies. No new recordkeeping requirements will be added to this collection, as the recordkeeping burden associated with the FNS–843 and FNS–844 forms are being captured under requirements in the information collections under OMB Control Numbers 0584–0280 and 0584–0055.

This rulemaking will protect program integrity by extending the serious deficiency process to the SFSP. By extending the rulemaking, State agencies will create, update, and maintain data that will be reported to the National Disqualified List, ensuring that sponsors and responsible principals and individuals declared seriously deficient and disqualified from participation are prevented from re-entering the program under sponsors or participating in another program.

The burden for complying with the proposed reporting requirements at 225.18(e)(2)(i)), for the 53 SFSP State agencies, is estimated at 239 hours annually (for 106 FNS–843 responses per State agency, 371 FNS–844 responses per State agency, and 30 minutes (0.5 hours) each to complete the necessary forms). Overall, the burden associated with meeting the proposed reporting requirements are expected to increase burden hours, responses, and respondents, from 784 hours to an estimated 1,023 hours, from 1,568 responses to an estimated 2,045 responses annually, and from 56 respondents to an estimated 109 respondents, due to the proposed rule. The increase of 239 hours, 477 responses, and 53 respondents is due to a program change by incorporating the SFSP into the National Disqualified List. The average burden per response and the annual burden hours for reporting are explained below and summarized in the charts which follow.

Reporting

Respondents (Affected Public): State, Local, and Tribal Government. The respondent group identified include State agencies which handle the SFSP.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 9.

Estimated Total Annual Responses: 477.

Estimated Time per Response: 0.50.

Estimate Total Annual Burden on Respondents: 239.

NATIONAL DISQUALIFIED LIST (NDL) ICR
[OMB Control Number 0584–0584]

Respondent type	Burden activities	Section	Forms	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours	Current OMB approved burden hours	Program changes	Total difference in burden
State Agency	The State agency creates updates, and maintains a list of sponsoring organizations who have been terminated or otherwise disqualified from SFSP participation.	225.18(e)(2)(i)	FNS–843 *	53	2	106	0.50	53	0	53	53
			FNS–844 *	53	7	371	0.50	185.5	0	185.5	185.5
State agency Level Reporting Totals.	.....	.....	.....	53	9	477	0.50	238.5	0	238.5	238.5

SUMMARY OF BURDEN
[OMB Control Number 0584–0584]

Total No. Respondents	109
Average No. Responses per Respondent	18.76
Total Annual Responses	2,045
Average Hours per Response	0.50
Total Burden Hours	1,023
Current OMB Approved Burden Hours	784
Adjustments	0
Program Changes	239
Total Difference in Burden	239

J. E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk,

Reporting and recordkeeping requirements.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

7 CFR Part 225

Food assistance programs, Grant programs-health, Infants and children, Labeling, Reporting and recordkeeping requirements.

7 CFR Part 226

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, American Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

For the reasons stated in the preamble, Food and Nutrition Services proposes to amend 7 CFR parts 210, 215, 220, 225, and 226 as set forth below:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. In § 210.2, add in alphabetical order the definition for ''Good standing'' to read as follows:

§ 210.2 Definitions.

* * * * *

Good standing means a school food authority or school that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

* * * * *

■ 3. In § 210.9, add paragraph (d) to read as follows:

§ 210.9 Agreement with State agency.

* * * * *

(d) *Terminations or disqualifications.* (1) The State agency is prohibited from approving any school food authority or school to administer or participate in the Program if the school food authority, school, responsible principals, or responsible individuals:

(i) Have been terminated for cause from any program authorized under this part or parts 215, 220, 225, and 226 of this chapter; and

(ii) Are currently included on a National Disqualified List described in § 225.18(e)(2) and § 226.25(e)(2).

(2) State agencies must ensure that school food authorities, schools, responsible principals, or responsible individuals described in paragraph (d)(1) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each deficiency has been corrected, or until 7 years have elapsed since disqualification. However, the school food authority, school, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(3) If school food authorities or schools currently administering or participating in the Program meet the criteria described in paragraph (d)(1) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 210.25.

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 4. The authority citation for part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 5. In § 215.2, add in alphabetical order the definition for ''Good standing'' to read as follows:

§ 215.2 Definitions.

* * * * *

Good standing means a school food authority or school that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

* * * * *

■ 6. In § 215.7, add paragraph (g) to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(g) *Terminations or disqualifications.* (1) The State agency is prohibited from approving any school food authority or school to administer or participate in the Program if the school food authority, school, responsible principals, or responsible individuals:

(i) Have been terminated for cause from any program authorized under this part or parts 210, 220, 225, and 226 of this chapter; and

(ii) Are currently included on a National Disqualified List described in § 225.18(e)(2) and § 226.25(e)(2).

(2) State agencies must ensure that school food authorities, schools, responsible principals, or responsible individuals described in paragraph (g)(1) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each deficiency has been corrected, or until 7 years have elapsed since disqualification. However, the school food authority, school, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(3) If school food authorities or schools currently administering or participating in the Program meet the criteria described in paragraph (g)(1) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 215.16.

PART 220—SCHOOL BREAKFAST PROGRAM

■ 7. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 8. In § 220.2, add in alphabetical order the definition for ''Good standing'' to read as follows:

§ 220.2 Definitions.

* * * * *

Good standing means a school food authority or school that meets its program responsibilities, is current with its financial obligations, and, if applicable, has fully implemented all corrective actions within the required period of time.

* * * * *

■ 9. In § 220.7, add paragraph (i) to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(i) *Terminations or disqualifications.* (1) The State agency is prohibited from approving any school food authority or school to administer or participate in the Program if the school food authority, school, responsible principals, or responsible individuals:

(i) Have been terminated for cause from any program authorized under this part or parts 210, 215, 225, and 226 of this chapter; and

(ii) Are currently included on a National Disqualified List described in § 225.18(e)(2) and § 226.25(e)(2).

(2) State agencies must ensure that school food authorities, schools, responsible principals, or responsible individuals described in paragraph (i)(1) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each deficiency has

been corrected, or until 7 years have elapsed since disqualification. However, the school food authority, school, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(3) If school food authorities or schools currently administering or participating in the Program meet the criteria described in paragraph (i)(1) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 220.19.

PART 225—SUMMER FOOD SERVICE PROGRAM

■ 10. The authority citation for 7 CFR part 225 continues to read as follows:

Authority: Secs. 9, 13, and 14, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

■ 11. In § 225.2, add in alphabetical order the definitions for ''Cognizant Regional office'', ''Cognizant State agency'', ''Contingency plan'', ''Corrective action'', ''Disqualified'', ''Fair hearing'', ''Finding'', ''Fiscal action'', ''Full correction'', ''Hearing official'', ''Lack of business integrity'', ''Legal basis'', ''Multi-State sponsoring organization (MSSO)'', ''National Disqualified List (NDL)'', ''Notice'', ''Principal'', ''Program operator'', ''Responsible individual'', ''Responsible principal'', ''Review cycle'', ''Seriously deficient'', ''Serious management problem'', ''State agency list'', and ''Termination for cause'' to read as follows:

§ 225.2 Definitions

* * * * *

Cognizant Regional office means the FNSRO which acts on behalf of the Department in the administration of the Program and is responsible for determining which State agency has cognizance when a multi-State sponsoring organization operates the Program.

Cognizant State agency (CSA) means the agency which is responsible for the administration of the Program in the State where a multi-State sponsoring organization's headquarters is located.

* * * * *

Contingency plan means the State agency's written process for the transfer of sponsored site service area that will help ensure that Program meals for children will continue to be available without interruption if a sponsor's agreement is terminated.

* * * * *

Corrective action means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.

* * * * *

Disqualified means the status of a sponsor, responsible principal, or responsible individual who is ineligible for participation in the Program.

* * * * *

Fair hearing means due process provided upon request to:

(1) A sponsor that has been given notice by the State agency of an action that will affect participation or reimbursement under the Program;

(2) A principal or individual responsible for a sponsor's serious management problems and issued a notice of proposed termination and proposed disqualification from Program participation; or

(3) a sponsor that has been given notice of proposed termination.

* * * * *

Finding means a violation of a regulatory requirement identified during a review.

Fiscal action means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, disallowance of funds for failure to take corrective action to meet Program requirements.

* * * * *

Full correction means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problems are identified in subsequent reviews, as described § 225.18(c)(3).

* * * * *

Hearing official means an individual who is responsible for conducting an impartial and fair hearing—as requested by a sponsor, responsible principal, or responsible individual responding to a proposal for termination—and rendering a decision.

* * * * *

Lack of business integrity means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice.

Legal basis means the lawful authority established in statute or regulation.

* * * * *

Multi-State sponsoring organization (MSSO) means a sponsor that sponsors sites in more than one State.

National Disqualified List (NDL) means a system of records, maintained by the Department, of sponsors, responsible principals, and responsible individuals disqualified from participation in the Program.

* * * * *

Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to a sponsor's Program reimbursement or participation.

* * * * *

Principal means any individual who holds a management position within, or is an officer of, a sponsor or a sponsored site, including all members of the sponsor's board of directors or the sponsored site's board of directors.

* * * * *

Program operator means any entity that participates in one or more child nutrition programs.

* * * * *

Responsible individual means any individual employed by, or under contract with a sponsor or an individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for a sponsor's serious management problems.

Responsible principal means any principal, as described in this section, who the State agency or FNS determines to be responsible for a sponsor's serious management problems.

* * * * *

Review cycle means the frequency and number of required reviews of sponsors and sites.

* * * * *

Seriously deficient means the status of a sponsor after it is determined that full correction has not been achieved and termination for cause is the only appropriate course of action.

Serious management problem means the finding(s) that relate to a sponsor's inability to meet the Program's performance standards or that affect the integrity of a claim for reimbursement or the quality of meals served at a site.

* * * * *

State agency list means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on sponsors through the serious deficiency process in that State. The list must be made available to FNS upon request, and must include information specified in § 225.18(b).

* * * * *

Termination for cause means the termination of a Program agreement due

to considerations related to a sponsor's performance of Program responsibilities under the agreement between the State agency and sponsor.

* * * * *

■ 12. In § 225.6:

■ a. Revise paragraph (b)(9);

■ b. Add paragraph (b)(13);

■ c. In paragraph (c)(2), remove the words ''significant operational'' and add in their place the words ''serious management'';

■ d. Add paragraph (c)(5);

■ e. In paragraph (e), remove the words ''significant operational'' and add in their place the words ''serious management'', wherever they appear; and

■ f. Add paragraph (n).

The revisions and additions read as follows:

§ 225.6 State agency responsibilities.

* * * * *

(b) * * *

(9) The State agency must not approve the application of any applicant sponsor identifiable through its organization or principals as a sponsor which has been determined to be seriously deficient as described in § 225.18(d). However, the State agency may approve the application of a sponsor, not on the NDL, which has been previously disapproved if the applicant demonstrates to the satisfaction of the State agency that it has taken appropriate corrective actions to prevent recurrence of serious management problems.

* * * * *

(13) *Terminations or disqualifications.* (i) The State agency is prohibited from approving any sponsor or site to administer or participate in the Program if the sponsor, site, responsible principals, or responsible individuals:

(A) Have been terminated for cause from any Program authorized under this part or parts 210, 215, 220, or 226 of this chapter; and

(B) Are currently included on a National Disqualified List described in § 225.18(e)(2).

(ii) State agencies must ensure that sponsors, sites, responsible principals, or responsible individuals described in paragraph (b)(13)(i) of this section do not administer or participate in the Program until the State agency, in consultation with FNS, determines that each serious management problem has been corrected, or until 7 years have elapsed since disqualification. However, a sponsor, site, responsible principals, or responsible individuals will remain ineligible until all debts owed to the Program have been repaid.

(iii) If sponsors or sites currently administering or participating in the Program meet the criteria described in paragraph (b)(13)(i) of this section, the State agency must terminate the Program agreement in accordance with the procedures set forth in § 225.18(d).

(c) * * *

(5) *Information about MSSO operations.* The State agency must also determine if the sponsor operates in more than one State. Each sponsor that is approved to operate the Program in more than one State must provide:

(i) The number of affiliated sites it operates, by State;

(ii) The number of unaffiliated sites it operates;

(iii) The names, addresses, and phone numbers of the organization's headquarters and the officials who have administrative responsibility; and

(iv) The names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility.

* * * * *

(n) *Oversight of MSSOs.* An MSSO may include a sponsor that administers the Program in more than one State, a franchise operating multiple facilities in more than one State, or a for-profit organization whose parent corporation operates multiple affiliated centers in more than one State. Each State agency must determine if a sponsoring organization is an MSSO, as described in paragraph (c)(5) in this section. The State agency must assume the role of the CSA, if the MSSO's center of operations is located within the State. Each State agency that approves an MSSO must follow the requirements described in paragraph (n)(1) of this section. The CSA must follow the requirements described in paragraph (n)(2) of this section.

(1) *State agency responsibilities.* If a State agency determines that an MSSO operates the Program within the State, it must:

(i) Enter into a permanent written agreement with the MSSO, as described in paragraph (n)(1) of this section.

(ii) Approve the MSSO's administrative budget (in consultation with the CSA, as appropriate).

(A) The State agency must approve budget line items that are directly attributable to operations within the State.

(B) The State agency must approve its portion of costs that are shared among other State agencies and costs that attribute directly to program operations within the State.

(C) The State agency must notify the CSA if it has determined that the ratio of administrative to operating costs is high or that the net cash resources of an MSSO's nonprofit food service exceed the limits that are described in § 225.7(m)

(iii) Conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4) of this section. The State agency should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The State agency may base the review cycle on the number of facilities operating within the State.

(A) The State agency may use information from the CSA's technical assistance activities to assess compliance in areas where the scope of review overlaps during the same review cycle. The State agency may choose to conduct a review of implementation of additional State agency requirements, financial records to support State-specific administrative costs, and other areas of compliance that the CSA would not have reviewed.

(B) The State agency may also choose to conduct a full review at the MSSO's headquarters and financial records center. If the State agency chooses to conduct a full review, the State agency should request the necessary records from the CSA.

(C) The State agency must provide summaries of the MSSO reviews that are conducted to the CSA. The summaries must include the prescribed corrective actions and follow-up efforts.

(iv) Conduct audit resolution activities. The State agency must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.

(v) Notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i) of this section.

(2) *CSA responsibilities.* If it determines that an MSSO's center of operations is located within the State, the State agency must assume the role of the CSA, which must:

(i) Comply with the requirements for a State agency that has approved an MSSO to provide Program operations within the State, as described in this paragraph (n)(1).

(ii) Determine if there will be shared administrative costs among the States in which the MSSO operates and how the costs will be allocated. The CSA has the authority to approve cost levels for cost items that must be allocated. The CSA must approve the allocation method that the MSSO uses for shared costs. The

method must allocate the cost based on the benefits received, not the source of funds available to pay for the cost. If the MSSO administers the Program in centers, the CSA must also ensure that administrative costs do not exceed 15 percent on an organization-wide basis.

(iii) Coordinate monitoring. The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of its reviews. The CSA must make copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.

(iv) Ensure that organization-wide audit requirements are met. Each MSSO must comply with audit requirements, as described under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. Since their operations are often large and complex, MSSOs should have annual audits. If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.

(v) Oversee audit funding and costs. The share of organization-wide audit costs may be based on a percentage of each State's expenditure of CACFP funds and the MSSO's expenditure of Federal and non-Federal funds during the audited fiscal year. The CSA should review audit costs as part of the overall budget review and make audit reports available to the other State agencies that have agreements with the MSSO.

(vi) Ensure compliance with procurement requirements. Procurement actions involving MSSOs must follow the requirements under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. If the procurement action benefits all States in which the MSSO operates, the procurement standards of the State that are the most restrictive apply. If the procurement action only benefits a single State's Program, the procurement standards of that State agency apply.

* * * * *

§ 225.7 [Amended]

■ 13. In § 225.7:

■ a. In paragraph (e)(4)(ii), remove the words ''significant operational'' and add in their place the words ''serious management''; and

■ b. In paragraph (k), remove the citation ''§ 225.11'' and add in its place the citations ''§§ 225.11 and 225.18''.

■ 14. In § 225.11, revise paragraph (c) introductory text to read as follows:

§ 225.11 Corrective action procedures.

* * * * *

(c) *Denial of applications and termination of sponsors.* Except as specified in § 225.6(b)(9), the State agency shall not enter into an agreement with any applicant sponsor identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program and was seriously deficient in its operation of any such program. The State agency shall terminate the Program agreement with any sponsor which is determined to be seriously deficient. However, the State agency shall afford a sponsor reasonable opportunity to correct serious management problems before terminating the sponsor and declaring them seriously deficient. State agencies may approve the application of a sponsor in accordance with § 225.6(b)(9). Uncorrected serious management problems which are grounds for disapproval of applications and for termination include, but are not limited to, any of the following:

* * * * *

■ 15. Revise § 225.13 to read as follows:

§ 225.13 Fair hearing procedures.

(a) Each State agency must establish a procedure to be followed by an applicant appealing:

(1) A denial of an application for participation (except if the applicant has failed to complete a corrective action plan from the previous year);

(2) A denial of a sponsor's request for an advance payment;

(3) A denial of a sponsor's claim for reimbursement (except for late submission under § 225.9(d)(6));

(4) A State agency's refusal to forward to FNS an exception request by the sponsor for payment of a late claim or a request for an upward adjustment to a claim;

(5) A claim against a sponsor for remittance of a payment;

(6) The termination of the sponsor or a site;

(7) The termination of a sponsor's agreement;

(8) A denial of a sponsor's application for a site;

(9) A denial of a food service management company's application for registration, if applicable;

(10) The revocation of a food service management company's registration, if applicable; or

(11) Any other action of the State agency affecting a sponsor's participation or its claim for reimbursement.

(b) If after a fair hearing, an entity or individual is denied participation based on the National Disqualified List, their right to appeal the application denial is solely granted to contest the accuracy of the information on the National Disqualified List or the match to the National Disqualified List.

(c) Appeals must not be allowed on decisions made by FNS with respect to late claims or upward adjustments under § 225.9(d)(6).

(d) When a sponsor or a food service management company requests a fair hearing, the State agency must follow the procedures described in § 225.18(f).

§§ 225.18 through 225.20 [Redesignated as §§ 225.19 through 225.21]

■ 16. Redesignate §§ 225.18 through 225.20 as §§ 225.19 through 225.21, respectively.

■ 17. Add new section § 225.18 to read as follows:

§ 225.18 Administrative actions to address serious management problems.

(a) *Serious management problems.* (1) *General.* State agencies must follow the procedures outlined in this section to address any serious management problems. The State agency must provide the sponsor an opportunity for corrective action and due process.

(2) *Six steps.* The serious deficiency process includes a standard set of procedures that State agencies follow to address serious management problems in the operation of the Program. These procedures apply to serious management problems in new or experienced sponsors. The State agency must:

(i) Identify serious management problems.

(ii) Issue a notice of serious management problems.

(iii) Receive and assess corrective action.

(iv) Issue a notice of successful corrective action or a notice of proposed termination with appeal rights.

(v) Provide a fair hearing, if requested.

(vi) Issue a notice of successful appeal if the fair hearing vacates the proposed termination, or issue a notice of termination, serious deficiency, and disqualification, if the fair hearing upholds the proposed termination or the timeframe for requesting a fair hearing has passed.

(3) *Identifying serious management problems.* State agencies must consider the type and magnitude of the finding(s) to determine whether it rises to the level of a serious management problem. State agencies should define a set of standards to identify serious management problems. At a minimum, to identify serious management problems, State agencies and must consider:

(i) *The severity of the problem.* Is the finding minor or substantial? Is the finding systemic or isolated?

(ii) *The degree of responsibility.* Is the finding best described as an inadvertent error or is there evidence of negligence or conscious indifference to regulatory requirements, or even deception? Is the finding at the site level or the sponsor level? If it is at the sponsor level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the site level, has the sponsor taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(iii) *The history of participation in the Program.* Is this the first instance or is there a history of frequently recurring Program findings or serious management problems at the same sponsor?

(iv) *The nature of requirements that relate to the finding.* Is the action a clear finding of Program requirements or a simple mistake? Are new policies incorporated correctly?

(v) *The degree to which the problem impacts Program integrity.* Does the finding undermine the intent of the Program? Is the finding administrative or does it impact viability, capability or accountability? Is the finding at the sponsor level or the site level? If it is at the sponsor level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the site level, has the sponsor taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(4) *Good standing.* If a State agency identifies a serious management problem, the institution, day care home or unaffiliated center is considered to be not in good standing. At a minimum, the following criteria need to be met to return to good standing.

(i) Outstanding debts are paid;

(ii) All corrective actions are fully implemented; and

(iii) Meets its Program responsibilities.

(5) *Notifications.* The State agency must provide a written notice of action through each step of the serious deficiency process.

(i) Each type of notice must include a basis and an explanation of any action that is proposed and any action that is taken.

(ii) The notice must be delivered via certified mail, return receipt, or an equivalent private delivery service, facsimile, or email.

(iii) The notice is considered to be received on the date it is delivered, sent by facsimile, or sent by email.

(iv) If the notice is undeliverable, it is considered to be received 5 days after it is sent to the addressee's last known mailing address, facsimile number, or email address.

(6) *Serious management problems notification procedures for sponsors.* If the State agency determines that the sponsor has serious management problems, the sponsor must use the following procedures. The State agency must notify the sponsor of all findings, including those that do not rise to a serious management problem, and they must be corrected.

(i) *First notification—notice of serious management problems.* The State agency must notify the sponsor's executive director, chair of the board of directors that the sponsor has serious management problems and provide an opportunity to take corrective action. The notice must also be sent to all other responsible principal, other responsible individual. At the same time the notice is issued, the State agency must add the sponsor to the State agency list, as described in paragraph (b) of this section and provide a copy of the notice to the FNSRO. This notice documents that a serious management problem must be addressed and corrected. Prompt action must be taken to minimize the time that elapses between the identification of a serious management problem and the issuance of the notice. For each serious management problem, the notice must:

(A) Specify the serious management problem;

(B) Cite the specific regulatory requirements, instructions, or policies as the basis for the serious management problems;

(C) Identify the responsible principals and responsible individuals;

(D) Specify the actions that must be taken to correct the serious management problem. The notice may specify different corrective actions and time periods for completing the corrective action for the institution and the responsible principal and the responsible individual;

(E) Set time allotted for implementing the corrective action. The corrective action must include milestones and a definite completion date that will be monitored. Although paragraph (c)(2) of this section sets maximum timeframes, shorter timeframes for corrective action may be established.

(F) Specify that failure to fully implement corrective actions for each serious management problem within the allotted time will result in the State agency's proposed termination of the sponsor's agreement and the proposed disqualification of the sponsor and the responsible principals and responsible individuals;

(G) Clearly state that, if the sponsor voluntarily terminates its agreement with the State agency after having been notified of serious management problems it will still result in the sponsor's agreement being terminated for cause and the placement of the sponsor and its responsible principals and responsible individuals on the National Disqualified List;

(H) Submission of the date of birth for any individual named as a responsible principal or responsible individual in the notice of serious management problems is a condition of corrective action for the sponsor and/or responsible principal or responsible individual.

(I) The serious management problems are not subject to a fair hearing.

(ii) *Second notification—notice of successful corrective action or notice of proposed termination, proposed disqualification.* (A) *Notice of successful corrective action.* If corrective action has been implemented to correct each serious management problem within the time allotted and to the State agency's satisfaction, the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that corrective actions are fully implemented.

(2) If corrective action is complete for the sponsor, but not for all of the responsible principals and responsible individuals (or vice versa), the State agency must continue with actions, in accordance with paragraph (a)(6)(ii)(B) of this section against the remaining parties.

(3) At the same time the notice is issued, the State agency must also update the State agency list, as described in paragraph (b) of this section and provide a copy of the notice to the appropriate FNSRO.

(4) Ensure the sponsor continues to implement procedures and policies to fully correct the serious management problems, as described in paragraph (c)(3) of this section.

(B) *Notice of proposed termination and proposed disqualification.* If corrective action has not been taken or fully implemented for each serious management problem within the time allotted and to the State agency's satisfaction, or repeat serious management problems occur before full correction is achieved (as described in paragraph (c)(3) of this section), the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that the State agency proposes to terminate the sponsor's agreement and proposes to disqualify the sponsor, responsible principals and responsible individuals and explain the sponsor's opportunity for seeking a fair hearing as described in paragraph (g) of this section.

(2) At the same time the notice is issued, the State agency must also update the State agency list, as described in paragraph (b) of this section and provide a copy of the notice the appropriate FNSRO.

(3) The notice must specify:

(i) That the State agency is proposing to terminate the sponsor's agreement and proposing to disqualify the sponsor and the responsible principals and the responsible individuals;

(ii) The basis for the proposal to terminate;

(iii) That, if the sponsor voluntarily terminates its agreement with the State agency after receiving the notice of proposed termination, it will still result in the sponsor's agreement being terminated for cause and the placement of the institution and its responsible principals and responsible individuals on the National Disqualified List;

(iv) The procedures for seeking a fair hearing (in accordance with paragraph (g) of this section) of the proposed termination and proposed disqualifications; and

(v) That, unless participation has been suspended, the sponsor may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until the fair hearing is complete.

(iii) *Third notification—Notice to vacate the proposed termination of the sponsor's agreement or notice of serious deficiency, termination of the agreement, and disqualifications—*

(A) *Notice to vacate the proposed termination of a sponsor's agreement.* If the fair hearing vacates the proposed termination, the State agency must notify the sponsor and must:

(1) Notify the sponsor's executive director and chair of the board of directors that the proposed termination of the sponsor's agreement has been vacated.

(*2*) Update the State agency list at the time the notice is issued;

(*3*) Provide a copy of the notice to the appropriate FNSRO.

(B) *Notice of serious deficiency, termination of the sponsor's agreement and disqualifications.* When the time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(*1*) Notify the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals, that the sponsor's agreement is terminated and that the sponsor and the responsible principals and responsible individuals are disqualified and placed on the National Disqualified List;

(*2*) Update the State agency list at the time notice is issued; and

(*3*) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(b) *Placement on the State agency list.* (1) The State agency must maintain a State agency list, made available to FNS upon request, and must include the following information:

(i) Names and mailing addresses of each sponsor that is determined to have a serious management problem;

(ii) Names, mailing addresses, and dates of birth of each responsible principal and responsible individual;

(iii) The status of the sponsor as it progresses through the stages of corrective action, termination, and disqualification, full correction, as applicable.

(2) Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide FNS with the information as described in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Correcting serious management problems.* In response to the notice of serious management problems, the sponsor must submit, in writing, what corrective actions it has taken to correct each serious management problem.

(1) *Corrective action plans.* An acceptable corrective action plan must demonstrate that the serious management problem is resolved. The plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome. The corrective action plan must include the following:

(i) What is the serious management problem and the action taken to address it?

(ii) Who addressed the serious management problem? List personnel responsible for this task.

(iii) When was the action taken to address the serious management problem? Provide a timeline for implementing the action (*i.e.,* daily, weekly, monthly, or annually, and when did implementation of the plan begin)?

(iv) Where is documentation of the corrective action plan filed?

(v) How were staff and providers informed of the new policies and procedures?

(2) *Corrective action timeframes.* Corrective action must be taken within the allotted time to ensures that serious management problems are quickly addressed and fully corrected. The time allotted to correct the serious management problem must be appropriate for the type of serious management problem. The allotted time begins on the date the first notification is received, as described in paragraph (a)(6)(i) of this section. The serious management problems must be corrected as soon as possible and:

(i) Up to 10 days from the date the sponsor receives the first notification.

(ii) More than 10 days only if the State agency determines that corrective action will require the long-term revision of management systems or processes, such as, but not limited to, the purchase and implementation of new claims payment software or a major reorganization of Program management duties that will require action by the board of directors.

(A) The State agency may permit more than 10 days to complete the corrective action.

(B) The sponsor's corrective action plan must include milestones and a definite completion date.

(C) The State agency must receive and approve the corrective action plan within 15 days from the date the sponsor received the notice.

(D) The State agency must monitor full implementation of the corrective action plan.

(iii) Up to 5 days for a sponsor that:

(A) Engaged in an unlawful practice,

(B) Submitted a false or fraudulent claim to the State agency,

(C) Submitted other false or fraudulent information to the State agency,

(D) Was convicted of a crime, or

(E) Concealed a criminal background.

(3) *Achieving full correction of serious management problems.* The path to full correction requires the sponsor to demonstrate that it has the ability to operate the Program with no serious management problems, as described in paragraph (a) of this section. The State agency must prioritize follow-up reviews and more frequent full reviews of sponsors with serious management problems, as described in § 225.7(e)(4)(ii). A follow-up review must be conducted to confirm that the serious management problem is corrected. Full reviews must be

conducted at least once every year. Full correction of a sponsor's serious management problems is achieved when:

(i) At least two full reviews reveal no new or repeat serious management problems;

(ii) The first and last full reviews are at least 12 months apart and reveal no new or repeat serious management problems; and

(iii) All reviews, including any follow-up reviews, between the first and last full review reveal no new or repeat serious management problems.

(iv) Once full correction is achieved, a serious management problem that recurs again, is not considered repeat and therefore, would not lead to an immediate proposal of termination. Any new or recurrence of a serious management problem would require the State agency to issue a new notice of serious management problems, as described in paragraph (a)(6) of this section.

(d) *Termination*—(1) *Termination for cause.* If the State agency determines that the sponsor is unable to properly perform its responsibilities under its Program agreement and fails to take successful corrective action, the Program agreement must be terminated for cause. The State agency and sponsoring organization must declare the sponsor to be seriously deficient at the point of termination, which would be followed by disqualification. The State agency shall not terminate for convenience to avoid implementing the serious deficiency process.

(2) *Contingency plan.* The State agency must have a contingency plan in place for the transfer of sites if a sponsor is terminated or disqualified to ensure that eligible children continue to have access to meal services.

(e) *Disqualification*—(1) *Reciprocal disqualification.* A State agency may not enter into an agreement with any sponsor, if they have been terminated for cause from any child nutrition program and placed on a National Disqualified List. Any existing agreements with the sponsor must also be terminated and the sponsor and all responsible principals and responsible individuals must also be terminated and disqualified.

(i) No individual on the National Disqualified List may serve as a principal at any sponsor.

(ii) The State agency must not approve the application of a new or experienced sponsor if any of the sponsor's principals is on the National Disqualified List.

(iii) A sponsor is prohibited from submitting an application on behalf of a site if any of the site's principals are on the National Disqualified List.

(iv) A sponsor is prohibited from submitting an application on behalf of a site if the site is on the National Disqualified List.

(v) The State agency must not approve an application described in paragraphs (e)(1)(iii) and (iv) of this section.

(vi) Once included on the National Disqualified List, a sponsor, responsible principal, or responsible individual will remain on the list until such time as the State agency determines that either the serious management problem that led to its placement on the list has been corrected or until 7 years have elapsed since its agreement was terminated for cause, whichever is longer. Any debt owed under the Program must be repaid.

(2) *National Disqualified List.* FNS will maintain the National Disqualified List and make it available to all State agencies and all sponsors. This computer matching program uses a Computer Matching Act system of records of information on institutions and individuals who are disqualified from participation in SFSP and CACFP.

(i) *Placement on the National Disqualified List.* The State agency must provide the following information to FNS for each sponsor, responsible principle, and responsible individual:

(A) Name and address of the sponsor (including city, State, and zip code);

(B) Any known aliases;

(C) Termination date;

(D) Amount of debt owed, if any;

(E) Reason, and if other is checked, an explanation;

(F) Date of birth of the responsible principal and responsible individual; and

(G) Position within the institution or facility of the responsible principal and responsible individual.

(ii) *Removal from the National Disqualified List.* A sponsor, responsible principal and responsible individual that has been disqualified from the Program due to uncorrected serious management problems will remain on the National Disqualified List until the State agency and FNS have determined that the serious management problems are corrected, or for 7 years, whichever is longer. Any debt under the Program must be repaid. After a sponsor, responsible principal or responsible individual has been removed from the National Disqualified List, they will be considered to be in good standing, and eligible to apply for the Program.

(iii) *Early removal of sponsors, principals, and individuals from the list.* The State agency must review and approve a sponsor or responsible principal and responsible individual's request for removal from the National Disqualified List. If the State agency approves the request, and ensures that any debt associated has been paid, it may submit the information to the FNSRO, where it will be reviewed for completeness. The FNSRO will also ensure that the State agency's request is within Program requirements and that the documentation supports the early removal. Once reviewed, the FNSRO will submit the request to the FNS National Office for removal. The effective date of National Disqualified List removal will be the date on which the FNS National Office processes the removal request. The FNSRO will be notified once the removal has been completed and inform the State agency.

(3) *Computer Matching Act (CMA).* The Computer Matching and Privacy Protection Act addresses the use of information from computer matching programs that involve a Federal System of Records. Address: compliance, matching agreement, and independent verification.

(i) Each State agency participating in a computer matching program must comply with the provisions of the Computer Matching Act if it uses an FNS system of records in order to:

(A) Establish eligibility for a Federal benefit program;

(B) Verify eligibility for a Federal benefit program;

(C) Verify compliance with either statutory or regulatory requirements of a Federal benefit program; or

(D) Recover payments or delinquent debts owed under a Federal benefit program.

(ii) State agencies must enter into written agreements with USDA/FNS, consistent with 5 U.S.C. 552a(o) of the Computer Matching Act, in order to participate in a matching program involving a USDA/FNS Federal system of records. The agreement must include the State agency's independent verification requirements.

(iii) State agencies are prohibited from taking any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or recipient based on information produced by a Federal computer matching program that is subject to the requirements of the Computer Matching Act, unless:

(A) The information has been independently verified by the State agency; and

(B) FNS has waived the two-step independent verification and notice requirement.

(iv) A State agency that receives a request for verification from another State agency or from FNS must provide

the necessary verification. The State agency must respond within 20 calendar days of receiving the request.

(v) A State agency may use the record of a certified notice to independently verify the accuracy of a computer match.

(f) *Fair hearing*—(1) *Right to a fair hearing.* (i) The sponsor must be advised in writing of the grounds upon which the State agency based the action and its right to a fair hearing. The State agency must offer a fair hearing in the notice to the sponsor for any of the actions described in § 225.13(a). A fair hearing for any other action is not required.

(ii) The notice of due process must inform the sponsor of:

(A) The action that is taken or proposed to be taken;

(B) The legal basis for the action;

(C) The right to appeal the action; and

(D) The procedures and deadlines for requesting an appeal of the action.

(iii) If a fair hearing is requested:

(A) The State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred until the hearing official issues a decision.

(B) Any information upon which the State agency based its action must be available to the appellants for inspection from the date of receipt of the hearing request.

(C) Appellants may request a fair hearing in person or by submitting written documentation to the hearing official.

(D) Appellants may represent themselves, retain legal counsel, or be represented by another person.

(E) All parties must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.

(F) Appellants must be permitted to contact the hearing official directly.

(2) *Fair hearing procedures.* A hearing must be held by the fair hearing official in addition to, or in lieu of, a review of written information only if the sponsor or the responsible principals and responsible individuals request a hearing in the written request for a fair hearing. If the sponsor's representative or the responsible principals or responsible individuals or their representatives, fails to appear at a scheduled hearing, they waive the right to a personal appearance before the hearing official, unless the hearing official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the sponsor and the responsible principals and responsible individuals and to answer questions posed by the hearing official. If a hearing is requested, the sponsor, the responsible principals, and responsible individuals, and the State agency must be provided with at least 5 days advance notice of the time and place of the hearing.

(i) The purpose of the hearing is to determine that the State agency, sponsor, responsible principals, or responsible individuals, followed Program requirements.

(ii) The hearing official's decisions should be limited to that purpose.

(iii) The purpose is not to determine whether to uphold the legality of Federal or State Program requirements.

(iv) The request for a fair hearing must be submitted in writing no later than 10 calendar days after the date the notice of action is received. The State agency must acknowledge the request for a fair hearing within 5 calendar days of its receipt of the request. The State agency must provide a copy of the written request for a fair hearing, including the date of receipt of the request to FNS within 10 calendar days of its receipt of the request.

(3) *Hearing officials.* The individual who is appointed to conduct the fair hearing, including any State agency employee or contractor, must be independent and impartial. The sponsor, responsible principals, and responsible individuals must be permitted to contact the hearing official directly if they so desire. The State agency must ensure that the hearing official:

(i) Has no involvement in the action under appeal;

(ii) Does not occupy a position that may potentially be subject to undue influence from any party that is responsible for the action under appeal;

(iii) Does not occupy a position that may exercise undue influence on any party that is responsible for the action under appeal;

(iv) Has no personal interest in the outcome of the fair hearing;

(v) Has no financial interest in the outcome of the fair hearing.

(4) *Basis for decision.* The hearing official must render a decision that is based on:

(i) The determination that the State agency, sponsor, responsible principals, or responsible individuals, followed Program requirements;

(ii) The information provided by the State agency, sponsor, responsible principals, and responsible individuals; and

(iii) The Program requirements established in Federal and State laws, regulations, policies, and procedures.

(5) *Final decision.* The hearing official's decision is the final action in the appeal process.

(i) Within 10 days of the State agency's receipt of the request for a fair hearing, the fair hearing official must inform the State agency, the sponsor's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, of the fair hearing's outcome.

(ii) The hearing official must render a decision within 30 days of the date the State agency received the appeal request.

(iii) The hearing official must inform the State agency, sponsor, responsible principals, and responsible individuals of the decision within this 30-day period.

(iv) This timeframe is a requirement and cannot be used to justify overturning the State agency action if a decision is not made within the 30-day period.

(v) The hearing official's decision is final.

(vi) The decision is not subject to appeal.

(6) *Effect of State agency action.* The State agency's action must remain in effect during the fair hearing. The effect of this requirement on particular State agency actions is as follows:

(i) *Overpayment demand.* During the period of the fair hearing, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) *Recovery of advances.* During the fair hearing, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(g) *Payments*—(1) *Payment of valid claims.* If a fair hearing is requested, the State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred un the hearing official issues a decision.

(2) *Debts owed to the Program.* The State agency is responsible for the collection of unearned payments, including any assessment of interest, as described in § 225.12(b).

(i) After the State agency has sent the necessary demand letter for debt collection, State agency staff must refer the claim to the appropriate State

authority for pursuit of the debt payment.

(ii) FNS defers to the State's laws and procedures to establish a repayment plan to recover funds as quickly as possible.

(iii) It is the responsibility of the State agency to notify the sponsor that interest will be charged. Interest must be assessed on sponsors' debts established on or after July 29, 2002. Interest will continue to accrue on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment, including during an extended payment plan and each month while on the National Disqualified List.

(iv) State agencies are required to assess interest using one uniform rate. The appropriate rate to use is the Current Value of Funds Rate, which is published annually by Treasury in the **Federal Register** and is available from the FNSRO.

(h) *FNS determination of serious management problems*—(1) *General.* FNS may determine independently that a sponsor has one or more serious management problems, as described in paragraph (a) of this section. FNS will follow procedures outlined in this section to address any finding that prevents a sponsor from meeting the Program's performance standards, affects the integrity of a claim for reimbursement, or affects the integrity of the meals served in a day care home or unaffiliated center.

(2) *Required State agency action*—(i) *Termination of agreements.* If the State agency holds an agreement with a sponsor that FNS determines to be seriously deficient and subsequently disqualifies, the State agency must terminate the sponsor's agreement effective no later than 45 days after the date of the sponsor's disqualification by FNS. As noted in paragraph (f) of this section, the termination of an agreement for this reason is not subject to a fair hearing. At the same time the notice of termination is issued, the State agency must add the sponsor to the State agency list and provide a copy of the notice to the appropriate FNSRO.

(ii) *Disqualified responsible principal and individuals.* If the State agency holds an agreement with a sponsor whose principal FNS determines to be seriously deficient and subsequently disqualifies, the State agency must initiate action to terminate and disqualify the sponsor in accordance with the procedures in paragraph (a)(6)(ii)(B) of this section. The State agency must initiate these actions no later than 45 days after the date of the principal's disqualification by FNS.

PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 18. The authority citation for 7 CFR part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, Richard B. Russell National School Lunch Act, as amended, 42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766.

■ 19. In § 226.2:
■ a. Remove the definitions for ''Administrative review'' and ''Administrative review official'';
■ b. Add in alphabetical order the definitions for ''Cognizant Regional office'', ''Cognizant State agency'', ''Contingency plan'', and ''Corrective action'';
■ c. Revise the definition for ''Disqualified'';
■ d. Add in alphabetical order the definitions for ''Fair hearing'', ''Finding'', ''Fiscal action'', ''Full correction'', ''Good standing'', ''Hearing official'', ''Lack of business integrity'', ''Legal basis'', and ''Multi-State sponsoring organization (MSSO)'';
■ e. Revises the definitions for ''National Disqualified List'' and ''Notice'';
■ f. Add the definitions for ''Program operator'', ''Responsible individual'' and ''Responsible principal'';
■ g. Remove the definition for ''Responsible principal or responsible individual'';
■ h. Add the definitions for ''Review cycle'' and ''Serious management problem''; and
■ i. Revise the definitions for ''Seriously deficient'', ''State agency list'', ''Termination for cause''.

The revisions and additions read as follows:

§ 226.2 Definitions

* * * * *

Cognizant Regional office means the FNSRO which acts on behalf of the Department in the administration of the Program and is responsible for determining which State agency has cognizance when a multi-State sponsoring organization operates the Program.

Cognizant State agency means the agency which is responsible for the administration of the Program in the State where a multi-State sponsoring organization's headquarters is located.

Contingency plan means the State agency's written process for the transfer of sponsored centers and day care homes that will help ensure that Program meals for children and adult participants will continue to be available without interruption if a sponsoring organization's agreement is terminated.

Corrective action means implementation of a solution, written in a corrective action plan, to address the root cause and prevent the recurrence of a serious management problem.

* * * * *

Disqualified means the status of an institution, facility, responsible principal, or responsible individual who is ineligible for participation in the Program.

* * * * *

Fair hearing means due process provided upon request to:

(1) An institution that has been given notice by the State agency of an action that will affect participation or reimbursement under the Program;

(2) A principal or individual responsible for an institution's serious management problem and issued a notice of proposed termination and proposed disqualification from Program participation; or

(3) An individual responsible for a day care home or unaffiliated center's serious management problem and issued a notice of proposed disqualification from Program participation.

* * * * *

Finding means a violation of a regulatory requirement identified during a review.

Fiscal action means the recovery of an overpayment or claim for reimbursement that is not properly payable through direct assessment of future claims, offset of future claims, disallowance of overclaims, submission of a revised claim for reimbursement, or disallowance of funds for failure to take corrective action to meet Program requirements.

* * * * *

Full correction means the status achieved after a corrective action plan is accepted and approved, all corrective actions are fully implemented, and no new or repeat serious management problem is identified in subsequent reviews, as described in § 226.25(c).

* * * * *

Good standing means the status of a program operator that meets its Program responsibilities, is current with its financial obligations, and if applicable, has fully implemented all corrective actions within the required period of time.

* * * * *

Hearing official means an individual who is responsible for conducting an impartial and fair hearing—as requested by an institution, responsible principal, or responsible individual responding to

a proposal for termination—and rendering a decision.

* * * * *

Lack of business integrity means the conviction or concealment of a conviction for fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice.

Legal basis means the lawful authority established in statute or regulation.

* * * * *

Multi-State sponsoring organization (MSSO) means an organization that sponsors facilities in more than one State.

National Disqualified List (NDL) means a system of records, maintained by the Department, of institutions, responsible principals, and responsible individuals disqualified from participation in the Program.

* * * * *

Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a State agency or FNS with regard to an institution's Program reimbursement or participation. Notice also means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by a sponsoring organization with regard to a day care home or unaffiliated center's participation.

* * * * *

Program operator means any entity that participates in one or more Child Nutrition Programs.

* * * * *

Responsible individual means any individual employed by, or under contract with an institution or facility, or any other individual, including uncompensated individuals, who the State agency or FNS determines to be responsible for an institution or facility's serious management problem.

Responsible principal means any principal, as described in this section, who the State agency or FNS determined to be responsible for an institution's serious management problem.

Review cycle means the frequency and number of required reviews of institutions and facilities.

* * * * *

Serious management problem means the finding(s) that relates to an institution's inability to meet the Program's performance standards or that affects the integrity of a claim for reimbursement or the quality of meals served in a day care home or center.

Seriously deficient means the status of an institution or facility after it is determined that full corrective action will not be achieved and termination for cause is the only appropriate course of action.

* * * * *

State agency list means an actual paper or electronic list, or the retrievable paper records, maintained by the State agency, that includes information on institutions and day care home providers or unaffiliated centers through the serious deficiency process in that State. The list must be made available to FNS upon request and must include information specified in § 226.25(b).

* * * * *

Termination for cause means the termination of a Program agreement due to considerations related to an institution or a facility's performance of Program responsibilities under the agreement between:

(1) A State agency and the independent center,

(2) A State agency and the sponsoring organization,

(3) A sponsoring organization and the unaffiliated center, or

(4) A sponsoring organization and the day care home.

* * * * *

■ 20. In § 226.6:

■ a. In paragraph (b)(1), revise the second sentence;

■ b. In paragraph (b)(1)(xii), remove the word ''principals'' and adding in its place the words ''responsible principals or responsible individuals'' wherever it appears;

■ c. Revise paragraphs (b)(1)(xiii) and (b)(1)(xiv)(A) and (B);

■ d. Add paragraphs (b)(1)(xv)(A) and (b)(1)(xix) ;

■ e. In paragraph (b)(2), remove the word ''principals'' and adding in its place the words ''responsible principals or responsible individuals'' wherever it appears;

■ f. In paragraph (b)(2)(ii)(F), remove the word ''and'';

■ g. In paragraph (b)(2)(ii)(G), remove ''.'' and adding in its place ''; and'';

■ h. Add paragraph (b)(2)(ii)(H);

■ i. Revise paragraph (b)(2)(iii)(D);

■ j. In paragraph (b)(2)(iii)(F), add a new second sentence;

■ k. Add paragraph (b)(2)(iii)(L);

■ l. In paragraph (b)(3)(i), revise the last two sentences;

■ m. Revise paragraphs (b)(4)(ii) and (iii) and (c);

■ n. Remove paragraphs (k) and (l) and redesignate paragraphs (m) through (q) as paragraphs (k) through (o), respectively;

■ o. Revise newly redesignated paragraph (k)(2);

■ p. In newly redesignated paragraph (k)(3)(x), remove the words ''paragraph (m)(5)'' and add in their place the words ''paragraph (k)(5)'';

■ q. In newly redesignated paragraph (k)(3)(xi) remove the word ''and'';

■ r. In newly redesignated paragraph (k)(3)(xii) remove ''.'' and add in its place ''; and'';

■ s. Add paragraph (k)(3)(xiii);

■ t. In newly redesignated paragraph (k)(4) remove the words ''paragraph (m)(6)'' and add in their place the words ''paragraph (k)(6)'';

■ u. In newly redesignated paragraph (k)(5) remove the words ''paragraph (m)'' and add in their place the words ''paragraph (k)'';

■ v. Revise newly redesignated paragraph (m);

■ w. In newly designated paragraph (n), remove the citation ''§ 226.16(l)'' and add in its place the citation ''§ 226.25'';

■ x. Redesignate paragraph (r) as paragraph (p) and add new paragraph (q).

The additions and revisions read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(b) * * *

(1) * * * The State agency must also determine if the sponsoring organization operates in more than one State. * * *

* * * * *

(xiii) *Ineligibility for other publicly funded programs*—(A) *General.* Ineligibility for other publicly funded programs. A State agency is prohibited from approving an institution or facility's application if, the institution, facility, responsible principals, or responsible individuals:

(*1*) Have been declared ineligible for any other publicly funded program by reason of violating that program's requirements, during the past 7 years. However, this prohibition does not apply if the institution, facility, responsible principals, or responsible individuals have been fully reinstated in or determined eligible for that program, including the payment of any debts owed. The State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible.

(*2*) Were terminated for cause from any program authorized under this part or parts 210, 215, 220, or 225 of this chapter and are currently listed on a

National Disqualified List, per paragraph (b)(1)(xiii) of this section;. State agencies must develop a process to share information on any institution, facility, responsible principal, or responsible individual not approved to administer or participate in the programs as described under paragraph (b)(2)(iii)(A)*(1)* of this section. The State agency must work closely with any other Child Nutrition Program State agency within the State to ensure information is shared for program purposes and on a timely basis. The process must be approved by FNS.

(B) *Certification.* Institutions must submit:

(*1*) A statement listing the publicly funded programs in which the institution, and its responsible principals and responsible individuals have participated in the past 7 years; and

(*2*) A certification that, during the past 7 years, neither the institution nor any of its responsible principals or responsible individuals have been declared ineligible to participate in any other publicly funded program by reason of violating that program's requirements; or

(*3*) In lieu of the certification, documentation that the institution or the responsible principals or responsible individuals previously declared ineligible was later fully reinstated in, or determined eligible for, the program, including the payment of any debts owed.

(C) *Follow-up.* If the State agency has reason to believe that the institution, facility, its responsible principals or responsible individuals were determined ineligible to participate in another publicly funded program by reason of violating that program's requirements, the State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible.

(xiv) *Information on criminal convictions.* (A) A State agency is prohibited from approving an institution's application if the institution or any of its principals has been convicted of any activity that occurred during the past 7 years and that indicated a lack of business integrity, as described in § 226.2, any other activity indicating a lack of business integrity as defined by the State agency; and

(B) Institutions must submit a certification that neither the institution nor any of its principals has been convicted of any activity that occurred during the past seven years and that indicated a lack of business integrity, as described in § 226.2, or any other activity indicating a lack of business integrity as defined by the State agency;

(xv) * * *

(A) Each principal who fills a position that the State agency designates as responsible must submit signed certifications acknowledging Program responsibility.

(B) [Reserved] * * * * *

(xix) *Information about MSSO operations.* Sponsoring organizations approved to participate in the Program in more than one State must provide:

(A) The number of affiliated centers it sponsors, by State;

(B) The number of unaffiliated centers it sponsors, by State;

(C) The number of day care homes it sponsors, by State;

(D) The names, addresses, and phone numbers of the organization's headquarters and the officials who have administrative responsibility;

(E) The names, addresses, and phone numbers of the financial records center and the officials who have financial responsibility; and

(F) The organization's decision on whether to use program funds for administrative expenses.

* * * * *

(2) * * *

(ii) * * *

(H) Information about MSSO operations, as described in paragraph (b)(1)(xix) of this section, is up-to-date.

(iii) * * *

(D) *Ineligibility for other publicly funded programs.* A State agency is prohibited from approving a renewing institution or facility's application if, the institution, facility, responsible principals, or responsible individuals:

(1) Have been declared ineligible for any other publicly funded program by reason of violating that program's requirements, during the past 7 years. However, this prohibition does not apply if the institution, facility, responsible principals, or responsible individuals have been fully reinstated in or determined eligible for that program, including the payment of any debts owed. The State agency must follow up with the entity administering the publicly funded program to gather sufficient evidence to determine whether the institution or its principals were, in fact, determined ineligible.

(2) Were terminated for cause from any program authorized under this part or parts 210, 215, 220, or 225 of this chapter and are currently listed on a National Disqualified List, per paragraph (b)(1)(xiii) of this section. State agencies must develop a process to share information on any institution, facility, responsible principal, or responsible individual not approved to administer or participate in the programs as described under paragraph (b)(2)(iii)(A)*(1)* of this section. The State agency must work closely with any other Child Nutrition Program State agency within the State to ensure information is shared for program purposes and on a timely basis. The process must be approved by FNS.

* * * * *

(F) *Submission of names and addresses.* * * * The State agency must also ensure that the signed certifications acknowledging Program responsibility, as described in paragraph (b)(1)(xv)(A) of this section are up-to-date. * * *

* * * * *

(L) *Multi-state sponsoring organizations.* The State agency must ensure that the MSSO's operations, as described in paragraph (b)(1)(xix) of this section, are up-to-date. If the MSSO has facilities not previously reported to the State agency, as described in paragraph (b)(1)(xix) of this section, the MSSO must update the information.

* * * * *

(3) * * *

(i) * * * Any disapproved applicant institution must be notified of the reasons for its disapproval and its right to appeal. Any disapproved applicant day care home or unaffiliated center must be notified of the reasons for its disapproval and its right to appeal, as described in § 226.25(g).

* * * * *

(4) * * *

(ii) The Program agreement must include the following requirements:

(A) The responsibility of the institution to accept final financial and administrative management of a proper, efficient, and effective food service, and comply with all requirements under this part.

(B) The responsibility of the institution to comply with all requirements of 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, and the Department's regulations concerning nondiscrimination (parts 15, 15a and 15b of this title), including requirements for racial and ethnic participation data collection, public notification of the nondiscrimination policy, and reviews to assure compliance with the nondiscrimination policy, to the end that no person may, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits

of, or be otherwise subjected to discrimination under, the Program.

(C) The right of the State agency, the Department, and other State or Federal officials to make announced or unannounced reviews of their operations during the institution's normal hours of child or adult care operations, and that anyone making such reviews must show photo identification that demonstrates that they are employees of one of these entities.

(iii) The existence of a valid permanent agreement does not limit the State agency's ability to terminate the agreement, as provided under paragraph (c)(3) of this section. The State agency must terminate the institution's agreement whenever an institution's participation in the Program ends.

(A) The State agency must terminate the agreement for cause as described in § 226.25(d)(1).

(B) The State agency or institution may terminate the agreement at its convenience for considerations unrelated to the institution's performance of Program responsibilities under the agreement. However, any action initiated by the State agency to terminate an agreement for its convenience requires prior consultation with FNS.

(C) Termination for convenience does not result in ineligibility for any program authorized under this part or parts 210, 215, 220, or 225 of this chapter.

(D) The State agency, institution, or facility cannot terminate for convenience to avoid actions related to serious management problems. Termination procedures as a result of the serious deficiency process can be found in § 226.25.

(c) *Denial of a new institution's application.* (1) *Denial of applications that do not meet minimum requirements.* The State agency must deny the application, if a new institution's application does not meet all of the requirements in paragraph (b) of this section and in §§ 226.15(b) and 226.16(b).

(2) *Denial of applications by ineligible applicants.* The State agency must deny the application and must initiate action to disqualify the new institution and the responsible principals, including the person who signs the application, and responsible individuals if the State agency determines that the institution has:

(i) Submitted false information on its application, including but not limited to a determination that the institution has concealed a conviction for any activity that occurred during the past seven years and that indicates a lack of business integrity; or

(ii) Any other action affecting the institution's ability to administer the Program in accordance with Program requirements.

(3) *Denial and disqualification notification procedures.* If the State agency initiates action to deny and disqualify the new institution, the State agency must use the procedures described in paragraph (c)(4) of this section to provide the institution and the responsible principals and responsible individuals with notice for the basis of denial and an opportunity to take corrective action.

(4) *Notice of proposed denial and proposed disqualification.* If the State agency initiates action to deny the institution's application, the State agency must notify the institution's executive director and chairman of the board of directors. The notice must identify the responsible principals, including the person who signed the application, and responsible individuals and must be sent to those persons as well. The State agency may specify in the notice different corrective actions and time periods for completing the corrective action for the institution and the responsible principals and responsible individuals. At the same time the notice is issued, the State agency must add the institution to the State agency list, along with the basis for denial, and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(i) The basis of denial;

(ii) The corrective actions required to be taken;

(iii) The time allotted for corrective actions;

(v) That failure to complete the corrective actions within the allotted time will result in denial of the institution's application and the disqualification of the institution and the responsible principals and responsible individuals;

(vi) That the State agency will not pay any claims for reimbursement for eligible meals served or allowable administrative expenses incurred until the State agency has approved the institution's application and the institution has signed a Program agreement; and

(vii) That the institution's withdrawal of its application, after having been notified of its proposed denial and proposed disqualification, will still result in the institution's application being denied and placement of the institution and its responsible principals and responsible individuals on the National Disqualified List by the State agency; and

(viii) That, if the State agency does not possess the date of birth for any individual named as a ''responsible principal'' or ''responsible individual'' in the notice of proposed denial and proposed disqualification, the submission of that person's date of birth is a condition of corrective action.

(5) *Successful corrective action.* (i) If corrective action has been completed within the allotted time and to the State agency's satisfaction, the State agency must:

(A) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the corrective actions are complete; and

(B) Offer the new institution the opportunity to resubmit its application. If the new institution resubmits its application, the State agency must complete its review of the application within 30 days after receiving a complete and correct application.

(ii) If corrective action is complete for the institution but not for all of the responsible principals and responsible individuals, the State agency must:

(A) Continue with the actions, as described in paragraph (c)(4) of this section, against the remaining parties;

(B) At the same time the notice is issued, the State agency must also update the State agency list to indicate that the corrective actions are complete and provide a copy of the notice to the appropriate FNSRO.

(iii) If the State agency initially approves the institution's application and the State agency and institution have a signed permanent agreement, the State agency must follow procedures, as described in § 226.25, for any serious management problems that occur.

(iv) If the institution is still in the process of applying and the State agency initially determined that the institution's corrective action is complete, but later the same problem occurs, the State agency must move immediately to issue a notice of intent to deny the application and disqualify the institution, as described in paragraph (c)(6) of this section.

(6) *Application denial and proposed disqualification.* If timely corrective action is not completed, the State agency must notify the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals, that the institution's application has been denied. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice to the

appropriate FNSRO. The notice must also specify:

(i) That the institution's application has been denied and the State agency is proposing to disqualify the institution and the responsible principals and responsible individuals;

(ii) The basis for denial; and

(iii) The procedures for seeking a fair hearing, as described in § 226.25(g), of the application denial and proposed disqualifications.

(7) *Program payments.* The State agency is prohibited from paying any claims for reimbursement from a new institution for eligible meals served or allowable administrative expenses incurred until the State agency has approved its application and the institution and State agency have signed a Program agreement.

(8) *Disqualification.* When the time for requesting a fair hearing expires or when the hearing official upholds the State agency's denial and proposed disqualifications, the State agency must notify the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals that the institution and the responsible principal and responsible individuals have been disqualified. At the same time the notice is issued, the State agency must also update the State agency list and provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

* * * * *

(k) * * *

(2) *Review priorities.* In choosing institutions for review, as described in paragraph (k)(6) of this section, the State agency must target for more frequent review of institutions whose prior review included serious management problems.

(3) * * *

(xiii) If a sponsoring organization of day care homes or unaffiliated centers, implementation of the serious deficiency and termination procedures for day care homes and unaffiliated centers and, if these procedures have been delegated to sponsoring organizations, as described in paragraph § 226.25(g) of this section, the fair hearing procedures for day care homes or unaffiliated centers.

* * * * *

(m) *Child care standards compliance.* The State agency shall, when conducting reviews of child care centers, and day care homes approved by the State agency under *paragraph (d)(3)* of this section, determine compliance with the child care standards used to establish eligibility, and the institution shall ensure that all findings are corrected and the State shall ensure that the institution has corrected all findings. If findings are not corrected within the specified timeframe for corrective action, the State agency must follow procedures for termination, described in § 226.25(d). However, if the health or safety of the children is imminently threatened, the State agency or sponsoring organization must follow the procedures, described in § 226.25(f). The State agency may deny reimbursement for meals served to attending children in excess of authorized capacity.

* * * * *

(q) *Oversight of MSSOs.* An MSSO may include a sponsoring organization that administers the Program in more than one State, a franchise operating multiple facilities in more than one State, or a for-profit organization whose parent corporation operates multiple affiliated centers in more than one State. Each State agency must determine if a sponsoring organization is an MSSO, as described in paragraphs (b)(1)(xix) and (b)(2)(iii)(L). The State agency must assume the role of the CSA, if the MSSO's center of operations is located within the State. Each State agency that approves an MSSO must follow the requirements described in paragraph (q)(1) of this section. The CSA must follow the requirements described in paragraph (q)(2) of this section.

(1) If the State agency determines that an MSSO provides operates the Program within the State,

(i) Enter into a permanent written agreement with the MSSO, as described in paragraph (b)(4) of this section.

(ii) Approve the MSSO's administrative budget (in consultation with the CSA, as appropriate).

(A) The State agency must approve budget line items that are directly attributable to operations within the State.

(B) The State agency must approve its portion of costs that are shared among other State agencies and costs that attribute directly to program operations within the State.

(C) The State agency must notify the CSA if any of the MSSO's administrative costs exceed the 15 percent limit, as described in paragraph (f)(1)(iv) of this section.

(iii) Conduct monitoring of MSSO Program operations within the State, as described in paragraph (k)(4) of this section. The State agency should coordinate monitoring with the CSA to streamline reviews and minimize duplication of the review content. The State agency may base the review cycle on the number of facilities operating within the State.

(A) The State agency may use information from the CSA's technical assistance activities to assess compliance in areas where the scope of review overlaps during the same review cycle. The State agency may choose to conduct a review of implementation of additional State agency requirements, financial records to support State-specific administrative costs, and other areas of compliance that the CSA would not have reviewed.

(B) The State agency may also choose to conduct a full review at the MSSO's headquarters and financial records center. If the State agency chooses to conduct a full review, the State agency should request the necessary records from the CSA.

(C) The State agency must provide summaries of the MSSO reviews that are conducted to the CSA. The summaries must include the prescribed corrective actions and follow-up efforts.

(iv) Conduct audit resolution activities. The State agency must review audit reports, address audit findings, and implement corrective actions, as required under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415.

(v) Notify all other State agencies that have agreements with the MSSO of termination and disqualification actions, as described in paragraph (c)(2)(i) of this section.

(2) CSA responsibilities. If it determines that an MSSO's center of operations is located within the State, the State agency must assume the role of the CSA, which must:

(i) Comply with the requirements for a State agency that has approved an MSSO to provide Program operations within the State, as described in paragraph (q)(1).

(ii) Determine if there will be shared administrative costs among the States in which the MSSO operates and how the costs will be allocated. The CSA has the authority to approve cost levels for cost items that must be allocated. The CSA must approve the allocation method that the MSSO uses for shared costs. The method must allocate the cost based on the benefits received, not the source of funds available to pay for the cost. If the MSSO administers the Program in centers, the CSA must also ensure that administrative costs do not exceed 15 percent on an organization-wide basis.

(iii) Coordinate monitoring. The CSA must conduct a full review at the MSSO headquarters and financial records center. The CSA must coordinate the timing of reviews. The CSA must make

copies of monitoring reports and findings available to all other State agencies that have agreements with the MSSO.

(iv) Ensure that organization-wide audit requirements are met. Each MSSO must comply with audit requirements, as described under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. Since their operations are often large and complex, MSSOs should have annual audits. If an MSSO has for-profit status, the cognizant agency must establish audit thresholds and requirements.

(v) Oversee audit funding and costs. The share of organization-wide audit costs may be based on a percentage of each State's expenditure of CACFP funds and the MSSO's expenditure of Federal and non-Federal funds during the audited fiscal year. The CSA should review audit costs as part of the overall budget review and make audit reports available to the other State agencies that have agreements with the MSSO.

(vi) Ensure compliance with procurement requirements. Procurement actions involving MSSOs must follow the requirements under 2 CFR part 200, subpart D, and USDA implementing regulations 2 CFR parts 400 and 415. If the procurement action benefits all States in which the MSSO operates, the procurement standards of the State that are the most restrictive apply. If the procurement action only benefits a single State's Program, the procurement standards of that State agency apply.

§ 226.7 [Amended]

■ 21. In § 226.7, in paragraph (c), remove the word ''deficiencies'' and add in its place the words ''management problems''.

■ 22. In § 226.10, revise paragraph (b)(2) to read as follows:

§ 226.10 Program payment procedures.

* * * * *

(b) * * *

(2) If the State agency has audit or monitoring evidence of extensive serious management problems or other reasons to believe that an institution will not be able to submit a valid claim for reimbursement, advance payments must be withheld until the claim is received or the corrective actions are complete.

* * * * *

§ 226.12 [Amended]

■ 23. In § 226.12, in paragraph (b)(3) remove the citation ''§ 226.6(k)'' and add in its place the citation ''§ 226.25(g)''.

§ 226.14 [Amended]

■ 24. In § 226.14, in paragraph (a), remove the words ''an administrative review'' and ''the administrative review'' and add in their place the words ''fair hearing'' and remove the words ''§ 226.6(k). Minimum'' and add in their place the words ''§ 226.25(g). Minimum''.

§ 226.15 [Amended]

■ 25. In § 226.15, in paragraph (b), remove the citation ''§ 226.6(b)(1)(viii)'' and add in its place the citation ''§ 226.6(b)(1)(xvi)''.

■ 26. In § 226.16:

■ a. Revise paragraphs (b)(3) and (6), the first sentence of (d)(4)(iv), and (d)(4)(v);

■ b. Remove paragraph (l) and redesignate paragraph (m) as paragraph (l).

The revisions read as follows:

§ 226.16 Sponsoring organization provisions.

(b) * * *

(3) Timely information concerning the eligibility status of each facility, such as licensing or approval actions;

* * * * *

(6) A copy of the sponsoring organization's procedures, if the State agency has made the sponsoring organization responsible for the fair hearing of a proposed termination of a day care home or an unaffiliated center, as described in § 226.25(g);

* * * * *

(d) * * *

(4) * * *

(iv) *Averaging of required reviews.* If a sponsoring organization conducts one unannounced review of a day care home or an unaffiliated center in a year and finds no serious management problems, as described in § 226.25, the sponsoring organization may choose not to conduct a third review of the facility that year, and may make its second review announced, provided that the sponsoring organization conducts an average of three reviews of all of its facilities that year, and that it conducts an average of two unannounced reviews of all of its facilities that year. * * *

(v) *Follow-up reviews.* If, in conducting a review of a day care home or an unaffiliated center, a sponsoring organization detects a serious management problem, the next review of that day care home or unaffiliated center must be unannounced. Serious management problems are those described in § 226.25(a)(3) regardless of the type of facility.

* * * * *

■ 27. In § 226.17, add a new sentence at the end of paragraphs (e) and (f) to read as follows:

§ 226.17 Child care center provisions.

* * * * *

(e) * * * The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

(f) * * * The State agency may terminate this agreement for cause as described in § 226.25(a).

■ 28. In § 226.17a, add a new sentence at the end of paragraphs (f)(2)(i) and (ii) to read as follows:

§ 226.17a At-risk afterschool center provisions.

* * * * *

(f) * * *

(2) * * *

(i) * * * The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

(ii) * * * The State agency may terminate this agreement for cause as described in § 226.25(a).

* * * * *

§ 226.18 [Amended]

■ 29. In § 226.18:

■ a. In paragraph (b) introductory text, remove the citation ''§ 226.16(l)'' and add in its place the citation ''§ 226.25''; and

■ b. In paragraph (b)(16):

■ i. Remove the words ''an administrative review'' and add in their place the words ''a fair hearing''; and

■ ii. Remove the citation ''§ 226.16(l)(2)'' and add in its place the citation ''§ 226.25''.

■ 30. In § 226.19, add a new sentence at the end of paragraph (d) to read as follows:

§ 226.19 Outside-school-hours care center provisions.

(d) * * * The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

* * * * *

■ 31. In § 226.19a, add a new sentence at the end of paragraph (d) to read as follows:

§ 226.19a Outside-school-hours care center provisions.

(d) * * * The sponsoring organization may terminate this agreement for cause as described in § 226.25(a).

* * * * *

§§ 226.25 through 226.27 [Redesignated as §§ 226.26 through 226.28]

■ 32. §§ 226.25 through 226.27 are redesignated as §§ 226.26 through 226.28, respectively.

■ 33. Add new § 226.25 to read as follows:

§ 226.25 Administrative actions to address serious management problems

(a) *Serious management problems*—(1) *General.* State agencies and sponsoring organizations must follow the procedures outlined in this section to address any serious management problems. The State agency must provide the institution an opportunity for corrective action and due process. The sponsoring organization must provide the day care home or unaffiliated center an opportunity for corrective action and due process.

(2) *Six steps.* The serious deficiency process includes a standard set of procedures that State agencies and sponsoring organizations follow to address serious management problems in the operation of the Program. These procedures apply to serious management problems in new institutions with a signed permanent agreement, participating institutions, day care homes, and unaffiliated centers. The State agency or sponsoring organization must:

(i) Identify serious management problems.

(ii) Issue a notice of serious management problems.

(iii) Receive and assess corrective action(s).

(iv) Issue a notice of successful corrective action or a notice of proposed termination with appeal rights.

(v) Provide a fair hearing, if requested.

(vi) Issue a notice of successful appeal if the fair hearing vacates the proposed termination, or issue a notice of termination, serious deficiency, and disqualification, if the fair hearing upholds the proposed termination or the timeframe for requesting a fair hearing has passed.

(3) *Identifying serious management problems.* State agencies must consider the type and magnitude of the finding(s) to determine whether it rises to the level of a serious management problem. State agencies should define a set of standards to identify serious management problems. At a minimum, to identify serious management problems, State agencies and must consider:

(i) *The severity of the problem.* Is the finding minor or substantial? Is the finding systemic or isolated?

(ii) *The degree of responsibility.* Is the finding best described as an inadvertent error or is there evidence of negligence or conscious indifference to regulatory requirements, or even deception? Is the finding at the facility level or the institution level? If it is at the institution level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the facility level, has the sponsoring organization taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(iii) *The history of participation in the Program.* Is this the first instance or is there a history of frequently recurring Program findings or serious management problems at the same institution, day care home or unaffiliated center?

(iv) *The nature of requirements that relate to the finding.* Is the action a clear finding of Program requirements or a simple mistake? Are new policies incorporated correctly?

(v) *The degree to which the problem impacts Program integrity.* Does the finding undermine the intent of the Program? Is the finding administrative or does it impact viability, capability or accountability? Is the finding at the facility level or the institution level? If it is at the institution level, has the State agency taken appropriate steps to resolve it through monitoring, training, and technical assistance? If it is at the facility level, has the sponsoring organization taken the appropriate steps to resolve it through monitoring, training, and technical assistance?

(4) *Good standing.* If a State agency identifies a serious management problem, the institution, day care home or unaffiliated center is considered to be not in good standing. At a minimum, the following criteria need to be met to return to good standing.

(i) Outstanding debts are paid;

(ii) All corrective actions are fully implemented; and

(iii) Meets its Program responsibilities.

(5) *Notifications.* The State agency and sponsoring organization must provide written notice of action through each step of the serious deficiency process.

(i) Each type of notice must include a basis and an explanation of any action that is proposed and any action that is taken.

(ii) The notice must be delivered via certified mail, return receipt, or an equivalent private delivery service, facsimile, or email.

(iii) The notice is considered to be received on the date it is delivered, sent by facsimile, or sent by email.

(iv) If the notice is undeliverable, it is considered to be received 5 days after it is sent to the addressee's last known mailing address, facsimile number, or email address.

(6) *Serious management problems notification procedures for institutions.* If the State agency determines that institution has serious management problems, the sponsoring organization must use the following procedures. The State agency must notify the institution of all findings, even those that do not rise to a serious management problem, and they must be corrected.

(i) *First notification—notice of serious management problem.* The State agency must notify the institution's executive director, chair of the board of directors that the institution has serious management problems and provide an opportunity to take corrective action. The notice must also be sent to all other responsible principal and other responsible individual. At the same time the notice is issued, the State agency must add the institution to the State agency list, as described in paragraph (b) of this section and provide a copy of the notice to the FNSRO. This notice documents that a serious management problem must be addressed and corrected. Prompt action must be taken to minimize the time that elapses between the identification of a serious management problem and the issuance of the notice. For each serious management problem, the notice must:

(A) Specify each serious management problem;

(B) Cite the specific regulatory requirements, instructions, or policies as the basis for the serious management problems;

(C) Identify the responsible principals and responsible individuals;

(D) Specify the actions that must be taken to correct each serious management problem. The notice may specify different corrective actions and time periods for completing the corrective actions for the institution and the responsible principal and the responsible individual;

(E) Set time allotted for implementing the corrective action. The corrective action must include milestones and a definite completion date that will be monitored. Although paragraph (c)(2) of this section sets maximum timeframes, shorter timeframes for corrective action may be established.

(F) Specify that failure to fully implement corrective actions for each serious management problem within the allotted time will result in the State agency's proposed termination of the institution's agreement and the proposed disqualification of the institution and the responsible principals and responsible individuals;

(G) Clearly state that, if the institution voluntarily terminates its agreement with the State agency after having been notified of serious management problems it will still result in the institution's agreement being terminated for cause and the placement of the

institution and its responsible principals and responsible individuals on the National Disqualified List;

(H) Clearly state that submission of the date of birth for any individual named as a responsible principal or responsible individual in the notice of serious management problems is a condition of corrective action for the institution and/or responsible principal or responsible individual.

(I) Clearly state that the serious management problems are not subject to a fair hearing.

(ii) *Second notification—notice of successful corrective action or notice of proposed termination, proposed disqualification*—(A) *Notice of successful corrective action.* If corrective action has been implemented to correct each serious management problem within the time allotted and to the State agency's satisfaction, the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that the corrective actions are fully implemented;

(2) If corrective action is complete for the institution, but not for all of the responsible principals and responsible individuals, the State agency must continue with actions, as described in paragraph (a)(6)(ii)(B) of this section, against the remaining parties.

(3) At the same time the notice is issued, the State agency must also update the State agency list, as described in paragraph (b) of this section and provide a copy of the notice the appropriate FNSRO.

(4) Ensure the institution continues to implement procedures and policies to fully correct the serious management problems and achieve full correction, as described in paragraph (c)(3) of this section.

(B) *Notice of proposed termination and proposed disqualification.* If corrective action has not been taken or fully implemented for each serious management problem within the time allotted and to the State agency's satisfaction, or repeat serious management problems occur before full correction is achieved, the State agency must:

(1) Notify the executive director, chair of the board of directors, owner, responsible principals, and responsible individuals, that the State agency proposes to terminate the institution's agreement and proposes to disqualify the institution, responsible principals and responsible individuals and explain the institution's opportunity for seeking a fair hearing;

(2) At the same time the notice is issued, the State agency must also update the State agency list, and provide a copy of the notice the appropriate FNSRO.

(3) The notice must specify:

(i) That the State agency is proposing to terminate the institution's agreement and proposing to disqualify the institution and the responsible principals and the responsible individuals;

(ii) The basis for the proposal to terminate;

(iii) That, if the institution voluntarily terminates its agreement with the State agency after receiving the notice of proposed termination, it will still result in the institution's agreement being terminated for cause and the placement of the institution and its responsible principals and responsible individuals on the National Disqualified List;

(iv) The procedures for seeking a fair hearing (in accordance with paragraph (g) of this section) of the proposed termination and proposed disqualifications; and

(v) That, unless participation has been suspended, the institution may continue to participate and receive Program reimbursement for eligible meals served and allowable administrative costs incurred until the fair hearing is complete.

(iii) *Third notification—Notice to vacate the proposed termination of the institution's agreement or notice of serious deficiency, termination of the agreement, and disqualifications*—(A) *Notice to vacate the proposed termination of an institution's agreement.* If the fair hearing vacates the proposed termination, the State agency must notify the institution and must:

(1) Notify the institution's executive director and chairman of the board of directors that the proposed termination of the institution's agreement has been vacated.

(*2*) Update the State agency list at the time the notice is issued;

(*3*) Provide a copy of the notice to the appropriate FNSRO.

(B) *Notice of serious deficiency, termination of the institution's agreement and disqualifications.* When the time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(*1*) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement is terminated and that the institution and the responsible principals and responsible individuals are disqualified and placed on the National Disqualified List;

(*2*) Update the State agency list at the time notice is issued; and

(*3*) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(7) *Serious management problem(s) notification procedures for day care homes and unaffiliated centers.* If the sponsoring organization determines that a day care home or unaffiliated center has serious management problems, the sponsoring organization must use the following procedures. The sponsoring organization must notify the day care home and unaffiliated centers of all findings, even those that do not rise to a serious management problem and they must be corrected.

(i) *First notification—notice of serious management problem.* The sponsoring organization must notify the day care home or unaffiliated center that it has serious management problems and offer it an opportunity to take corrective action. At the same time the notice is issued, the sponsoring organization must provide a copy of the notice to the State agency. Prompt action must be taken to minimize the time that elapses between the identification of serious management problem(s) and the issuance of the notice. For each serious management problem, the notice must:

(A) Specify the serious management problem;

(B) Cite the specific regulatory requirements, instructions, or policies as the basis for each serious management problem.

(C) Specify the actions that must be taken to correct the serious management problem(s). The notice may specify different corrective actions and time periods for completing the corrective action(s) for the day care home or unaffiliated center;

(D) Set time allotted for implementing the corrective action. The corrective action must include milestones and a definite completion date that will be monitored. Although paragraph (c)(2) of this section sets maximum timeframes, shorter timeframes for corrective action may be established.

(E) Specify that failure to fully implement corrective actions for each serious management problem within the allotted time will result in the sponsoring organization's proposed termination of the Program agreement and the proposed disqualification of the day care home and provider or unaffiliated center and its principals;

(F) Clearly state that, if the day care home or unaffiliated center voluntarily

terminates its agreement with the State agency after having been notified of serious management problems, it will still result in the day care home or unaffiliated center's agreement being terminated for cause and the placement of the day care home and provider or unaffiliated center and its principals on the National Disqualified List;

(G) Clearly state that the serious management problems are not subject to a fair hearing.

(ii) *Second notification—notice of successful corrective action or notice of proposed termination, proposed disqualification.* (A) Notice of successful corrective action. If corrective action has been implemented to correct each serious management problem within the time allotted and to the sponsoring organization's satisfaction, the sponsoring organization must:

(1) Notify the day care home or unaffiliated center, that the corrective actions are fully implemented;

(2) At the same time the notice is issued, the sponsoring organization must provide a copy of the notice to the State agency.

(3) Ensure the day care home and unaffiliated center continues to implement procedures and policies to fully correct the serious management problems, as described in paragraph (c)(3) of this section.

(B) Notice of proposed termination and proposed disqualification. If corrective action has not been taken or fully implemented for each serious management problem within the time allotted and to the sponsoring organization's satisfaction, or repeat serious management problems occur before full correction is achieved, the State agency must:

(1) Notify the day care home or unaffiliated center, that the sponsoring organization proposes to terminate the agreement and proposes to disqualify the day care home or unaffiliated center and explain the day care home or unaffiliated center's opportunity for seeking a fair hearing.

(2) At the same time the notice is issued, the sponsoring organization must also provide a copy of the notice to the State agency.

(3) The notice must also specify:

(i) The basis for the proposal to terminate;

(ii) That, if the day care home or unaffiliated center voluntarily terminates its agreement with the sponsoring organization after receiving the notice of proposed termination, it will still result in the day care home or unaffiliated center's agreement being terminated for cause and the placement of the day care home provider or unaffiliated center and its principals on the National Disqualified List;

(iii) The procedures for seeking a fair hearing of the proposed termination and proposed disqualifications; and

(iv) That, unless participation has been suspended, the day care home or unaffiliated center may continue to participate and receive Program reimbursement for eligible meals served until the fair hearing is complete.

(iii) *Third notification—Notice to vacate the proposed termination of the facility's agreement, or notice of serious deficiency, termination of the agreement, and disqualifications*—(A) *Notice to vacate the proposed termination of a day care home or unaffiliated center's agreement.* If the fair hearing vacates the proposed termination, the State agency must notify the institution and must:

(1) Notify the institution's executive director and chairman of the board of directors that the proposed termination of the institution's agreement has been vacated.

(2) Provide a copy of the notice to the State agency.

(B) *Notice of serious deficiency, termination of the day care home or unaffiliated center's agreement and disqualifications.* When the time for requesting a fair hearing expires or when the hearing official upholds the sponsoring organization's proposed termination and proposed disqualifications, the sponsoring organization must immediately terminate the day care home or unaffiliated center's agreement and disqualify the day care home or unaffiliated center and its principals:

(*1*) Notify the day care home or unaffiliated center that its agreement is terminated and that the day care home or unaffiliated center and its principals are placed on the National Disqualified List; and

(2) Provide a copy of the notice to the State agency.

(b) *Placement on the State agency list.* (1) The State agency must maintain a State agency list, made available to FNS upon request, and must include the following information:

(i) Names and mailing addresses of each institution, day care home or unaffiliated center that is determined to have a serious management problem;

(ii) Names, mailing addresses, and dates of birth of each responsible principal and responsible individual;

(iii) The status of the institution, day care home or unaffiliated center, as it progresses through the stages of corrective action, termination, suspension, and disqualification, full correction, as applicable.

(2) Within 10 days of receiving a notice of termination and disqualification from a sponsoring organization, the State agency must provide FNS with the information as described in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Correcting serious management problems.* In response to the notice of serious management problems, the institution, unaffiliated center or day care home must submit, in writing, what corrective actions it has taken to correct each serious management problem.

(1) *Corrective action plans.* An acceptable corrective action plan must demonstrate that the serious management problem is resolved. The plan must address the root cause of each serious management problem, describe and document the action taken to correct serious management problems, and describe the action's outcome. The corrective action plan must include the following:

(i) What is the serious management problem and the action taken to address it?

(ii) Who addressed the serious management problem?

(iii) When was the action taken to address the serious management problem? Provide a timeline for implementing the action (*i.e.,* daily, weekly, monthly, or annually, and when did implementation of the plan begin)?

(iv) Where is documentation of the corrective action plan filed?

(v) How were staff and providers informed of the new policies and procedures?

(2) *Corrective action timeframes.* Corrective action must be taken within the allotted time that ensures that serious management problems are quickly addressed and fully corrected. The time allotted to correct the serious management problem must be appropriate for the type of serious management problem and the type of institution or facility where the serious management problem is found. The allotted time begins on the date the first notification is received, as described in paragraphs (a)(7)(i) and (a)(8)(i) of this section.

(i) For day care homes and unaffiliated centers, the serious management problems must be corrected as soon as possible or up to 30 days from the date a day care home or unaffiliated center receives the notice.

(ii) For institutions, the serious management problems must be corrected as soon as possible or up to 90 days from the date a day care home or unaffiliated center receives the first notification.

(iii) More than 90 days only if the State agency determines that corrective action will require the long-term revision of management systems or processes, such as, but not limited to, the purchase and implementation of new claims payment software or a major reorganization of Program management duties that will require action by the board of directors.

(A) The State agency may permit more than 90 days to complete the corrective action.

(B) The institution's corrective action plan must include milestones and a definite completion date.

(C) The State agency must receive and approve the corrective action plan within 90 days from the date the institution received the notice.

(D) The State agency must monitor full implementation of the corrective action plan.

(iv) Up to 30 days for a false claim or unlawful practice. The State agency is prohibited from allowing more than 30 days for corrective action if it determines that an institution:

(A) Engaged in an unlawful practice,

(B) Submitted a false or fraudulent claim to the State agency,

(C) Submitted other false or fraudulent information to the State agency,

(D) Was convicted of a crime, or

(E) Concealed a criminal background.

(3) *Achieving full correction of serious management problems.* The path to full correction requires demonstrating the ability to operate the Program with no serious management problems, as described in paragraph (a) of this section.

(i) *Full correction of an institution's serious management problems.* The State agency must prioritize follow-up reviews and more frequent full reviews of institutions with serious management problems, as described in § 226.6(k)(6)(ii). A follow-up review must be conducted to confirm that the serious management problem is corrected. Full reviews must be conducted at least once every 2 years. Full correction of an institution's serious management problems is achieved when:

(A) At least two full reviews reveal no new or repeat serious management problems;

(B) The first and last full reviews are at least 24 months apart and reveal no new or repeat serious management problems; and

(C) All reviews, including any follow-up reviews, between the first and last full review reveal no new or repeat serious management problems.

(ii) *Full correction of a day care home or unaffiliated center's serious management problems.* Sponsoring organization's must conduct reviews, as described in § 226.16(d)(4) to confirm that the serious management problem is corrected. A follow-up review must be conducted to confirm that the serious management problem is corrected. Full correction of a day care home or unaffiliated center's serious management problems is achieved when:

(A) At least three full reviews, reveal no new or repeat serious management problems.

(B) All reviews, including any follow-up reviews, between the first and last full review reveal no new or repeat serious management problems.

(iii) Once full correction is achieved, a serious management problem that recurs again, is not considered repeat and therefore, would not lead to immediate proposal to terminate. Any new or recurrence of a serious management problem after the initial full correction is achieved would require the State agency or sponsoring organization to issue a new notice of serious management problem, as described in paragraph (a) of this section.

(iv) The recurrence of a serious management problem before full correction is achieved would lead directly to proposed termination.

(d) *Termination*—(1) *Termination for cause.* If the State agency or sponsoring organization determines that the institution or facility is unable to properly perform its responsibilities under its Program agreement and fails to take successful corrective action, the Program agreement must be terminated for cause. The State agency and sponsoring organization would declare the institution or facility to be seriously deficient at the point of termination, which would be followed by disqualification. The State agency, institution, or facility shall not terminate for convenience to avoid implementing the serious deficiency process. Termination not related to performance can be found in § 226.6(b)(4).

(2) *Contingency plan.* A State agency must have a contingency plan in place for the transfer of facilities if a sponsoring organization is terminated or disqualified to ensure that eligible participants continue to have access to meal services.

(e) *Disqualification*—(1) *Reciprocal disqualification.* A State agency may not enter into an agreement with any institution, responsible principal, or responsible individual, if they have been terminated for cause from any Child Nutrition Program and placed on a National Disqualified List, as described in § 226.6(b)(1)(xiii). Any existing agreements with an institution, responsible individual, or responsible principal must also be terminated and disqualified.

(i) No individual on the National Disqualified List may serve as a principal in any institution or facility or as a day care home provider.

(ii) The State agency must not approve the application of a new or renewing institution if any of the institution's principals is on the National Disqualified List.

(iii) A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility if any of the facility's principals are on the National Disqualified List.

(iv) A sponsoring organization is prohibited from submitting an application on behalf of a sponsored facility if the facility is on the National Disqualified List.

(v) The State agency must not approve an application described in paragraphs (e)(1)(iii) and (iv) of this section.

(vi) Once included on the National Disqualified List, an institution, unaffiliated center, or day care home, responsible principal, or responsible individual will remain on the list until the State agency determines that either the serious management problem that led to placement on the National Disqualified List has been corrected or 7 years have elapsed since disqualification from the Program, whichever is longer. Any debt owed under the Program must be repaid.

(2) *National Disqualified List.* FNS will maintain the National Disqualified List and make it available to all State agencies and all sponsoring organizations. This computer matching program uses a Computer Matching Act system of records of information on institutions and individuals who are disqualified from participation in CACFP.

(i) *Placement on the National Disqualified List.* The State agency must provide the following information to FNS for each institution, facility, responsible principal, and responsible individual:

(A) Name and address of the institution, including city, State, and zip code;

(B) Any known aliases;

(C) Termination date;

(D) Amount of debt owed, if any;

(E) Reason, and if other is checked, an explanation, for the;

(F) Date of birth of the responsible principal and responsible individual; and

(G) Position within the institution or facility of the responsible principal and responsible individual.

(ii) *Removal from the National Disqualified List.* An institution, responsible principal and responsible individual disqualified from the Program due to uncorrected serious management problems will remain on the National Disqualified List until the State agency and FNS have determined that the serious management problems are corrected, or for 7 years, whichever is longer. Any debts owed under the Program must be repaid. After an institution, responsible principal or responsible individual has been removed from the National Disqualified List, they will be considered to be in good standing, and eligible to apply for the Program.

(iii) *Early removal of institutions, principals, and individuals from the list.* The State agency must review and approve a request for removal from the National Disqualified List. If the State agency approves the request, and ensures that any debt associated has been paid, it may submit the information to the FNSRO, where it will be reviewed for completeness. The FNSRO will also ensure that the State agency's request is within Program requirements and that the documentation supports the early removal. Once reviewed, the FNSRO will submit the request to the FNSRO for removal. The effective date of removal will be the date on which the FNS National Office processes the removal request. The FNSRO will be notified once the removal has been completed and inform the State agency.

(3) *Computer Matching Act (CMA).* The Computer Matching and Privacy Protection Act addresses the use of information from computer matching programs that involve a Federal System of Records. Address: compliance, matching agreement, and independent verification

(i) Each State agency participating in a computer matching program must comply with the provisions of the Computer Matching Act if it uses an FNS system of records in order to:

(A) Establish eligibility for a Federal benefit program;

(B) Verify eligibility for a Federal benefit program;

(C) Verify compliance with either statutory or regulatory requirements of a Federal benefit program; or

(D) Recover payments or delinquent debts owed under a Federal benefit program.

(ii) State agencies must enter into written agreements with FNS, consistent with 5 U.S.C. 552a(o) of the Computer Matching Act, in order to participate in a matching program involving a FNS Federal system of records. The agreement must include the State agency's independent verification requirements.

(iii) State agencies are prohibited from taking any adverse action to terminate, deny, suspend, or reduce benefits to an applicant or recipient based on information produced by a Federal computer matching program that is subject to the requirements of the Computer Matching Act, unless:

(A) The information has been independently verified by the State agency; and

(B) FNS has waived the two-step independent verification and notice requirement.

(iv) A State agency that receives a request for verification from another State agency or from FNS must provide the necessary verification. The State agency must respond within 20 calendar days of receiving the request.

(v) A State agency may use the record of a certified notice to independently verify the accuracy of a computer match.

(f) *Suspension*—(1) *Public health or safety.* If State or local health or licensing officials have cited an institution, day care home or unaffiliated center for serious health or safety violations, Program participation must be immediately suspended prior to any formal action to revoke the institution, day care home or unaffiliated center's licensure or approval. If the State agency or sponsoring organization determines that there is an imminent threat to the health or safety of participants, or that there is a threat to public health or safety, the appropriate State or local licensing and health authorities must immediately be notified and take action that is consistent with the recommendations and requirements of those authorities. The State agency or sponsoring organization must initiate action for termination and disqualification.

(i) Notification procedures for institutions engaging in activities that threaten public health or safety or pose an imminent threat to the health or safety of participants:

(A) *Notice of suspension, proposed termination, and proposed disqualification.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution's participation (including Program payments) has been suspended and that the State agency proposes to terminate the institution's agreement and to disqualify the institution and the responsible principals and responsible individuals. The notice must also identify the responsible principals and responsible individuals and must be sent to those persons as well. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(*1*) That the State agency is suspending the institution's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the institution and the responsible principals and responsible individuals;

(*2*) The basis for the suspension;

(*3*) That, if the institution voluntary terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(*4*) The procedures for seeking a fair hearing (consistent with paragraph (g) of this section) of the suspension, proposed termination, and proposed disqualifications; and

(*5*) That, if the suspension review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(B) *Notice of agreement termination, serious deficiency and disqualifications.* When time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(*1*) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(*2*) Update the State agency list at the time such notice is issued; and

(*3*) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(ii) Notification procedures for day care homes and unaffiliated centers engaging in activities that threaten public health or safety or pose an imminent threat to the health or safety of participants:

(A) *Notice of suspension, proposed termination, and proposed disqualification.* The sponsoring organization must notify the day care home provider or the unaffiliated center's principals that the day care home or unaffiliated center's participation (including Program payments) has been suspended and that the sponsoring organization proposes to terminate the day care home or unaffiliated center's agreement and to disqualify the day care home or unaffiliated and its principals. The notice must also identify the principals. At the same time this notice is sent, the sponsoring organization must also provide a copy of the notice to the State agency. The notice must also specify:

(*1*) That the sponsoring organization is suspending the day care home or unaffiliated center's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the day care home or unaffiliated center and its principals;

(*2*) The basis for the suspension;

(*3*) That, if the day care home or unaffiliated center voluntary terminates its agreement with the State agency after having been notified of the proposed termination, the day care home or unaffiliated center and its principals will be disqualified;

(*4*) The procedures for seeking a fair hearing (consistent with paragraph (g) of this section) of the suspension, proposed termination, and proposed disqualifications; and

(*5*) That, if the suspension review official overturns the suspension, the day care home or unaffiliated center may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(B) *Notice of agreement termination, serious deficiency and disqualifications.* When time for requesting a fair hearing expires or when the hearing official upholds the sponsoring organization's proposed termination and disqualifications, the sponsoring organization must:

(*1*) Notify the day care home provider or unaffiliated center and its principals, that the day care home or unaffiliated center's agreement has been terminated and that the day care home or unaffiliated center and its principals have been disqualified; and

(*2*) Provide a copy of the notice to the State agency.

(2) *Submission of a false or fraudulent claim for reimbursement.* If the State agency determines that an institution has knowingly submitted a false or fraudulent claim, the State agency must initiate action to suspend the institution's participation and must initiate action to terminate the institution's agreement and initiate action to disqualify the institution and the responsible principals and responsible individuals. The following procedures must be used to issue a notice of proposed suspension of participation at the same time it issues a notice of proposed termination, which must include the following information:

(i) *Notice of proposed suspension of participation.* The State agency must notify the institution's executive director and chairman of the board of directors that the State agency proposes to suspend the institution's participation, including Program payments. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(A) That the State agency is proposing to suspend the institution's participation;

(B) The basis for the suspension;

(C) That, if the institution voluntarily terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(D) The procedures for seeking a fair hearing (consistent with paragraph (g) of this section) of the suspension, proposed termination, and proposed disqualifications;

(E) The effective date of the suspension (which may be no earlier than 10 days after the institution receives the suspension notice);

(F) The name, address and telephone number of the suspension review official who will conduct the suspension review; and

(G) That if the institution intends to request a suspension review, it must submit the request a written documentation opposing the proposed suspension to the suspension review official within 10 days of the institution's receipt of the notice.

(ii) *Maximum time for suspension.* Under no circumstances may the suspension of participation remain in effect for more than 120 days following the suspension review decision.

(iii) *Notice of suspension, proposed termination, and proposed disqualification.* The State agency must notify the institution's executive director and chairman of the board of directors that the institution's participation (including Program payments) has been suspended and that the State agency proposes to terminate the institution's agreement and to disqualify the institution and the responsible principals and responsible individuals. The notice must also identify the responsible principals and responsible individuals and must be sent to those persons as well. At the same time this notice is sent, the State agency must add the institution and the responsible principals and responsible individuals to the State agency list, along with the basis for the suspension and provide a copy of the notice to the appropriate FNSRO. The notice must also specify:

(A) That the State agency is suspending the institution's participation (including Program payments), proposing to terminate the institution's agreement, and proposing to disqualify the institution and the responsible principals and responsible individuals;

(B) The basis for the suspension;

(C) That, if the institution voluntary terminates its agreement with the State agency after having been notified of the proposed termination, the institution and the responsible principals and responsible individuals will be disqualified;

(D) The procedures for seeking a fair hearing of the suspension, proposed termination, and proposed disqualifications as described in paragraph (g) of this section; and

(E) That, if the suspension review official overturns the suspension, the institution may claim reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(iv) *Notice of agreement termination, serious deficiency and disqualifications.* When time for requesting a fair hearing expires or when the hearing official upholds the State agency's proposed termination and disqualifications, the State agency must:

(A) Notify the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals, that the institution's agreement has been terminated and that the institution and the responsible principals and responsible individuals have been disqualified;

(B) Update the State agency list at the time such notice is issued; and

(C) Provide a copy of the notice and the mailing address and date of birth for each responsible principal and responsible individual to the appropriate FNSRO.

(g) *Fair hearing*—(1) *Right to a fair hearing.* (i) The institution must be advised in writing of the grounds upon which the State agency based the action and its right to a fair hearing. The State agency must offer a fair hearing in the notice to the institution of any of the following actions:

(A) Denial of a new institution's application for participation (see § 226.6(b)(1) on the State agency review of a new institution's application; and § 226.6(c)(1), on the State agency's denial of new institution's application);

(B) Denial of an application submitted by a sponsoring organization on behalf of a facility;

(C) Proposed termination of an institution's agreement (see paragraph (a)(6)(ii)(B) of this section, dealing with proposed termination of agreements and paragraph (f) of this section dealing with proposed termination of agreements for suspended institutions);

(D) Suspension of an institution's participation (see paragraph (f) of this section, dealing with suspension for health or safety reasons or submission of a false or fraudulent claim);

(E) Denial of an institution's application for start-up or expansion payments (§ 226.7(h));

(F) Denial of a request for an advance payment (see § 226.10(b));

(G) Recovery of all or part of an advance in excess of the claim for application period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments (see § 226.10(b)(3)); or

(H) Denial of all or part of an institution's claim for reimbursement (except for denial based on a late submission under § 226.10(e)) (see §§ 226.10(f) and 226.14(a));

(I) Decision by the State agency to not forward to FNS an exception request by an institution for payment of a late claim, or a request for an upward adjustment to a claim (§ 226.10(e));

(J) Demand for the remittance of an overpayment (see § 226.14(a)); and

(K) Any other action of the State agency affecting an institution's participation of its claim for reimbursement.

(ii) The facility must be advised in writing of the grounds upon which the sponsoring organization based the action and its right to a fair hearing. The State agency or sponsoring organization must offer a fair hearing for proposed termination or suspension. A fair hearing for any other action is not required.

(iii) The notice of due process must inform the institution or facility of:

(A) The action that is taken or proposed to be taken;

(B) The legal basis for the action;

(C) The right to appeal the action; and

(D) The procedures and deadlines for requesting an appeal of the action.

(iv) If a fair hearing is requested:

(A) The State agency must continue to pay any valid claims for reimbursement of eligible meals served and allowable administrative expenses incurred until the hearing official issues a decision.

(B) Any information upon which the State agency or sponsoring organization based its action must be available to the appellants for inspection from the date of receipt of the hearing request.

(C) Appellants may request a fair hearing in person or by submitting written documentation to the hearing official.

(D) Appellants may represent themselves, retain legal counsel, or be represented by another person.

(E) All parties must submit written documentation to the hearing official prior to the beginning of the hearing, within 30 days after receiving the notice of action.

(F) Appellants must be permitted to contact the hearing official directly.

(2) *Fair hearing procedures.* A hearing must be held by the fair hearing official in addition to, or in lieu of, a review of written information only if the institution, facility or the responsible principals and responsible individuals request a hearing in the written request for a fair hearing. If the institution's representative, facility's representative, or the responsible principals or responsible individuals or their representative, fail to appear at a scheduled hearing, they waive the right to a personal appearance before the hearing official, unless the hearing official agrees to reschedule the hearing. A representative of the State agency must be allowed to attend the hearing to respond to the testimony of the institution and the responsible principals and responsible individuals and to answer questions posed by the hearing official. If a hearing is requested, the institution, the responsible principals, and responsible individuals, and the State agency must be provided with at least 10 calendar days advance notice of the time and place of the hearing.

(i) The purpose of the hearing is to determine that the State agency or sponsoring organization followed Program requirements.

(ii) The hearing official's decisions should be limited to that purpose.

(iii) The purpose is not to determine whether to uphold the legality of Federal or State Program requirements.

(iv) The request for a fair hearing must be submitted in writing no later than 15 calendar days after the date the notice of action is received. The State agency or sponsoring organization must acknowledge the request for a fair hearing within 10 calendar days of its receipt of the request. The State agency must provide a copy of the written request for a fair hearing, including the date of receipt of the request to FNS within 10 calendar days of its receipt of the request.

(3) *Hearing officials.* The individual who is appointed to conduct the fair hearing, including any State agency or sponsoring organization employee or contractor, must be independent and impartial. The institution, facility, responsible principals and responsible individuals must be permitted to contact the hearing official directly if they so desire. The State agency or sponsoring organization must ensure that the hearing official:

(i) Has no involvement in the action under appeal;

(ii) Does not occupy a position that may potentially be subject to undue influence from any party that is responsible for the action under appeal;

(iii) Does not occupy a position that may exercise undue influence on any party that is responsible for the action under appeal;

(iv) Has no personal interest in the outcome of the fair hearing;

(v) Has no financial interest in the outcome of the fair hearing.

(4) *Basis for decision.* The hearing official must render a decision that is based on:

(i) The determination that the State agency or sponsoring organization followed Program requirements;

(ii) The information provided by the State agency, institution, responsible principals, and responsible individual; and

(iii) The Program requirements established in Federal and State laws, regulations, policies, and procedures.

(5) *Final decision.* The hearing official's decision is the final action in the appeal process.

(i) Within 60 calendar days of the State agency's receipt of the request for a fair hearing, the fair hearing official must inform the State agency, the institution's executive director and chair of the board of directors, and the responsible principals and responsible individuals, of the fair hearing's outcome.

(ii) The hearing official must inform the sponsoring organization and the facility of the outcome within the period of time specified in the State agency or sponsoring organization's fair hearing procedures. This timeframe is an administrative requirement for the State

agency or sponsoring organization, and may not be used as a basis for overturning a termination if a decision is not made within the specified timeframe.

(iii) The hearing official must render a decision within 60 calendar days of the date the State agency received the appeal request.

(iv) The hearing official must inform the State agency, institution, responsible principals, and responsible individuals of the decision within this 60-day period.

(v) This timeframe is a requirement and cannot be used to justify overturning the State agency or sponsoring organization's action if a decision is not made within the 60-day period.

(vi) State agencies failing to meet the timeframe set forth in this paragraph are liable for all valid claims for reimbursement to aggrieved institutions, as specified in paragraph (h)(4) of this section.

(vii) The hearing official's decision is final.

(viii) The decision is not subject to appeal.

(6) *Provision of fair hearing procedures.* The State agency or sponsoring organization's fairing hearing procedures must be provided:

(i) Annually to all institutions, day care homes and unaffiliated centers;

(ii) To an institution, to each responsible principal and responsible individual, to a day care home or unaffiliated center when the State agency or sponsoring organization takes any action subject to a fair hearing; and

(iii) Any other time upon request.

(7) *Effect of State agency action.* The State agency's action must remain in effect during the fair hearing. The effect of this requirement on particular State agency actions is as follows:

(i) *Overpayment demand.* During the period of the fair hearing, the State agency is prohibited from taking action to collect or offset the overpayment. However, the State agency must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the State agency's action.

(ii) *Recovery of advances.* During the fair hearing, the State agency must continue its efforts to recover advances in excess of the claim for reimbursement for the applicable period. The recovery may be through a demand for full repayment or an adjustment of subsequent payments.

(h) *Payments*—(1) *Payment of valid claims.* If the State agency holds an agreement with an institution that is proposed to be terminated, the State agency must continue to pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative expenses incurred until the agreement is terminated, as described in paragraphs (a)(6)(ii) and (iii) of this section, including the period of any fair hearing, unless participation has been suspended.

(2) *Suspension of payments.* The State agency is prohibited from paying any claims for reimbursement submitted by a suspended institution.

(i) If the suspended institution prevails in the fair hearing of the proposed termination, the State agency must pay any claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(ii) If the institution suspended for the submission of false or fraudulent claims is a sponsoring organization, the State agency must ensure that sponsored facilities continue to receive reimbursement for eligible meals served during the suspension period. If the suspended institution prevails in the fair hearing of the proposed termination, the State agency must pay any valid unpaid claims for reimbursement for eligible meals served and allowable administrative costs incurred during the suspension period.

(3) *Debts owed to the Program.* The State agency is responsible for the collection of unearned payments, including any assessment of interest, as described in § 226.14(a).

(i) After the State agency has sent the necessary demand letter for debt collection, State agency staff must refer the claim to the appropriate State authority for pursuit of the debt payment.

(ii) FNS defers to the State's laws and procedures to establish a repayment plan to recover funds as quickly as possible.

(iii) It is the responsibility of the State agency to notify the institution that interest will be charged. Interest must be assessed on institutions' debts established on or after July 29, 2002. Interest will continue to accrue on debts not paid in full within 30 days of the initial demand for remittance up to the date of payment, including during an extended payment plan and each month while on the National Disqualified List.

(iv) State agencies are required to assess interest using one uniform rate. The appropriate rate to use is the Current Value of Funds Rate, which is published annually by Treasury in the **Federal Register** and is available from the FNSRO.

(4) *State liability for payment.* (i) A State agency that fails to meet the 60-day timeframe set forth in paragraph (g)(5)(i) of this section must pay, from non-Federal sources, all valid claims for reimbursement to the institution during the period beginning on the 61st day and ending on the date on which the hearing determination is made, unless FNS determines that an exception should be granted

(ii) FNS will notify the State agency of its liability for reimbursement at least 30 days before liability is imposed. The timeframe for written notice from FNS is an administrative requirement and may not be used to dispute the State's liability for reimbursement.

(iii) The State agency may submit, for FNS review, information supporting a request for a reduction in the State's liability, a reconsideration of the State's liability, or an exception to the 60-day deadline, for exceptional circumstances. After review of this information, FNS will recover any improperly paid Federal funds.

(i) *FNS determination of serious management problems.* (1) *General.* FNS may determine independently that an institution has one or more serious management problems, as described in paragraph (a) of this section. FNS will follow procedures outlined in this section to address any finding that prevents an institution from meeting the Program's performance standards, affects the integrity of a claim for reimbursement, or affects the integrity of the meals served in a day care home or unaffiliated center.

(2) *Required State agency action*—(i) *Termination of agreements.* If the State agency holds an agreement with an institution that FNS determines to be seriously deficient and subsequently disqualifies, the State agency must terminate the institution's agreement effective no later than 45 days after the date of the institution's disqualification by FNS. As noted in paragraph (g) of this section, the termination of an agreement for this reason is not subject to a fair hearing. At the same time the notice of termination is issued, the State agency must add the institution to the State agency list and provide a copy of the notice to the appropriate FNSRO.

(ii) *Disqualified responsible principal and individuals.* If the State agency holds an agreement with an institution whose principal FNS determines to be seriously deficient and subsequently disqualifies, the State agency must initiate action to terminate and disqualify the institution in accordance with the procedures in paragraph (a)(6)(ii)(B) of this section. The State agency must initiate these actions no

later than 45 days after the date of the principal's disqualification by FNS.

* * * * *

Cynthia Long,

Administrator, Food and Nutrition Service.

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Part III

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 293

Class III Tribal State Gaming Compacts; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 293

[245A2100DD/AAKC001030/A0A501010.999900]

RIN 1076–AF68

Class III Tribal State Gaming Compacts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Department of the Interior (Department) is issuing revisions to its regulations governing the review and approval of Tribal-State gaming compacts. The revisions add factors and clarify how the Department reviews ''Class III Tribal-State Gaming Compacts'' (Tribal-State gaming compacts or compacts).

DATES: This rule is effective on March 22, 2024.

FOR FURTHER INFORMATION CONTACT: Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action (RACA), Office of the Assistant Secretary—Indian Affairs; Department of the Interior, telephone (202) 738–6065, *RACA@bia.gov.*

SUPPLEMENTARY INFORMATION: This final rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs (Assistant Secretary; AS–IA) by 209 DM 8.

Table of Contents

I. Statutory Authority

In enacting the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701–2721 (1988)) (hereinafter IGRA), Congress delegated authority to the Secretary to review compacts to ensure compliance with IGRA, other provisions of Federal law that do not relate to jurisdiction over gaming on Indian lands, and the trust obligations of the United States. 25 U.S.C. 2710(d)(8)(B)(i)–(iii).

II. Executive Summary

The Department of the Interior (Department) is issuing revisions to its regulations located at 25 CFR part 293, which govern the Department's review and approval of Tribal-State gaming compacts under IGRA. The final rule includes revisions to the Department's existing part 293 regulations and adds provisions clarifying how the Department reviews ''Class III Tribal-State Gaming Compacts'' (Tribal-State gaming compacts or compacts).

The Department's current regulations do not identify the factors the Department considers when reviewing a compact; rather, those factors are contained in a series of letters issued by the Department dating back to 1988. Evolution in the gaming industry and ongoing litigation highlight the need for the Department to clarify how it will analyze Tribal-State gaming compacts to determine whether they comply with IGRA, 25 U.S.C. 2701, *et seq.,* other provisions of Federal law that do not relate to jurisdiction over gaming on Indian lands, and the trust obligations of the United States to Indians.

III. Background

In the early 1970s, as part of the Federal shift away from the termination era policies towards Tribal self-governance, Federal support grew for Indian gaming as a means of generating revenue for Tribal governments. During that period, the United States was taking affirmative steps to encourage Tribal gaming operations as a way for Tribes to improve self-governance by reducing their dependence on Federal funds.[1] In response, States began to take police and regulatory based legal actions in an attempt to restrain Tribal gaming.[2] Then, in 1987, the Supreme Court issued its *Cabazon* decision, effectively holding that Tribes have the exclusive right to regulate gaming activities on Indian lands, provided that gaming is not prohibited by Federal law, and the State permits such gaming. *Cabazon,* 480 U.S. 202.

One year later, Congress enacted IGRA, which acknowledged that many Tribes were already engaged in gaming and placed limits on Tribes' sovereign right to conduct gaming. The IGRA divided gaming into three classes. Class I gaming includes social games for prizes of minimal value and traditional forms of Indian gaming that are engaged in as part of Tribal ceremonies and celebrations. 25 U.S.C. 2703(6) and 25 CFR 502.2. Class II gaming includes bingo and bingo like games as well as non-house banked card games for example traditional poker. 25 U.S.C. 2703(7) and 25 CFR 502.3. Class III gaming includes all other forms including: house backed card games, for example baccarat or blackjack; casino games for example roulette and craps; slot machines; sports betting and parimutuel wagering including horse racing; and lotteries. 25 U.S.C. 2703(8) and 25 CFR 502.4. Congress through IGRA sought to ensure that Tribes are the primary beneficiaries of Indian gaming operations, but also authorized State governments to play a limited role in the regulation of class III Indian gaming by negotiating agreements with Tribes called ''Class III Tribal-State Gaming Compacts'' (class III gaming compacts or compacts). Class III gaming compacts govern the conduct of class III gaming on the Indian lands of the Tribe by providing the jurisdictional framework for the licensing and regulation of the class III gaming. Congress sought to strike a balance between Tribal sovereignty and States' interests in regulating gaming and ''shield[ing] it from organized crime and other corrupting influences.'' 25 U.S.C. 2702(2).

With IGRA, Congress sought to balance State interests while safeguarding Tribes against aggressive States by providing a specific list of permissible topics in a compact and requiring States to negotiate in good faith.[3] In addition to the good faith negotiation requirements and the limited list of permissible topics, Congress also provided both judicial remedies and administrative oversight in the form of Secretarial review. Congress provided the United States district courts with jurisdiction over causes of action stemming from IGRA's requirement that States enter into negotiations with Tribes who request

[1] *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202, 217 (1987) (*Cabazon*).

[2] *See* Cohen's Handbook of Federal Indian Law, 2012 edition, sec. 12.91 The Emergence of Gaming.

[3] *Chicken Ranch Rancheria* v. *California,* 42 F.4th 1024 (9th Cir. 2022).

negotiations, and that the State negotiate in good faith. 25 U.S.C. 2710(d)(7)(A)(i). Under IGRA, the district courts review the negotiation process which often includes reviewing if the negotiations have strayed beyond IGRA's limited list of permissible topics in a compact. The Secretary's review of a compact begins after the parties have executed the compact and necessarily includes reviewing if it contains terms that strayed beyond IGRA's limited list of permissible topics in a compact.

Congress expressly included ''the trust obligations of the United States to Indians'' as part of the Secretary's review of a compact.[4] In that respect, IGRA's use of the term *trust obligation* invokes the broader general government-to-government *trust relationship* to Tribes, not a specific fiduciary trust duty. These provisions in IGRA support the application of the government-to-government trust relationship, as well as its protection of Tribal sovereignty, to IGRA's carefully balanced encroachment into Tribal sovereignty. It is, therefore, appropriate for the Department to consider the general government-to-government trust relationship and protect Tribal sovereignty during its review of compacts. Further, this rulemaking upholds the government-to-government trust relationship by codifying longstanding Departmental policy and interpretations of caselaw addressing IGRA's limited list of permissible topics in a compact. The final rule will ensure Tribes have the tools they need to protect themselves against further encroachment by aggressive States that insist on including compact provisions that are not directly related to the operation of gaming activities. The final rule provides clarity by articulating the Department's ''direct connection'' test and by giving examples of provisions the Department has found *are* directly connected to a Tribe's operation of gaming activities and of provisions that do not meet this test. Some examples of improper provisions States have sought to require include requiring compliance with State tobacco regulations; requiring memoranda of understanding with local governments; adopting State environmental regulations of projects that are not directly related to the operation of gaming activities; or regulating non-gaming Tribal economic activities.

At the time of IGRA's enactment, Indian gaming represented an approximately $121 million segment of the total United States gaming industry, while Nevada casinos reported approximately $4.1 billion in gross gaming revenue.[5] By the end of fiscal year 2022, Indian gaming represented an approximately $40.9 billion segment of the total United States gaming industry, with commercial gaming reporting approximately $60.4 billion.[6] In the Casino City's 2018 Edition of the *Indian Gaming Industry Report,* Allen Meister, Ph.D., of Meister Economic Consulting estimated that in 2016, Indian Gaming represented a total economic contribution of $105.4 billion across the U.S. economy.

In line with the growth in Indian gaming, State licensed commercial gaming and State lotteries have also experienced growth. When Congress began considering legislation addressing Indian gaming in the early 1980s, two States had legalized commercial casino gaming and seventeen had State run lotteries. By 2017, 24 States had legalized commercial casino gaming, resulting in approximately 460 commercial casino locations, excluding locations with State licensed video lottery terminals, animal racetracks without gaming machines, and card rooms. In 2017, the gross gaming revenue for the commercial casino industry represented approximately $40.28 billion and generated approximately $9.2 billion in gaming tax revenue. Further, 44 States were operating State lotteries in 2017.

The expansion of State lotteries and State licensed commercial gaming can place Tribes and States in direct competition for market share. Advancements in gaming technology and changes in State and Federal gaming law since the passage of IGRA have consequently shaped the compact negotiation process. As a result, class III gaming compacts have expanded in scope and complexity as the parties seek mutually beneficial provisions. IGRA, however, anticipated the compact negotiation process would be between sovereign governments seeking to regulate and safeguard Indian gaming, an arrangement protected by judicially enforceable limits on the provisions a State could seek to include in a compact.

Through IGRA, Congress diminished Tribal sovereignty by requiring Tribes to enter into compacts with States governing the Tribes' conduct of class III gaming before Tribes may conduct casino style or ''class III gaming.'' 25 U.S.C. 2710(d)(1)(C). IGRA requires States to negotiate class III gaming compacts in good faith, limits the scope of negotiation for class III gaming compacts to seven enumerated subjects, and prohibits States from using the process to impose any tax, fee, charge, or other assessment on Tribal gaming operations. 25 U.S.C. 2710(d)(3)(A); 2710(d)(3)(C); and 2710(d)(4). However, States have often sought to include provisions in compacts which test the limits Congress provided in IGRA. Tribes have sought both judicial and administrative relief resulting in a body of case law and administrative decisions clarifying the proper scope of compacts.

Under IGRA, the Department has 45 days to complete its review and either approve or disapprove a class III gaming compact. 25 U.S.C. 2710(d)(8). If the Department takes no action within that 45-day period, the Tribal-State gaming compact is considered approved by operation of law—to the extent that it is consistent with IGRA. 25 U.S.C. 2710(d)(8)(C). In order for a compact to take effect, notice of its approval or approval by operation of law must be published in the **Federal Register**. 25 U.S.C. 2710(d)(3)(B).

The regulations that codify the Department's review process for Tribal-State gaming compacts are found at 25 CFR part 293 and were promulgated in 2008 (''2008 Regulations''). 73 FR 74004 (Dec. 5, 2008). The Department's 2008 Regulations were designed to ''address[ ] the process for submission by Tribes and States and consideration by the Secretary of Class III Tribal-State Gaming Compacts, and [are] not intended to address substantive issues.'' 73 FR 74004–5. The Department's consideration of substantive issues appears in decision letters, ''deemed approved'' letters, and technical assistance letters. In addition, a body of case law has developed that addresses the appropriate boundaries of class III gaming compacts. With this final rule, the Department codifies longstanding Departmental policies and interpretation of case law in the form of substantive regulations, which will provide certainty and clarity on how the Secretary will review certain provisions in a compact.

On March 28, 2022, the Department published a Dear Tribal Leader Letter announcing Tribal consultation regarding proposed changes to 25 CFR part 293, pursuant to the Department's consultation policy and under the criteria in E.O. 13175. The Department held two listening sessions and four

[4] 25 U.S.C. 2710(d)(8)(B)(iii).

[5] *See, e.g.,* ''The Economic Impact of Tribal Gaming: A State-By-State Analysis,'' by Meister Economic Consulting and American Gaming Association dated November 8, 2018.

[6] *See, e.g.,* ''The National Indian Gaming Commission's annual gross gaming revenue report for 2022;'' *see also* American Gaming Association's press release ''2022 Commercial Gaming Revenue Tops $60B, Breaking Annual Record for Second Consecutive Year.''

formal consultation sessions. The Department also accepted written comments until June 30, 2022.

The Dear Tribal Leader Letter included a Consultation Draft of the proposed revisions to 25 CFR part 293 (Consultation Draft); a Consultation Summary Sheet of Draft Revisions to part 293; and a redline reflecting proposed changes to the 2008 Regulations. The Dear Tribal Leader Letter asked for comments on the Consultation Draft, as well as responses to seven consultation questions.

The Department received numerous written and verbal comments from Tribal leaders and Tribal advocacy groups. The Department also received written comments from non-Tribal entities, which are not addressed in the Tribal consultation comment and response. The Department has included and addressed those comments as part of the public comment record for the proposed rule.

On December 6, 2022, the Department published a notice of proposed rulemaking announcing the public comment period for the proposed revisions to 25 CFR part 293 (proposed rule). 87 FR 74916. The Department published a Dear Tribal Leader Letter dated December 5, 2022, announcing a second round of Tribal consultation sessions on the proposed rule. The Department also published a redline version of the proposed rule reflecting changes to the 2008 Regulations, a redline version reflecting changes made in response to Tribal consultation comments, and a Table of Authorities identifying case law and Departmental decisions and other policy statements considered when drafting the proposed rule. The Department held one in-person Tribal consultation and two virtual Tribal consultation sessions. The Department also accepted written comments until March 1, 2023. Over 56 entities commented on part 293, including Tribal, State, and local governments, industry organizations, and individual citizens. In total, the submissions were separated into 607 individual comments. Generally, around 258 comments were supportive, 136 were not supportive, and 213 were neutral or provided constructive criticism.

IV. Summary of Comments Received

A. General Comments

Several commenters commented on the process and timing of the proposed rulemaking process. Some commenters requested additional time to comment and further consultations or listening sessions during the rulemaking process. Other commenters requested detailed records of the government-to-government Tribal consultation sessions held between March 28 and June 30, 2022. Others encouraged the Department to proceed with the rulemaking expeditiously.

The Department acknowledges the comments. The Department seeks to balance robust consultation and public participation with expeditious processing of the rulemaking. The Department held two virtual consultation sessions, one in-person listening session, and provided an 85-day public comment period on the proposed rule. The final rule reflects public input on the proposed rule and builds on the input of Tribal leaders from the government-to-government Tribal consultation process.

B. Section Comments

Comments on § 293.1—What is the purpose of this part?

Several commenters expressed support for the proposed amendments to § 293.1 and some commentors noted it is helpful that the Department states the regulations contain substantive requirements for class III compacts.

The Department acknowledges the comments.

Comments on § 293.2—How are key terms defined in this part?

Many commenters expressed support and approval for the proposed amendments to existing definitions and the proposed new definitions—including, but not limited to, ''gaming facility,'' ''gaming spaces,'' ''amendment,'' and ''meaningful concession.''

The Department acknowledges the comments.

One commenter suggested the Department include a definition for ''primary beneficiary'' as the term is used in § 293.25(b)(3)[7] of the proposed rule, noting that the current version suggests that this be measured against projected revenue to the Tribe and State but that market circumstances often change. One commenter requested additional defined terms and clarified definitions. Requested definitions include: ''Beneficiary,'' ''Projected Revenue,'' and clarification of the difference (if any) between ''great scrutiny'' and ''strict scrutiny.''

The Department declines to accept the recommendation to define ''primary beneficiary.'' The IGRA sets a benchmark that requires the Tribe receive at least 60 percent of net revenue. The National Indian Gaming Commission relies on Sole Proprietary Interest and IGRA at 25 U.S.C. 2710(b)(2)(A), consistent with 25 U.S.C. 2710(b)(4)(B)(III) and 2711(c), which collectively requires that the Tribe receive at least 60 percent of net revenue. *See, e.g.,* NIGC Bulletin No. 2021–6. The IGRA at 25 U.S.C. 2711(c) sets a presumptive cap on management contracts of 30 percent of net revenue but allows for some management contracts to go up to 40 percent of net revenue if the Chairman is satisfied that the income projections and capital investment required justify the higher fee.

One commenter believes the Department is artificially limiting the scope of compacts with the new defined terms ''gaming facility'' and ''gaming space'' in § 293.2(e) and § 293.2(f). The commenter also raised concerns these terms may bring compacts which are currently in effect out of compliance with the proposed rule.

The Department acknowledges the concern regarding existing compacts and notes that § 293.30 clarifies that the final rule is prospective and does not alter the Department's prior approval of compacts now in effect. As explained in the Notice of proposed rulemaking, IGRA limits the review period to approve or disapprove compacts or amendments to 45 days. As a result, the Department cannot retroactively approve or disapprove compacts or amendments after the 45-day review period has run. Therefore, any compacts already in effect for the purpose of Federal law will remain in effect. The definition of *gaming spaces* in the final rule continues to seek the smallest physical footprint of potential State jurisdiction over a Tribe's land under IGRA. This definition is intended to codify the Department's long-standing narrow read of 25 U.S.C. 2710(d)(3)(C) as applying only to the physical spaces in which the operation of class III gaming actually takes place. The definition of *gaming facility* addresses building maintenance and licensing under the second clause of 25 U.S.C. 2710(d)(3)(C)(vi) and is intended to be narrowly applied to only the building or structure where the gaming activity occurs on Indian lands.[8]

[7] The Department notes § 293.25 has been redesignated as § 293.27 in the final rule.

[8] *See, e.g.,* Letter to the Honorable Peter S. Yucupicio, Chairman, Pascua Yaqui Tribe of Arizona, from the Director, Office of Indian Gaming, dated June 15, 2012, at 5, and fn. 9, discussing the American Recovery & Reinvestment Act of 2009 and the IRS's ''safe harbor'' language to reassure potential buyers that tribally-issued bonds would be considered tax exempt by the IRS because the bonds did not finance a casino or other gaming establishment.

One commenter requested the Department define ''Gaming facility'' as follows: ''Gaming facility means any physical space within a building or structure, *or portion thereof,* where the gaming activity occurs.'' The commenter stated this definition would avoid relying on structural design of buildings to determine the scope of a compact. The commenter noted that the definition of ''gaming facility'' is too broad and is concerned that it may allow the State more control than it is entitled to. Additionally, the commenter opined that the Department's reliance on the IRS' safe harbor provision for tax-free bonds may result in a compact which extends well beyond the gaming spaces based on the structural engineering of the building. Finally, the commenter is concerned that the Department has not incorporated its own definition of ''gaming spaces'' into the substantive portions of the draft.

The Department declines to accept the proposed change. As explained in the Notice of proposed rule Making, the Department included the defined terms ''gaming facility'' and ''gaming spaces.'' The definition of gaming spaces seeks the smallest physical footprint of potential State jurisdiction over a Tribe's land under IGRA. This definition is intended to codify the Department's long-standing narrow read of 25 U.S.C. 2710(d)(3)(C) as applying only to the spaces in which the operation of class III gaming actually takes place. The definition of gaming facility addresses building maintenance and licensing under the second clause of 25 U.S.C. 2710(d)(3)(C)(vi) and is intended to be narrowly applied to only the building or structure where the gaming activity occurs on Indian lands. The IRS safe harbor definition of building was developed through consultation with the Secretary as a workable test for Tribes to use tax exempt bonds to fund economic development provided the bond was not being used to finance ''any portion of a building in which class II or class III gaming . . . is conducted or housed''. 26 U.S.C. 7871(f)(3)(B)(i). The IRS safe harbor provides that a structure will be treated as a separate building—for the purpose of tax exempt Tribal Economic Development Bonds—if it has ''an independent foundation, independent outer walls, and an independent roof.'' [9] Further, ''connections (*e.g.,* doorways, covered walkways or other enclosed common area connections) between two adjacent independent walls of separate buildings may be disregarded''.[10] We are sensitive to the commenters concern that our reliance on the IRS safe harbor definition may result in the portions of the compact that address building maintenance and licensing under the second clause of 25 U.S.C. 2710(d)(3)(C)(vi), reaching beyond the *gaming spaces* as defined in § 293.2(f).

One commenter requested that proposed § 293.2(h)(2) be revised to include the word ''activity'' so that the provision would read ''Directly related to gaming activity.''

The Department has modified § 293.2(h)(2) in the final rule to include the word ''activity.''

Several commenters expressed concern with the definitions of ''meaningful concessions'' and ''substantial economic benefit'' as too narrow and vague. Several commenters stated that ''meaningful concessions'' and ''substantial economic benefits'' are not clear terms and suggested the proposed regulations include examples. Another commenter recommended the Department should make clear that ''meaningful concessions'' require the State to give something up and that proposed regulations should also address what constitutes ''substantial'' with respect to ''economic benefits.''

The Department acknowledges the comments and understands that the Tribe and State, during their negotiations, determine what a substantial economic benefit and meaningful concession means to them. The final rule at § 293.27 sets forth the Department's criteria for reviewing revenue sharing provisions to ensure they provide a substantial economic benefit in exchange for a meaningful concession.

One commenter suggested that the terms ''ancillary agreement'' and ''documents'' need further defining because it is still unclear how those terms apply to §§ 293.4, 293.8, 293.21, and 293.28 in the proposed rule.[11] Particularly in States like Arizona, where all tribes are required to come to the table with a single compact, one change to one tribe's compact might trigger changes to other Arizona tribes' compacts.

The Department acknowledges the comment and has reviewed the final rule for consistency. The Department declines to define the terms ''ancillary agreement'' or ''documents'' as used in §§ 293.4(b) and 293.8(d). Section 293.4(b) contains descriptions of the types of ancillary agreements or documents the Department will require be submitted for review as well as types of documents which are exempt from review.

Comments on § 293.3—What authority does the Secretary have to approve or disapprove compacts and amendments?

Many commenters support the proposed changes to § 293.3.

The Department acknowledges the comments.

Comments on § 293.4—Are compacts and amendments subject to review and approval?

Many commentors support the proposed changes made to § 293.4 because they help clarify what are considered to be compact amendments, while also clarifying the timelines to submit agreements between political subdivisions and Tribes. Commenters also support the opportunity for Tribes to submit documents to the Department for review.

The Department acknowledges the comments.

A commenter requested clarification if the Department's review of an amendment includes reviewing the underlying compact for consistency with the proposed rule.

The Department acknowledges the comment and notes IGRA limits the Secretary's authority to review and approve or disapprove a compact or amendment to 45 days. As a result, the Department cannot retroactively approve or disapprove a compact or amendment after the 45-day review period has run. Instead, the Department's review is limited to the text of the document under review during the 45-day review period. The Department treats restated and resubmitted compacts as a new compact because the parties have submitted entire text of the compact for review. The Department encourages parties to utilize restated compacts or amended and restated compacts as a best practice to incorporate a series of amendments into a single document. The Department finds it helpful if the Tribe or State also submits a redlined copy of the restated compact.

Several commenters expressed concerns whether proposed § 293.4(b) requires review or exempts from review certain types of intergovernmental and inter-tribal agreements including ''Transfer Agreements'' and ''Pooling Agreements.''

The Department has made some stylistic revisions to § 293.4(b) in the final rule in an effort to further clarify

[9] IRS Tax Exempt Bonds Notice 2009–51 (Tribal Economic Development Bonds) Section 10 (b).

[10] *Id.*

[11] The Department notes § 293.21 of the proposed rule has been redesignated as § 293.20 in the final rule, and § 293.28 of the proposed rule has been redesignated as § 293.29 in the final rule.

which documents are considered compacts or amendments subject to review and which documents are exempt from review. Further, § 293.4(c) of the final rule allows parties to submit documents for a determination if the document is a compact or amendment subject to review under IGRA.

Several commenters expressed support for proposed § 293.4(b), noting that revisions from the Consultation Draft resolved many concerns about the scope of § 293.4(b). Commenters stated proposed § 293.4(b) appears to exempt from review minor changes through mutual agreement under provisions in existing compacts that allow for such changes. Examples offered by commenters included adding class III games or adopting a more favorable provision in a newly negotiated compact or amendment through ''most favored nations'' provisions.

The Department notes that some compacts include provisions which allow for the Tribe and the State to add class III games, or forms of games, which are approved through changes in State law or regulations without amending the Compact. The final rule at § 293.4(b)(2) and (3) exempts from review a document memorializing the automatic addition of a class III game pursuant to such a provision. The final rule at § 293.4(b)(1) however clarifies that the incorporation of a more favorable compact term through a ''most favored nation'' provision would be treated as an amendment because it acts to modify or change a term in a compact or amendment. The Department also encourages parties to forgo submitting stand-alone amendments, and instead utilize restated compacts or amended and restated compacts as a best practice to incorporate a series of amendments into a single document.

A commentor requested the Department strike proposed § 293.4(b)(3), arguing the provision is redundant with proposed § 293.8(d), and contains various vague and undefined terms (*e.g.,* ''expressly contemplates'').

The Department acknowledges the comment and notes that the final rule at § 293.4 addresses whether a document is a compact or amendment to a compact. The final rule at § 293.8 addresses what documents are required to be submitted as part of the Secretary's review of a compact or amendment. Further, § 293.4(b)(3) exempts internal control standards and other documents between Tribal and State regulators from review as a compact or amendment. The final rule at § 293.8(d) requires the submission of agreements required by a compact which either requires the Tribe to make payments to the State, its agencies, or its political subdivisions, or restricts or regulates the Tribe's use and enjoyment of its Indian lands.

Several commenters discussed the Department's efforts to limit and review agreements between Tribal and local governments through the inclusion of §§ 293.4(b)(4), 293.8(d), 293.24(c)(5), and § 293.28 in the proposed rule.[12] Some commenters expressed support for the Department's effort in the rule making to prevent local governments from disrupting Tribal gaming through revenue sharing demands noting this is a continuation of the Department's recent disapprovals of compacts containing similar language. Other commenters questioned if the proposed provisions were sufficiently holistic to address the efforts of local governments to disrupt Tribal gaming. Other commenters questioned the Secretary's authority to review intergovernmental agreements, suggesting that the Department's efforts were misplaced, encroached on Tribal sovereignty, and may result in uncertainty regarding the validity of existing intergovernmental agreements between Tribes and local governments. Some commenters opined that these sections contain inherent internal conflicts that could be interpreted as both prohibiting the inclusion of provisions addressing intergovernmental agreements in compacts, while also requiring the submission of intergovernmental agreements for review as a compact. Some commenters noted these agreements have resulted in strong co-operative working relationships between Tribes and local governments with overlapping or abutting jurisdictions.

The Department notes that intergovernmental agreements between Tribes and States or local governments can be beneficial; Congress, however, provided a narrow scope of topics that Tribes and States may include when negotiating a Tribal-State gaming compact. As explained in the Notice of proposed rulemaking, the Department revised these provisions in the proposed rule—which are codified with minor clarifying edits in the final rule—to clarify that these provisions cover only agreements between Tribes and States, or States' political subdivisions, which govern gaming, include payments from gaming revenue, or are required by a compact or amendment. Agreements that are not required by a compact and that do not regulate gaming do not need to be submitted to the Department for approval as part of a Tribal-State gaming compact. Likewise, agreements between Tribes and the State and/or local governments that facilitate cooperation and good governance, but that do not regulate gaming or require gaming revenue sharing payments, should not be incorporated into or referenced as a requirement of a Tribal-State gaming compact. The Department also included the phrase ''restricts or regulates a Tribe's use and enjoyment of its Indian lands'' to clarify these agreements may be considered both as a contract which encumber Tribal lands under 25 U.S.C. 81 and the Department's regulations at 25 CFR part 84, and as a compact or amendment under IGRA. The Department has included the § 293.4(c) process for a determination if an agreement or other document is a compact or amendment in the final rule.

A commenter recommends qualifying proposed § 293.4(b)(4) by including a reference to ''the State, its agencies or political subdivisions'' to make it consistent with proposed § 293.8(d). Another recommends that the Department remove ''or includes any of the topics identified in 25 CFR 292.24'' from proposed § 293.4(b)(4). A commenter recommends qualifying § 293.4(b)(4) by including a reference to ''the State, its agencies or political subdivisions'' because adding this language would improve the clarity of the regulatory text by ensuring that this provision is consistent with proposed rule § 293.8(d) and proposed rule § 293.28.[13] The commenter argued it would also eliminate any uncertainty regarding whether a contract with a private party (*e.g.,* financing documents, management contracts, development agreements, etc.) could be subject to this provision. Others requested changes to proposed § 293.4(b)(4). Many commentors submitted draft language.

The Department has modified § 293.4(b)(4) in the final rule to state that if an ancillary agreement or document interprets language in a compact or an amendment concerning a Tribe's revenue sharing to the State, its agencies or political subdivisions under § 293.27, or includes topics which are directly related to the operation of gaming activities under § 293.23, then it may constitute an amendment subject to review and approval by the Secretary.

Several commenters noted the proposed § 293.4(b)(4) appeared to contain a typographical error in the cross-reference to 25 CFR 292.24 and

[12] The Department notes §§ 293.24 and 293.28 have been redesignated as §§ 293.23 and 293.29 in the final rule.

[13] The Department notes proposed § 293.28 has been redesignated as § 293.29 in the final rule.

suggested the correct cross-reference is 25 CFR 293.24.[14]

The Department has corrected the error and changed the cross-reference to § 293.23 in the final rule.[15]

Several commenters recommended the Department make a technical amendment to proposed § 293.4(c) to provide clarity regarding when the clock begins to run on the opinion letter issuance timeline and offered suggested language. Commenters noted that the usefulness of proposed § 293.4(c) would be limited without including reasonable parameters on review time. Other commenters requested the Department reduce the timeline of review in § 293.4(c).

The Department has accepted the comments in part and modified § 293.4(c) in the final rule to state that the Department will issue a letter within 30 days of receipt of the written request, providing notice of the Secretary's determination. The revised language clarifies when the clock starts. Additionally, the Department has adjusted the review period to 30 days, for consistency with section 81, Encumbrances of Tribal Land Contract Approvals under 25 CFR 84.005. The Department notes some agreements may trigger both IGRA and section 81 review. Should the Secretary determine that an ancillary agreement or document is a compact or amendment subject to review and approval by the Secretary, the Department has included clarifying language that the Tribe or State must resubmit the ancillary agreement or document consistent with § 293.8.

Several commenters suggested the Department revise proposed § 293.4(c) by including a ''deeming'' language so that if the deadline is missed, the document or agreement submitted pursuant to § 293.4(c) would be presumed ''not a compact or amendment.''

The Department declines to include ''deeming'' language as it could result in unintended consequences, including compacts or amendments which are not in effect as a matter of Federal law. Rather, the Department has included clarifying language that should the Secretary determine that an ancillary agreement or document is a compact or amendment subject to review and approval by the Secretary, the Tribe or State must resubmit the ancillary agreement or document consistent with § 293.8.

[14] The Department notes proposed § 293.24 has been redesignated as § 293.23 in the final rule.

[15] The Department notes proposed § 293.24 has been redesignated as § 293.23 in the final rule.

Several commenters requested the Department clarify if an agreement or other document submitted for review under proposed § 293.4(c) would be subjected to adverse action.

The Department acknowledges the comments and notes that the review process in § 293.4(c) of the final rule builds on the Department's longstanding practice of providing compact technical assistance to Tribes and States. The review process found in § 293.4(c) utilizes a shorter review period and does not include the formal submission requirements of § 293.8. The § 293.4(c) review process culminates in a written determination if the submitted document is a compact or amendment under IGRA.

Comments on § 293.5—Are extensions to compacts or amendments subject to review and approval?

Several commenters expressed support for proposed changes to § 293.5, opining the revisions are consistent with other provisions of the rule. Some commenters appreciate the addition of ''[t]he extension becomes effective only upon publication in the **Federal Register**.'' One commenter appreciates the lessened documentation requirements for processing compact extensions under proposed § 293.5.

The Department acknowledges the comments.

Comments on § 293.6—Who can submit a compact or amendment?

Several commenters expressed support for the proposed changes to § 293.6.

The Department acknowledges the comments.

Comments on § 293.7—When should the Tribe or State submit a compact or amendment for review and approval?

Several commenters expressed support for the proposed changes to § 293.7. One commenter supported the inclusion of the phrase ''otherwise binding on the parties'' and explained that language acknowledges some documents and ancillary agreements become binding on parties outside of an affirmative consent process.

The Department acknowledges the comments.

Comments on § 293.8—What documents must be submitted with a compact or amendment?

Several commenters support the proposed changes to § 293.8, and many commenters support the addition of proposed § 293.8(d).

The Department acknowledges the comments.

Several commenters requested that proposed § 293.8(d) be further clarified to avoid confusion about what documents should be submitted with a compact or amendment. One commenter offered the following edit to § 293.8(d) for clarity: ''Any agreement between a Tribe and a State, its agencies or its political subdivisions required by a compact or amendment *(including ancillary agreements, documents, ordinances, or laws required by the compact or amendment).*'' The commenter also recommended the Department strike the remainder of § 293.8(d).

The Department has accepted the revisions in part to reduce duplication with other sections of the final rule. The Department has changed the language of § 293.8(d) to state any agreement between a Tribe and a State, its agencies or its political subdivisions required by a compact or amendment (including ancillary agreements, documents, ordinances, or laws required by the compact or amendment) which the Tribe determines is relevant to the Secretary's review.

One commenter requested the Department strike proposed § 293.8(d) from the final rule, stating the subsection is unnecessary.

The Department declines to remove proposed § 293.8(d). The Department notes that intergovernmental agreements between Tribes and States or local governments can be beneficial; Congress, however, provided a narrow scope of topics that Tribes and States may include when negotiating a Tribal-State gaming compact. As explained in the notice of proposed rulemaking, and above, the Department included § 293.8(d) to address agreements between Tribes and States, or States' political subdivisions, which are required by a compact or amendment and require the Tribe to make payments to the State, its agencies, or its political subdivisions, or restricts or regulates the Tribe's use and enjoyment of its Indian lands. This provision ensures that such agreements receive proper scrutiny by the Department as required by IGRA and other Federal laws. The Department included the phrase ''restricts or regulates a Tribe's use and enjoyment of its Indian Lands'' to clarify these agreements may be considered both contracts which encumber Tribal lands under 25 U.S.C. 81 and the Department's regulations at 25 CFR part 84, and as a compact or amendment under IGRA. The Department has included the § 293.4(c) process for a determination if an agreement or other document is a compact or amendment in the final rule.

One commenter requested the language in § 293.8(e) be narrowed by including the phrase ''directly related to and necessary for making a determination.''

The Department declines to accept the suggested change to the language in § 293.8(e). The relevant text of § 293.8(e) remains unchanged from the 2008 Regulations, where it was numbered as § 293.8(d) and allows the Secretary to request documentation relevant to the decision-making process.

A commenter expressed support that the proposed rule included a requirement of a market analysis, or similar documentation, as part of the compact submission package for compacts that include revenue sharing in § 293.8(e). This would require compacting parties to prove revenue sharing agreements provide actual benefits to Tribes.

The Department acknowledges the comment and notes concerning § 293.8(e).

A commenter expressed concern that the proposed rule contained a new requirement of a market analysis, or similar documentation, for compacts that include revenue sharing in § 293.8(e). The commenter stated this requirement creates unnecessary delay and expense.

The Department acknowledges the comment and notes that the requirement in § 293.8(e) of the final rule represents a codification of the existing Departmental practice of requiring a market analysis, or similar documentation, as part of the submission package for compacts or amendments that include revenue sharing provisions. The Department routinely requests this information through § 293.8(d) of the 2008 Regulations. The Department included in § 293.8(e) of the proposed rule a cross reference to § 293.28,[16] codifying the Department's longstanding rebuttable presumption that any revenue sharing provisions are a prohibited tax, fee, charge, or other assessment. The Department has long required evidence, including market studies or other documentation, that a State's meaningful concession provides a substantial economic benefit to the Tribe in a manner justifying the revenue sharing required by the compact.

[16] The Department notes proposed § 293.28 has been redesignated as § 293.29 in the final rule.

Comments on § 293.9—Where should a compact or amendment or other requests under this part be submitted for review and approval?

A number of commenters support the proposed changes to § 293.9—especially the Department's proposal to accept electronic submissions. Commenters argue that electronic submissions will allow for increased efficiency and decreased processing times.

The Department acknowledges the comments.

Comments on § 293.10—How long will the Secretary take to review a compact or amendment?

Several commenters expressed support for the proposed changes to § 293.10.

The Department acknowledges the comments.

Comments on § 293.11—When will the 45-day timeline begin?

Several commenters expressed support for the inclusion of a requirement for the Department to provide an acknowledgment email for electronically submitted compacts in § 293.11 of the final rule and note that a confirmation email works well with the proposed changes to § 293.9.

The Department acknowledges the comments. The Department also notes that § 293.8(a) requires submission of at least one original paper copy of the fully executed compact if the compact or amendment was submitted electronically and the compact or amendment was executed utilizing ''wet'' or ink signatures.

Comments on § 293.12—What happens if the Secretary does not act on the compact or amendment within the 45-day review period?

Several commenters expressed support for the proposed changes made to § 293.12, including the codification of a letter informing the parties when a compact has gone into effect by operation of law, commonly referred to as ''deemed approved letters.'' Commenters also expressed support for the routine inclusion of language discussing provisions that may be inconsistent with the Department's interpretation of IGRA in ''deemed approved letters.'' Commenters also requested the Department increase the specificity included in ''deemed approved letters,'' including identifying the provisions that the Department considers are in violation of IGRA, as well as an explanation of the Department's reasoning.

The Department acknowledges the comments and notes that the final rule, consistent with the proposed rule, requires the Secretary to issue a ministerial letter informing the parties to the compact or amendment that it has gone into effect by operation of law. That letter may, at the Secretary's discretion, include guidance to the parties reflecting the Department's interpretation of IGRA.

Several commenters requested additional clarification on the potential uses of ''deemed approved'' letters, including if the deemed approved letter is ''final agency action'' and if the underlying compact would be ripe for litigation that challenges provisions the Department identifies in a ''deemed approved letter.'' Commenters offered proposed regulatory language: ''Accordingly, the signatory Tribe or State may subsequently challenge the non-compliant Compact provisions as unenforceable or severable from the Compact.''

The Department acknowledges the comment. The Department declines to include the proposed language in the final rule. Under IGRA, the Department has 45 days to complete its review and either approve or disapprove a class III gaming compact. If the Department takes no action within that 45-day period, the Tribal-State gaming compact is considered approved by operation of law—to the extent that it is consistent with IGRA. The Department takes no position on whether a Tribe or a State may subsequently challenge any compact provisions as unenforceable or severable from the compact.

One commenter requested the timeline for issuing a deemed approved letter be shortened to 60 days and provided draft language to that effect.

The Department declines to shorten the timeframe and refers to the second sentence of § 293.12, which states that the Secretary will issue a letter informing the parties that the compact or amendment has been approved by operation of law after the 45th day and before the 90th day. The 60-day suggestion falls within this timeframe. The final rule at § 293.14(b) states that the notice of affirmative approval or approval by operation of law must be published in the **Federal Register** within 90 days from the date the compact or amendment is received by the Office of Indian Gaming.

Several commenters are concerned that the proposed § 293.12 conflicts with *Amador County* v. *Salazar,* 640 F.3d 373 (D.C. Circuit 2011), in which the D.C. Circuit held that IGRA requires the Secretary to disapprove compacts that violate IGRA. Commenters raised both policy and legal concerns with the Department's practice of permitting

compacts with problematic provisions to be approved by operation of law.

The Department acknowledges the comments. Congress, through IGRA at 25 U.S.C. 2710(d)(8), provided the Secretary with time-limited authority to review a compact and discretionary disapproval authority. Within this limited review period, the Secretary may approve or disapprove a compact. IGRA further directs that if the Secretary does not approve or disapprove a compact within IGRA's 45-day review period, then the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of IGRA. 25 U.S.C. 2710(d)(8)(C). The Department notes that one Circuit has held that the Secretary must disapprove a compact if it is inconsistent with IGRA and thus, may not approve such compact by operation of law. *Amador County* v. *Salazar,* 640 F.3d 373, 381 (D.C. Cir. 2011). The Department also notes that the D.C. Circuit in *West Flagler Associates, Ltd.* v. *Haaland,* 71 F.4th 1059, 1067 (D.C. Cir. 2023), explained that its holding in *Amador County* was premised on the requirement under 25 U.S.C. 2710(d)(8)(A) that compacts govern gaming on *Indian lands.* In *Amador County,* the central, then-unanswered question at issue in the case was whether the gaming contemplated by the compact at issue would occur on property that qualified as ''Indian lands'' under IGRA. The D.C. Circuit found that the Secretarial disapproval was obligatory in this context because the particular statutory requirement that compacts govern gaming on Indian lands could not be satisfied. *West Flagler,* 71 F.4th at 1064.

Comments on § 293.13—Who can withdraw a compact or amendment after it has been received by the Secretary?

Several commenters expressed support for the proposed changes made to § 293.13.

The Department acknowledges the comments.

Comments on § 293.14—When does a compact or amendment take effect?

Several commenters expressed support for the proposed changes made to § 293.14.

The Department acknowledges the comments.

Comments on § 293.15—Is the Secretary required to disapprove a compact or amendment that violates IGRA?

Several commenters support the proposed § 293.15.

The Department acknowledges the comments and after further consideration and review of all comments, the Department declines to adopt proposed § 293.15 in the final rule.

Several commenters opposed the entirety of proposed § 293.15. Several commenters expressed concern that the proposed § 293.15 would permit compacts with unlawful provisions to go into effect by operation of law and limit the ability of the compacting parties to challenge the legality of such compacts.

The Department acknowledges the comments, and after further consideration, the Department declines to adopt proposed § 293.15 in the final rule.

One commenter requested the Department include in the final rule a non-exhaustive list of IGRA violations which would compel a disapproval.

The Department acknowledges the comments, and after further consideration, the Department declines to adopt proposed § 293.15 in the final rule.

Several commenters argued that *Amador County* held that the Department has an affirmative duty to disapprove illegal compacts and provided draft language to effect that duty. Commenters further noted that the Department's brief in *West Flagler* appeared to adopt the *Amador County* standard as binding on the Department, which appeared to conflict with the proposed § 293.15.

The Department acknowledges the comments, and after further consideration, the Department declines to adopt proposed § 293.15 in the final rule.

Comments on § 293.16—Which has been redesignated as § 293.15—When may the Secretary disapprove a compact or amendment?

The Department has redesignated proposed § 293.16 as § 293.15 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Two commenters support the proposed changes made to § 293.15.

The Department acknowledges the comments.

One commenter requested clarifying language regarding the Secretary's ability to approve or disapprove compacts.

The Department acknowledges the comment, but notes this provision is consistent with Congress' grant of discretionary disapproval authority to the Secretary. 25 U.S.C. 2710(d)(8)(B)(iii). The Department notes the proposed § 293.15(b) would clarify that if a compact submission package is missing the documents required by § 293.8 and the parties decline to cure the deficiency, the Secretary may conclude that the compact or amendment was not ''entered into'' by the Tribe and State as required by IGRA, 25 U.S.C. 2710(d)(1)(C), and will disapprove the compact or amendment on that basis. *See, e.g., Pueblo of Santa Ana* v. *Kelly,* 104 F.3d 1546, 1555 (10th Cir. 1997) (a compact or amendment must have been ''validly entered into'' before it can go into effect through Secretarial approval). The Department notes this is a change from an earlier practice of returning incomplete compact submission packages. The Department has reconsidered this practice so as to better fulfill Congress's goal of avoiding unnecessary delay in the Secretary's review process. If the Department cannot determine, based on the lack of documentation, that the compact was validly entered into by both the Tribe and the State, then approval—affirmative or by operation of law—exceeds the Secretary's authority.

Several commenters believe proposed § 293.15(b) is unnecessarily punitive unless the parties are provided a timely opportunity to cure deficiencies within the submission package or provide the Secretary with any missing documents. Several commenters offered draft regulatory text, including differing timeframes for submitting missing information or explaining why the required information was not submitted.

The Department acknowledges the comments and has accepted the revisions in part, changing § 293.15(b) of the final rule to state that if the documents required in § 293.8 are not submitted and the Department has informed the parties in writing of the missing documents, and provided the parties with an opportunity to supply those documents, the Secretary may conclude the compact or amendment was not validly entered into between the Tribe and the State and will disapprove the compact or amendment on those grounds.

Another commenter suggested an additional paragraph (c): ''At any time after the compact or amendment is submitted, the tribal party may submit a written request to pause the 45-day deadline for the Secretary to make a decision for purposes of supplying any missing document(s). Effective the date such request is received by the Department, no more days toward the 45-day deadline will accrue until written request to resume the 45-day period is received from the tribal applicant.''

The Department declines to incorporate the suggested new paragraph (c) in § 293.16 of the final rule and notes that IGRA's 45-day review period cannot be tolled. If the Tribe or the State is unable to provide missing documents within the 45-day review period, the parties may withdraw the compact from Secretarial review under § 293.13, then resubmit the compact with the documents required under § 293.8.

Comments on Subpart D

Several commenters expressed opposition to the part 293 Rulemaking effort and requested the Department remove all substantive provisions in subpart D.

The Department acknowledges the comments but declines to remove the substantive provisions contained in subpart D.

Several commenters objected to the rulemaking effort, questioned the Secretary's authority to engage in rulemaking or provide substantive rules on the scope of Tribal-State gaming compacts. Commenters also questioned the Department's inclusion of evidence of ''bad faith'' or ''violations of IGRA.''

The Secretary has authority to promulgate regulations regarding the Department's procedures for the submission and review of compacts and amendments based on the statutory delegation of powers contained in IGRA and 25 U.S.C. 2 and 9. In enacting IGRA, Congress delegated authority to the Secretary to review compacts to ensure that they comply with IGRA, other provisions of Federal law that do not relate to jurisdiction over gaming on Indian lands, and the trust obligations of the United States. 25 U.S.C. 2710(d)(8)(B)(i)–(iii). IGRA establishes the parameters for topics that may be the subject of compact and amendment negotiations and included in compacts. Thus, in reviewing submitted compacts and amendments, the Secretary is vested with the authority to determine whether the compacts contain impermissible topics. The Department recognizes that section 2710(d)(7)(A)(i) of IGRA vests jurisdiction in district courts over ''any cause[s] of action . . . arising from the failure of a State . . . to conduct [ ] negotiations in good faith.'' The district courts review of the negotiation process often includes reviewing if the negotiations have strayed beyond IGRA's limited list of permissible topics in a compact. The Secretary's review of a compact begins after the parties have executed the compact and necessarily includes reviewing if it contains terms that strayed beyond IGRA's limited list of permissible topics in a compact. This overlap has resulted in a body of case law the Department has interpreted and incorporated into longstanding Departmental policies. Additionally, courts have looked to prior Departmental decisions, ''deemed approved'' letters, and policy statements to guide the courts review. Therefore, the Department has replaced the phrase ''is considered evidence of bad faith'' with the phrase ''may be considered evidence of a violation of IGRA'' in the final rule. This change harmonizes the Department's regulations with IGRA's plain language by enumerating the specific topics that are appropriately addressed in compacts. The Department's regulations also identify examples of impermissible topics that may be considered evidence of a violation of IGRA.

Several commenters argued that the Department's interpretation of 25 U.S.C. 2710(d)(3)(C) as an exclusive list of proper compact terms is improper, and that the Department's interpretation that 25 U.S.C. 2710(d)(3)(C)(vii) must be narrowly applied is not supported by IGRA or case law.

The Department acknowledges the comment and notes that the Department's longstanding interpretation of IGRA's list of permissible topics for compacts, located at 25 U.S.C. 2710(d)(3)(c), as exhaustive is consistent with prevailing caselaw. For example, the Ninth Circuit in *Chicken Ranch* stated: ''IGRA, we made clear, does not permit the State and the [T]ribe to negotiate of any subjects the desire; rather, IGRA anticipates a very specific exchange of rights and obligations.'' [17]

Comments on § 293.17—Which has been redesignated as § 293.16—May a compact or amendment include provisions addressing the application of the Tribe's or the State's criminal and civil laws and regulations?

The Department has redesignated proposed § 293.17 as § 293.16 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Many commenters expressed support for the proposed § 293.16.

The Department acknowledges the comments.

One commenter requested the Department strike the phrase ''At the request of the Secretary pursuant to § 293.8(e)'' from the second sentence of § 293.16. The commenter argued the change would allow Tribal control over what State regulations apply.

The Department declines the proposed revision to § 293.16, which allows the Secretary to determine when additional information is needed during the Department's review and approval process.

Comments on § 293.18—Which has been redesignated as § 293.17—May a compact or amendment include provisions addressing the allocation of criminal and civil jurisdiction between the State and the Tribe?

The Department has redesignated proposed § 293.18 as § 293.17 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Many commenters expressed support for the proposed § 293.17.

The Department acknowledges the comments.

One commenter would like the Department to add ''reasonable'' to § 293.17 describing criminal and civil jurisdiction between the State and the Tribe necessary for the enforcement of the laws and regulations described in § 293.16.

The Department declines to accept the recommendation to add the word ''reasonable.'' This is not needed because the final rule at § 293.17 authorizes only those provisions ''necessary for the enforcement of the laws and regulations described in § 293.16,'' which in turn requires that the ''laws and regulations are ''*directly related to and necessary for* the licensing and regulation of the gaming activity.'' (emphasis added).

Two commenters requested the Department clarify proposed §§ 293.16 and 293.17 to confirm that the Tribe and the State may agree, as a matter of contract, that the Tribe will adopt standards that are equivalent to State standards.

The Department acknowledges the comments and notes that neither IGRA, nor the Department's regulations, prohibit a Tribe from adopting standards that are equivalent to State standards. Additionally, the final rule in § 293.21, directly addresses a Tribe's adoption of standards equivalent or comparable to State standards.

Comments on § 293.19—Which has been redesignated as § 293.18—May a compact or amendment include provisions addressing the State's costs for regulating gaming activities?

The Department has redesignated proposed § 293.19 as § 293.18 in the final rule. Comments have been edited

[17] *Chicken Ranch Rancheria of Me-Wuk Indians* v. *Cal.,* 42 F.4th 1024, 1034 (9th Cir. 2022). Internal citations and quotations omitted.

to reflect the new section number in the final rule.

Several commenters stated the proposed rule contained a typographical error with the use of the word ''is'' in the final sentence of proposed § 293.18 and offered a conforming edit.

The Department has accepted the conforming edit to the last sentence of § 293.18 in the final rule, which now states that if the compact does not include requirements for the State to show actual and reasonable annual expenses for regulating the specific Tribe's gaming activity over the life of the compact, the lack of such requirement may be considered evidence of a violation of IGRA.

Several commenters would like the Department to require greater proof of the reasonableness of a State's regulatory costs. Commenters requested the Department include the additional language to § 293.18, requiring specific forms of proof of both the actual cost and the reasonableness of the cost during the life of the compact.

The Department acknowledges the comments but declines to require specific forms of proof of both actual cost and the reasonableness of the cost or to define or require proof of reasonableness. The Department reads IGRA's provision permitting the State to assess regulatory costs narrowly and as inherently limited to the negotiated allocation of regulatory jurisdiction. The final rule at § 293.18 allows Tribes and States flexibility to determine how the parties will incorporate IGRA's limits on a State's assessment of regulatory costs into a compact, including flexibility in negotiating the terms that determine how the State will show aggregate costs are actual and reasonable. Providing specific definitions would diminish the parties' flexibility in negotiating reasonable compact terms that best meet the needs of the parties.

Several commenters expressed concern with the Department's inclusion of reporting requirements in § 293.18. The commenters argued that requirement would make it difficult for States to recoup the cost of regulating class III gaming, particularly in States with multiple Tribes who operate differing numbers and sizes of gaming facilities.

The Department acknowledges the comment. The final rule at § 293.27 includes a discussion of the Department's interpretation of IGRA's prohibition against the imposition of a tax, fee, charge, or other assessment. IGRA provides that a compact may include provisions relating to ''the assessment by the State of [the Tribe's class III gaming activity] in such amounts as are necessary to defray the costs of regulating [the Tribe's class III gaming activity].'' 25 U.S.C. 2710(d)(3)(C)(iii). In section 2710(d)(4), IGRA then prohibits the State from imposing a tax, fee, charge, or other assessment except for any assessments that may be agreed to under section 2710(d)(3)(C)(iii). The Department reads IGRA's provision permitting the State to assess regulatory costs narrowly and as inherently limited to the negotiated allocation of regulatory jurisdiction. Further, the Department has revised § 293.18 in the final rule to give the parties flexibility in negotiating the terms of a compact to determine how the State will show aggregate costs are actual and reasonable.

Comments on § 293.20—Which has been redesignated as § 293.19—May a compact or amendment include provisions addressing the Tribe's taxation of gaming?

The Department has redesignated proposed § 293.20 as § 293.19 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Several commenters support the proposed § 293.19.

The Department acknowledges the comments.

Several commenters expressed concerns with the Department's inclusion of § 293.19 in the proposed rule and argued that States may begin demanding compact provisions addressing the taxation of Tribal gaming. Others requested the Department strike specific language referencing State tax rates. Another commenter requested the Department include a ''directly related'' nexus for Tribal tax equivalents.

The Department acknowledges the comments but declines to make the requested changes to § 293.19 in the final rule. IGRA provides that a compact may address Tribal taxation of Tribal class III gaming in amounts comparable to State taxation of State gaming. 25 U.S.C. 2710(d)(3)(C)(iv).

Comments on § 293.21—Which has been redesignated as § 293.20—May a compact or amendment include provisions addressing the resolution of disputes for breach of the compact?

A number of commenters expressed support for proposed § 293.20, especially regarding the opportunity for Tribes to submit dispute resolution documents, settlement agreements, or arbitration decisions they are concerned act to amend the terms of their compact.

The Department acknowledges the comments.

Several commenters expressed concerns with the scope of review under § 293.20 and questioned how those provisions may impact existing compacts.

The Department acknowledges the comments and notes that § 293.32(b) of the final rule clearly states that the final rule is prospective and does not alter prior Departmental decisions on compacts. Additionally, § 293.20 allows the Tribe to use the § 293.4 process, including requesting a determination from the Department under § 293.4(c), to determine if their dispute resolution agreement or other document amends or alters the compact from which the dispute arose, or addresses matters not directly related to the operation of gaming.

One commenter requested the Department include within § 293.20 a duty on the Secretary to disapprove any compact which provides that the only remedy for a breach of compact is suspension or termination of the compact. The commenter argued that compacts should be required to include reasonable notice of alleged breach of compact with opportunities to cure any alleged violations.

The Department acknowledges the comment but declines to include an affirmative duty to disapprove a compact in all instances. The Department is concerned that a mandate requiring the Secretary to affirmatively disapprove compacts that contain illusory remedies for breach of compact would narrow the discretion IGRA provides the Secretary to either approve or disapprove a compact within the prescribed 45-day review period. The Department also notes that many compacts include opportunities for parties to the compact to meet and discuss alleged breaches of compact and arrange reasonable timelines for either curing the breach or negotiating an amendment to the compact addressing the breach.

Several commenters suggested that the Department is acting beyond its authority in proposed § 293.20 by impermissibly interpreting IGRA and acting without authority to review any and all court orders between Tribes and States as if they are compact amendments. The commenters also argued the proposed § 293.20 violates the Federal Arbitration Act.

The Department acknowledges the comments but disagrees with the commenters' view of the reach of §§ 293.20 and 293.4. These provisions provide Tribes the opportunity to seek a determination from the Department of whether their dispute resolutions, settlement agreements, or arbitration

decisions amend their compact such that Secretarial review and approval is required. The Department has observed Tribes and States resolving compact disputes through agreements that act to amend or change the terms in the underlying compact. Further, the Federal Arbitration Act permits an arbitration award to be vacated where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award was not made. 9 U.S.C. 10(a)(4). When an arbitration award acts to amend or change a term in the underlying compact it necessarily triggers IGRA's Secretarial review and approval requirement prior to becoming effective or final.

Comments on § 293.22—Which has been redesignated as § 293.21—May a compact or amendment include provisions addressing standards for the operation of gaming activity and maintenance of the gaming facility?

The Department has redesignated proposed § 293.22 as § 293.21 in the final rule. Comments have been edited to reflect the new section number in the final rule.

A number of commenters expressed support for § 293.21 because it helps to specify what provisions may be included in a compact.

The Department acknowledges the comments.

One commenter requested the Department add the phrase ''within gaming spaces'' to proposed § 293.21. The commenter argued this edit would be consistent with other portions of the proposed rule and IGRA by distinguishing between the physical space where the ''standards for the operation of gaming'' may properly reach, and from the gaming facility spaces where the standards for maintenance and licensing may properly reach.

The Department acknowledges the comment and has added the suggested phrase ''within gaming spaces'' to § 293.21 in the final rule.

A commenter expressed concerns that § 293.21 may have unintended consequences by restricting provisions which a Tribe may consider germane and arising from the Tribe's conduct of gaming.

The Department acknowledges the comment and notes § 293.21 in the final rule requires evidence that the required standards are ''both directly related to and necessary for the licensing and regulation of the gaming activity.'' The Department seeks to clarify and enforce the proper scope of compacts negotiated under IGRA while deferring to and respecting a Tribe's sovereign decision making.

Comments on § 293.23—Which has been redesignated as § 293.22—May a compact or amendment include provisions that are directly related to the operation of gaming activities?

The Department has redesignated proposed § 293.23 as § 293.22 in the final rule. Comments have been edited to reflect the new section number in the final rule.

A number of commenters expressed support for proposed § 293.22, explaining §§ 293.22 and 293.23 will help limit State overreach into class III gaming.

The Department acknowledges the comments.

One commenter requested that the proposed § 293.22 be struck as unnecessary.

The Department declines to strike the proposed § 293.22 from the final rule. The Department notes that the proposed § 293.22 was added in response to comments received during the Tribal consultation process. The final rule further clarifies, consistent with the holding of *West Flagler Associates., Ltd.* v. *Haaland,* 71 F.4th 1059 (D.C. Cir. 2023), that ''directly related'' activities may include activities that occur off Indian lands.

Comments on § 293.24—Which has been redesignated as § 293.23—What factors will be used to determine whether provisions in a compact or amendment are directly related to the operation of gaming activities?

The Department has redesignated proposed § 293.24 as § 293.23 in the final rule. Comments have been edited to reflect the new section number in the final rule.

A number of commenters expressed support for § 293.23 and applauded revisions the Department included in response to comments received during Tribal consultation. Commenters noted that the provisions would codify the Department's longstanding ''direct connection test,'' which was found persuasive by the Ninth Circuit in *Chicken Ranch,* 42 F.4th at 1036. Commenters also stated that the proposed § 293.23 would help Tribes and States understand the limits that IGRA imposes on Tribal-State gaming compacts.

The Department acknowledges the comments.

A commenter requested the Department revise proposed § 293.23(a) by adding the phrase ''within gaming spaces'' for consistency with other provisions in the proposed rule.

The Department acknowledges the comment but declines to include the proposed revision, which would create a logical conflict with § 293.23(a)(2) which addresses the transportation of gaming devices and equipment.

Several commenters expressed concern that, as drafted, the proposed § 293.23 could be construed to prohibit provisions addressing the collective bargaining rights of employees of a Tribal gaming facility. The commenters argued such an interpretation of the regulations conflicts with existing Ninth Circuit caselaw, citing to *Coyote Valley II*[18] and the Biden Administration's stated policies in Executive Order 14025. One commenter requested the Department include clarifying language in § 293.23 and offered proposed regulatory text.

The Department acknowledges the comments and has included a new provision § 293.24 addressing rights of employees. The proposed regulations codify existing case law, including *Coyote Valley II,*[19] *Rincon,*[20] and *Chicken Ranch*.[21] These cases collectively recognize that a compact can include provisions addressing labor relations for employees, including service and hospitality workers (such as food and beverage, housekeeping, cleaning, bell and door services, and laundry employees) of the gaming facility or at a facility whose only significant purpose is to facilitate patronage at the gaming facility because gaming activities could not operate without someone performing those jobs and thus the labor is directly related to gaming activities and inseparable from gaming itself. Additionally, Tribes and Unions may negotiate labor relations agreements or labor relations ordinances outside of a compact. In light of this body of caselaw, in this labor-relations context only, gaming compacts may include provisions addressing labor relations, or the process for reaching a labor relations agreement, although portions of these provisions or processes may include labor activities performed beyond the physical areas where class III gaming actually takes place. Nothing in these regulations alters Unions' existing ability to negotiate labor relations agreements with Tribes or to advocate for Tribes to pass Tribal labor

[18] *In re Indian Gaming Related Cases (Coyote Valley II),* 331 F.3d 1094 (9th Cir. 2003).

[19] *In re Indian Gaming Related Cases (Coyote Valley II),* 331 F.3d 1094 (9th Cir. 2003).

[20] *Rincon Band of Luiseno Mission Indians* v. *Schwarzenegger,* 602 F.3d 1019, 1038–39 (9th Cir. 2010).

[21] *Chicken Ranch Rancheria of Me-Wuk Indians* v. *California,* 42 F.4th 1024 (9th Cir. 2022).

relations laws outside of the compacting process.

One commenter expressed concern that, as drafted, the proposed § 293.23(b) could be construed to prohibit provisions addressing employee licensing and back of house security requirements for non-gaming business and amenities which in some instances may be necessary due to proximity to gaming spaces and gaming facility design.

The Department acknowledges the comment and has included a new provision § 293.25 in the final rule clarifying that a compact may include provisions addressing employee licensing. The Department notes the National Indian Gaming Commission's regulations at 25 CFR part 556 and part 558 set minimum standards for background investigations and suitability determinations for tribally-issued licenses. The final rule includes a reference to these minimum standards as a baseline for employee background investigations and licenses issued pursuant to a compact to allow flexibility in the compact negotiation process while ensuring appropriate vetting and licensing of employees.

Several commenters requested the Department make typographical and stylistic edits to proposed § 293.23(c) to improve readability of the rule.

The Department acknowledges the comments and has accepted some of the proposed revisions in the final rule.

A commenter requested the Department clarify if the Department will defer to Tribes' sovereign decision making and negotiations when applying § 293.23. The commenter requested the Department include the phrase ''the Department may consider'' to § 293.23(c) and the phrase ''and the department will defer to the Tribe regarding whether a direct connection exists'' in § 293.23(d).

The Department acknowledges the comment but declines to accept the proposed language in the final rule.

Several commenters expressed concerns that proposed § 293.23(c)(1) could be misconstrued to limit or prohibit Statewide compacting schemes or compacts with ''most favored nation'' provisions. A commenter offered draft language to clarify the intended reach of § 293.23(c)(1).

The Department acknowledges the comments and has made a clarifying edit to § 293.23(c)(1) in the final rule, which states, ''Expressly limiting third party Tribes' rights to conduct gaming activities under IGRA.'' The Department has consistently distinguished compacts with Statewide gaming market regulatory schemes from compacts which limit third party Tribes' rights under IGRA. In both Michigan and Arizona, the States and the Tribes negotiated mutually beneficial agreements addressing the location and size of Tribal gaming as part of a Statewide scheme. These and similar compacts included Tribe-to-Tribe revenue sharing provisions to offset market disparities between urban and rural Tribes. These compacts are identical across the State or contain identical relevant provisions. The Department has consistently found these types of agreements consistent with IGRA.[22]

These are contrasted with compacts which act to prevent a Tribe who is not party to either the compact or the broader Statewide scheme from exercising its full rights to conduct gaming under IGRA, most notably in the form of geographic exclusivity from Tribal competition. The Department has consistently expressed concern with these types of arrangements, and in some cases disapproved compacts containing such provisions.[23] The Department has not limited this provision in the final rule to strictly ''anti-compete'' or ''geographic exclusivity from Tribal competition.'' The final rule at § 293.23(c)(1) provides the Secretary flexibility when evaluating other provisions which may also improperly limit a third-party Tribe's rights under IGRA.

A commenter questioned the legality and public policy rationale of protecting third-party Tribes while not offering similar protections to State-licensed commercial gaming operators.

The Department acknowledges the comment and notes Tribal gaming under IGRA is a critical source of revenue for Tribal governments. The compact negotiation process in IGRA envisions a negotiation between two sovereigns over gaming on Indian lands and therefore does not directly address provisions a State seeks to institute regarding non-Indian gaming. The final rule at § 293.27 addresses when it is appropriate for a compact to include revenue sharing provisions through which a State may also receive a source of governmental revenue. We note that the expansion of State lotteries and State licensed commercial gaming can place Tribes and States in direct competition for market share.

A commenter requested the Department revise proposed § 293.23(c)(5) to clarify that any intergovernmental agreements containing provisions that are not directly related to the Tribe's gaming activities are not enforceable through a compact.

The Department acknowledges the comment but declines to include the requested language in § 293.23(c)(5) of the final rule. The Department notes § 293.30 provides a grandfather clause for compacts previously approved by the Department. Compacts that were approved by operation of law, also known as ''deemed approved'' compacts, are approved only to the extent they are consistent with IGRA. 25 U.S.C. 2710(d)(8)(C). The Department takes no position on whether a Tribe or a State may subsequently challenge compact provisions as unenforceable or severable from the compact.

A number of commenters offered differing opinions on whether regulations should allow, require, or prevent tort claims from being heard in State courts. Some commenters noted the proposed § 293.23(c)(7) was consistent with case law, citing to *Pueblo of Santa Ana* v. *Nash,* 972 F. Supp. 2d 1254 (D.N.M. 2013). Other commenters requested the Department defer to a Tribe's sovereign decision making and amend § 293.23(c)(7) to

[22] *See, e.g.,* Letter from Ada Deer, Assistant Secretary—Indian Affairs to Jeff Parker, Chairperson, Bay Mills Indian Community dated November 19, 1993, approving the 1993 Michigan Compact; Letter from Bryan Newland, Principal Deputy Assistant Secretary—Indian Affairs, to Robert Miguel, Chairman Ak-Chin Indian Community, dated May 21, 2021, at 2, discussing the Tribe-to-Tribe revenue sharing and gaming device leasing provisions.

[23] *See, e.g.,* Letter from Gale Norton, Secretary of the Interior, to Cyrus Schindler, Nation President, Seneca Nation of Indians dated November 12, 2002, discussing the limits placed on Tonawanda Band and the Tuscarora Nation in the Seneca Nation's exclusivity provisions, and describing such provisions as ''anathema to the basic notion of fairness in competition and . . . inconsistent with the goals of IGRA''; Letter from Aurene Martin, Assistant Secretary—Indian Affairs (acting), to Harold ''Gus'' Frank, Chairman, Forest County Potawatomi Community, dated April 25, 2003, addressing the parties removal of section XXXI.B which created a 50 mile 'no fly zone' around the Tribe's Menominee Valley facility and explained ''we find a provision excluding other Indian gaming anathema to basic notions of fairness in competition and inconsistent with the goals of IGRA''; Letter from Aurene Martin, Assistant Secretary—Indian Affairs (acting), to Troy Swallow, President, Ho-Chunk Nation, dated August 15, 2003, addressing section XXVII(b), limiting the Governor's ability to concur in a two-part Secretarial Determination under section 20(b)(1)(A) of IGRA for another Tribe as ''repugnant to the spirit of IGRA''; Letter from Kevin Washburn, Assistant Secretary—Indian Affairs, to Harold Frank, Chairman, Forest County Potawatomi Community dated January 9, 2013, disapproving an amendment which would have made the Menominee Tribe guarantee Potawatomi's Menominee Valley facility profits as a condition of the Governor's concurrence for Menominee's Kenosha two-part Secretarial Determination, *affirmed by Forest Cty. Potawatomi Cmty.* v. *United States,* 330 F. Supp. 3d 269 (D.D.C. 2018). *See also* Letter from Bryan Newland, Assistant Secretary—Indian Affairs to Claudia Gonzales, Chairwoman, Picayune Rancheria of Chukchansi Indian of California, dated November 5, 2021, at 13.

allow for Tribes to request tort claims be heard in State court. Other commenters requested the Department revise § 293.23(c)(7) to effectively prohibit the inclusion of provisions addressing tort claims from compacts, arguing that such provisions can be overly burdensome on Tribes, while noting that the resolution of tort claims is not absolutely necessary for the licensing and regulation of gaming. Commenters offered proposed edits to § 293.23(c)(7) reflecting their stances on tort claims.

The Department acknowledges the comments and notes that these comments highlight the sensitive nature of provisions addressing tort claims in compacts. The Department declined to revise § 293.23(c)(7) in the final rule.

A commenter requested the Department revise proposed § 293.23(c)(8) to include provisions that would regulate conduct outside of the gaming spaces in addition to non-gaming Tribal economic development.

The Department has revised § 293.23(c)(8) in the final rule to reflect the proposed revision.

Several commenters requested the Department clarify in proposed § 293.23(c)(9) that class I and class II gaming are subject to the jurisdiction of Tribes and the United States at the exclusion of the States. Commenters offered draft language.

The Department acknowledges the comments but declines to accept the proposed language. The Department notes that IGRA at section 2710(a)(1) provides that class I gaming on Indian lands is within the exclusive jurisdiction of the Tribe and is not subject to the provisions of IGRA. IGRA further provides that class II gaming is subject to the jurisdiction of the Tribe and the National Indian Gaming Commission.

Comments on § 293.29—Which has been redesignated as § 293.26—May a compact or amendment include provisions addressing Statewide remote wagering or internet gaming?

The Department has redesignated proposed § 293.29 as § 293.26 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Several commenters requested the Department clarify, either in the final rule or in the preamble, that players who are located on a Tribe's Indian land must comply with IGRA when initiating an i-gaming wager. The commenters noted that not all States or commercial i-gaming operators are properly mapping and geo-fencing Indian lands within the State, which could result in a player inadvertently violating IGRA and other Federal laws by initiating a wager from the Indian lands of a Tribe who has not authorized the placement of such wagers.

The Department acknowledges the comments and encourages Tribes who are concerned that i-gaming wagers are being improperly initiated on their lands and being accepted off their lands to report concerns to the Secretary and the Department of Justice. In order for an i-gaming wager to be legally received on a Tribe's land, the wager must comply with both IGRA and other Federal laws, including the Unlawful internet Gambling Enforcement Act. 31 U.S.C. 5361–67 (UIGEA). The UIGEA requires that wagers must be legal both where they are initiated and where they are received. *See, e.g., State of Cal.* v. *Iipay Nation of Santa Ysabel,* 898 F.3d 960, 965 (9th Cir. 2018) (internal quotations omitted).

Several commenters requested the Department provide some flexibility to the requirement in proposed § 293.26(c) that the player initiating the wager not be located on another Tribe's land. The commenters noted that such flexibility may result in agreements between Tribes, through which novel solutions may emerge that allow for more Tribes to benefit from i-gaming.

The Department acknowledges the comments and has revised § 293.26(c) in the final rule to allow for wagers to be initiated on another Tribe's Indian lands if the Tribe has provided lawful consent. The Department also notes this is consistent with the UIGEA's exemption for Intratribal Transactions at 31 U.S.C. 5362(10)(C).

Several commenters requested the Department amend proposed § 293.26 to clarify that if a State allows any person, organization, or entity to engage in statewide mobile gaming for any purpose, the State is required under IGRA to negotiate with Tribes in the State to offer statewide mobile gaming, even if the State is unwilling to allocate its jurisdiction over wagers made by patrons located off of Indian lands to the Tribes. The commenters offered draft language for inclusion in proposed § 293.26.

The Department acknowledges the comments but declines to include the requested language in the final rule. Consistent with the D.C. Circuit's 2023 decision in *West Flagler Associates, Ltd.* v. *Haaland,* 71 F.4th 1059 (D.C. Cir. 2023), a compact may include provisions addressing regulatory issues concerning statewide mobile wagering provided that State law authorizes the portion of the wagering transaction occurring off of Indian lands. The Secretary, however, does not have the authority to unilaterally require a State to allocate jurisdiction over wagers made by patrons located off Indian lands in the State.

Many commenters support the inclusion of proposed § 293.26, especially in the rapidly changing digital world. However, many commenters argued Tribes already have the authority to conduct online gaming without the language proposed § 293.26. Some commenters requested the Department include language in the proposed § 293.26 to reflect that pre-existing authority.

The Department acknowledges the comments. The final rule incorporates and codifies existing Departmental practice and, where relevant, existing case law. Consistent with the D.C. Circuit's 2023 decision in *West Flagler Associates, Ltd.* v. *Haaland,* 71 F.4th 1059 (D.C. Cir. 2023), a compact may include provisions addressing regulatory issues concerning statewide mobile wagering provided that State law authorizes the portion of the wager transaction occurring off of Indian lands.

Many non-Tribal organizations expressed deep concern about proposed § 293.26. These comments state that the Department has no authority to implement proposed § 293.26 under *Chevron* or the major questions doctrine, and that this provision illegally expands Indian gaming statewide and off-reservation.

The Department acknowledges the comments. The final rule incorporates and codifies existing Departmental practice and, where relevant, existing case law. Consistent with the D.C. Circuit's 2023 decision in *West Flagler Associates, Ltd.* v. *Haaland,* 71 F.4th 1059 (D.C. Cir. 2023), a compact may include provisions addressing regulatory issues concerning statewide mobile wagering provided that State law authorizes the portion of the wager transaction occurring off of Indian lands.

Comments on § 293.25—Which has been redesignated as § 293.27—What factors will the Secretary analyze to determine if revenue sharing is lawful?

The Department has redesignated proposed § 293.25 as § 293.27 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Several commenters expressed support for the proposed § 293.27, and note it appears to codify existing Departmental practice while incorporating Tribal consultation comments.

The Department acknowledges the comments.

Several commenters expressed concern that § 293.27 is overly restrictive and may result in incentivizing direct competition from State lotteries and State licensed commercial gaming.

The Department acknowledges the comments and notes the final rule in § 293.27 codifies the Department's longstanding test for evaluating revenue sharing. IGRA prohibits a State from seeking to impose any tax, fee, charge, or other assessments on a Tribe's conduct of gaming. The final rule in § 293.27 addresses when it is appropriate for a compact to include revenue sharing provisions through which a State may also receive a source of governmental revenue. Alternatively, States may choose to license and tax commercial gaming operations within the State. We note the expansion of State lotteries and State licensed commercial gaming can place Tribes and States in direct competition for market share.

Several commenters requested the Department include examples of previously approved ''meaningful concessions,'' similar to the lists found in § 293.23.

The Department acknowledges the comments and notes these comments highlight the sensitive nature of revenue sharing in compacts. The Department declines to include a list of meaningful concessions as both the concession and the revenue sharing rate must be evaluated on a case-by-case basis. The Department has previously approved revenue sharing in exchange for meaningful concessions, including geographic exclusivity from State-licensed gaming and statewide mobile or i-gaming exclusivity.[24] The Department cautions parties not to negotiate for a future meaningful concession which may require intervening Federal or State actions as that concession may be considered illusory.

A commenter requested carve out language for payments to local governments. The commenter argued that payments to local governments are consistent with IGRA's restrictions on the use of net gaming revenue in section 2710(b)(2)(B). The commenter argued Intergovernmental Agreements that include revenue sharing with local governments are beneficial to the relationship between the Tribe and local governments and help support critical needs of both governments. The commenter offered draft language establishing a test for such payments:

- In considering whether a compact provision providing for the Tribe's payment of gaming revenues to local governments is permissible, the Department may consider evidence submitted, at the insistence of the Tribe, that such a provision:
  - was created voluntarily by the Tribe;
  - is in exchange for benefits received by the Tribe; and/or
  - to offset the costs borne by such local governments as a result of the Tribe conducting its gaming activities.

The Department acknowledges the comment. The Department declines to accept the proposed regulatory text as it may result in unintended consequences. The Department notes the proposed test is consistent with past Departmental review and approval of revenue sharing provisions that included payments to local governments. The Department also notes intergovernmental agreements between Tribes and States, or local governments can be beneficial; however, Congress provided a narrow scope of topics Tribes and States may include when negotiating a Tribal-State gaming compact. IGRA limits a Tribe's use of gaming revenue to: funding Tribal governmental operations or programs; providing for the general welfare of the Tribe and its members; promoting Tribal economic development; donating to charitable organizations; or helping fund operations of local governmental agencies. 25 U.S.C. 2710(b)(2)(B). However, IGRA in section 2710(d)(4) prohibits the State or its political subdivisions from imposing a tax, fee, charge, or other assessment. The Department reads section 2710(b)(2)(B) of IGRA to permit a Tribe to voluntarily help fund operations of local governmental agencies, not as an end-run around the prohibition against imposed taxes, fees, charges, or other assessments in section 2710(d)(4). The Department included payments to local governments in §§ 293.4, 293.8, 293.27, and 293.29, of the final rule in an effort to address mandated intergovernmental agreements which may disguise improper taxes.

Several commenters requested the Department clarify, either in the regulatory text or the preamble, that exclusivity provisions which contain enforceable remedial provisions (also referred to as ''poison pill'' provisions) triggered by State action are considered directly related to gaming and permitted under IGRA.

The Department acknowledges the comments and notes that revenue sharing for geographic or game specific exclusivity from State sponsored or State licensed commercial gaming without enforceable remedial provisions can be considered illusory.[25] The Department notes the ''poison pill'' provision must also comply with § 293.23(c)(1).

A commenter requested the Department cease its practice of approving ''exclusivity compacts,'' which limit commercial gaming operators' access to some gaming markets.

The Department acknowledges the comment and notes Tribal gaming under IGRA is a critical source of revenue for Tribal Governments. The compact negotiation process in IGRA envisions a negotiation between two sovereigns. IGRA prohibits a State from seeking to impose any tax, fee, charge, or other assessments on a Tribes conduct of gaming. The final rule in § 293.27 addresses when it is appropriate for a compact to include revenue sharing provisions through which a State may also receive a source of governmental revenue. Alternatively, States may choose to license and tax commercial gaming operations within the State. We note the expansion of State lotteries and State licensed commercial gaming can place Tribes and States in direct competition for market share.

A commenter requested that the Department define the term ''projected revenue'' because most compacts with revenue sharing call for the State to receive a percentage of gross revenue regardless of the costs required to develop, maintain, and regulate gaming activities. The commenter also asks the Department to analyze the need to distinguish ''gross revenue'' from ''net revenue.'' Another commenter requested the Department address ''free play'' and ''point play'' as part of the revenue calculation in the regulations.

The Department acknowledges the comment but declines to define the terms or include a discussion of ''free'' or ''point'' play in the regulations in order to retain some flexibility in what evidence can be submitted. The IGRA sets a benchmark that requires the Tribe

[24] *See, e.g.,* Letter from Bryan Newland, Assistant Secretary—Indian Affairs to the Honorable R. James Gessner, Jr., Chairman, Mohegan Tribe of Indians dated September 10, 2021, approving the Tribe's compact amendment with the State of Connecticut; and Letter from Bryan Newland, Assistant Secretary—Indian Affairs to the Honorable Rodney Butler, Chairman, Mashantucket Pequot Indian Tribe dated September 10, 2021, approving the Tribe's amendment to its Secretarial Procedures, as amended in agreement with the State of Connecticut.

[25] *See, e.g.,* Letter from Kevin Foley, Assistant Secretary—Indian Affairs to the Honorable George E. Pataki, Governor of New York, disapproving the Tribal-State Compact between the State of New York and the St. Regis Mohawk Tribe dated July 26, 2000.

receive at least 60 percent of net revenue. The National Indian Gaming Commission relies on Sole Proprietary Interest and IGRA section 2710(b)(2)(A), consistent with sections 2710(b)(4)(B)(III) and 2711(c), which collectively require that the Tribe receive at least 60 percent of net revenue. *See, e.g.,* NIGC Bulletin No. 2021–6. Section 293.27(b)(3) reinforces this requirement and set an upper limit for revenue sharing. The National Indian Gaming Commission's regulations at 25 CFR 514.4(c) provide guidance on revenue calculation.

One commenter requested the Department clarify if there is a difference between ''great scrutiny'' and ''strict scrutiny.''

The Department acknowledges the comment. The Department's description of its review of revenue sharing provisions has evolved over time. Some of the Department's early revenue sharing decisions stated, ''the Department has sharply limited the circumstances'' of revenue sharing; that phrasing was replaced with ''great scrutiny,'' which is the standard adopted in these regulations.[26]

One commenter requested adding language to allow Tribes to request guidance from the Secretary regarding revenue sharing terms during the life of the compact to ensure the Tribe remains the primary beneficiary of gaming. The commenter provided draft language, which included adding several paragraphs to § 293.27. The proposed additional language would provide a process for Tribes to request guidance letters, including a formal legal opinion regarding revenue sharing during the life of the compact. The Department acknowledges the comments but declines to include the requested provisions in the final rule. The Department has long expressed concern with relatively high revenue sharing arrangements, often permitting compacts containing them to go into effect by operation of law while occasionally disapproving them. The Department's understanding of revenue sharing provisions, as well as exclusivity provisions, has evolved consistent with case law and experiences of Tribes operating under differing revenue sharing provisions for more than 30 years. The Department has long offered, and will continue to offer, technical assistance—highlighting the Department's precedents as well as observed best practices—to parties negotiating revenue sharing provisions. The Department notes that best practices include careful drafting of both the terms of the Tribe's exclusivity—or other meaningful concession—along with remedies for breach and triggers for periodic renegotiation of specific provisions.

A commenter requested the Department include carve out language for Tribe-to-Tribe revenue sharing but did not provide proposed regulatory text.

The Department acknowledges the comment but declines to include a specific carveout for Tribe-to-Tribe revenue sharing. The Department notes there are several existing examples of compacts which contain a Statewide gaming market regulatory scheme and include Tribe-to-Tribe revenue sharing provisions to offset market disparities between urban and rural Tribes. These compacts are identical across the State or contain identical relevant provisions. The Department has consistently found these types of agreements consistent with IGRA.[27]

Comments on § 293.26—Which has been redesignated as § 293.28—May a compact or extension include provisions that limit the duration of the compact?

The Department has redesignated proposed § 293.26 as § 293.28 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Many commenters expressed support for the proposed § 293.28—especially regarding the Department's preference for long-term compacts. The commenters noted compact negotiations are a time and resource intensive effort.

The Department acknowledges the comments.

Several commenters requested the Department define ''long-term'' and offered suggested minimum terms ranging from 15–20 years.

The Department declines to define what a ''long-term'' compact is because that may have unintended consequences.

Other commenters requested the Department allow flexibility for compacts with ''stacked renewal terms,'' which allow the compact to automatically renew for a defined period of time if neither party objects. Commenters also requested the Department include flexibility for reopener provisions.

The Department acknowledges the comments and notes that § 293.28 allows flexibility for ''stacked renewal terms'' or other duration provisions which meet the needs of the parties. The Department notes that a best practice includes triggers for periodic renegotiation of specific provisions, including adding games, adjusting for technological changes, and market conditions.

A commenter believes that proposed § 293.28 will needlessly limit compact negotiations, arguing that the proposed § 293.28 is inconsistent with prior affirmative approvals of compacts with fixed termination dates.

The Department acknowledges the comment and notes § 293.28 in the final rule allows for compacts with fixed termination dates. The Department notes the compact negotiation process can be lengthy and often requires a significant investment of resources.

A commenter requested the Department clarify that the existence of a compact between a Tribe and the State does not alleviate the State's obligation under IGRA to negotiate new compacts or amendments in good faith at the request of the Tribe, particularly for a period of time not covered by the existing compact.

The Department acknowledges the comments. The Department notes IGRA at 25 U.S.C. 2710(d)(3)(A) obligates a State to negotiate with a Tribe in good faith at the request of the Tribe. The existence of a compact does not absolve the State of its duty under IGRA.

Comments on Proposed § 293.27—May a compact or amendment permit a Tribe to engage in any form of class III gaming activity?

Several commenters expressed support for the proposed § 293.27. Commenters noted that the proposed § 293.27 is consistent with existing case law, citing to *Mashantucket Pequot Tribe* v. *Connecticut,* 913 F. 2d 1024 (2d Cir. 1990), which the commenter described as holding that Congress intended to codify the test set out in *California* v. *Cabazon Band of Mission Indians,* 480 U.S. 202 (1987). According to these commenters, the Second Circuit concluded in the *Mashantucket Pequot* case that when Congress used the phrase ''permits such gaming'' in IGRA,

[26] *See, e.g.,* Letter from Gale Norton, Secretary of the Interior, to Cyrus Schindler, Nation President, Seneca Nation of Indians dated November 12, 2002, at 3; *and* Letter from Gale Norton, Secretary of the Interior, to Christobal ''Chris'' Severs, Chairperson, Pauma Band of Luiseno Mission Indians dated August 20, 2004, at 2; *see also,* Letter from Larry Echo Hawk, Assistant Secretary—Indian Affairs to Sherry Treppa, Chairperson, Habematolel Pomo of Upper Lake dated August 17, 2010.

[27] *See, e.g.,* Letter from Ada Deer, Assistant Secretary—Indian Affairs to Jeff Parker, Chairperson, Bay Mills Indian Community dated November 19, 1993, approving the 1993 Michigan Compact; Letter from Bryan Newland, Principal Deputy Assistant Secretary—Indian Affairs, to Robert Miguel, Chairman Ak-Chin Indian Community, dated May 21, 2021, at 2, discussing the Tribe-to-Tribe revenue sharing and gaming device leasing provisions.

Congress categorically refers to class III gaming. Commenters also opined this rule would benefit Tribes during compact negotiations.

The Department acknowledges the comments and, after further consideration and review of all comments, the Department declines to adopt proposed § 293.27 in the final rule.

Several commenters request that the Department provide additional analysis of the Department's interpretation of conflicting caselaw to bolster proposed § 293.27 against expected litigation.

The Department acknowledges the comments, and after further consideration, the Department declines to adopt proposed § 293.27 in the final rule.

Several commenters are concerned the proposed § 293.27 would take away States' power to limit class III gaming. Commenters argued that a State's allowance of charitable casino nights should not necessarily result in full blown casino gambling under IGRA. Others misconstrued the proposed § 293.27 as requiring a State to negotiate over forms of gaming expressly prohibited by State law. Commenters also noted proposed § 293.27 conflicts with some caselaw, citing to *Rumsey Indian Rancheria of Wintun Indians* v. *Wilson,* 64 F. 3d 1250 (9th Cir. 1994) and *Cheyenne River Sioux Tribe* v. *South Dakota,* 3 F. 3d 273 (8th Cir. 1993).

The Department acknowledges the comments, and after further consideration, the Department declines to adopt proposed § 293.27 in the final rule.

One commenter argued that the proposed § 293.27 impermissibly expands the scope of the Secretary's review of a compact to include the compact negotiation process. The Department acknowledges the comments, and after further consideration, the Department declines to adopt proposed § 293.27 in the final rule.

Comments on § 293.28—Which has been redesignated as § 293.29—May any other contract outside of a compact regulate Indian gaming?

The Department has redesignated proposed § 293.28 as § 293.29 in the final rule. Comments have been edited to reflect the new section number in the final rule.

Several commenters expressed support for proposed § 293.29. Commenters requested that the Department include internal cross references to § 293.4 and § 293.8, as well as make clarifying edits for consistency across the proposed rule.

The Department acknowledges the comments and has made edits for clarity and consistency in the final rule and has included in § 293.29 cross references to § 293.4 and § 293.8.

One commenter requested clarity as to what agreements the Department may consider as regulating gaming, thus triggering § 293.29. The commenter also requested the Department clarify that agreements addressing public health and safety are allowable as either a separate agreement, or as part of the compact.

The Department acknowledges the comment. The final rule in §§ 293.4, 293.8, and 293.29 provide guidance on what types of agreements the Department is addressing. IGRA establishes a limited scope of appropriate topics in a Tribal-State gaming compact. Thus, in reviewing submitted compacts and amendments, the Secretary is vested with the authority to determine whether the compacts contain topics outside IGRA's limited scope. Agreements that do not regulate gaming do not need to be submitted to the Department for approval as part of a Tribal-State gaming compact. Likewise, agreements between Tribes and the State and/or local governments that facilitate cooperation and good governance, but that do not regulate gaming, limit a Tribe's use and enjoyment of its lands, or require payment of gaming revenue to local governments, should not be incorporated into or referenced as a requirement of a Tribal-State gaming compact.

Several commenters objected to proposed § 293.29 and argued that it exceeds the Secretary's authority to review compacts under IGRA. The commenters argue that many Tribes have intergovernmental agreements with local governments that address a wide range of topics which may affect a Tribe's gaming operation. The commenters argue that such agreements should not be subject to Secretarial Review as compacts or amendments under IGRA.

The Department acknowledges the comments and notes that § 293.29 has been revised to clarify that only agreements between Tribes and States, or States' political subdivisions, which govern gaming and include payments from gaming revenue, are covered by this section. In enacting IGRA, Congress delegated authority to the Secretary to review compacts and ensure that they comply with IGRA, other provisions of Federal law that do not relate to jurisdiction over gaming on Indian lands, and the trust obligations of the United States. 25 U.S.C. 2710(d)(8)(B)(i)–(iii). IGRA establishes a limited scope of appropriate topics in a Tribal-State gaming compact. Thus, in reviewing submitted compacts and amendments, the Secretary is vested with the authority to determine whether the compacts contain topics outside IGRA's limited scope. IGRA limits a Tribe's use of gaming revenue to: funding Tribal governmental operations or programs; providing for the general welfare of the Tribe and its members; promoting Tribal economic development; donating to charitable organizations; or helping fund operations of local governmental agencies. 25 U.S.C. 2710(b)(2)(B). However, IGRA in section 2710(d)(4) prohibits the State or its political subdivisions from imposing a tax, fee, charge, or other assessment. The Department reads section 2710(b)(2)(B) to permit a Tribe to voluntarily help fund operations of local governmental agencies, not as an end-run around the prohibition against imposed taxes, fees, charges, or other assessments in section 2710(d)(4). Agreements that do not regulate gaming do not need to be submitted to the Department for approval as part of a Tribal-State gaming compact. Likewise, agreements between Tribes and the State and/or local governments that facilitate cooperation and good governance, but that do not regulate gaming or require payment of gaming revenue to local governments, should not be incorporated into or referenced as a requirement of a Tribal-State gaming compact.

Comments on § 293.30—What effect does this part have on pending requests, final agency decisions already issued, and future requests?

Several commenters expressed support for proposed § 293.30.

The Department acknowledges the comments.

A commenter requested that this regulation include a grandfather clause for currently valid compacts.

The Department acknowledges the comment and notes the final rule in § 293.30(b) contains a grandfather clause and states that part 293 does not alter final agency decisions made pursuant to this part before March 22, 2024.

Comments on § 293.31—How does the Paperwork Reduction Act affect this part?

No comments were submitted regarding proposed § 293.30.

General Comments Not Otherwise Addressed Above

Various commenters requested more time to comment on the regulations.

The Department acknowledges the comment and notes that the Department issued a Dear Tribal Leaders letter with an attached Consultation Draft of Proposed Changes to part 293 on March 28, 2022. The letter and Consultation Draft were made publicly available on the Department's website at *https://www.bia.gov/as-ia/oig.* The Department then held two listening sessions, four formal consultation sessions, and accepted written comments until June 30, 2022. The Department incorporated Tribal feedback into the proposed rule and included a summary and responded to comments received during Tribal Consultation in the Department's Notice of proposed rulemaking. Additionally, the Department published a follow up Dear Tribal Leaders letter on December 6, 2022, held two virtual consultation sessions and one in-person consultation, and accepted written comments until March 1, 2023. The Department received written and verbal comments from over 56 entities during the public comment period on part 293. Commenters included members of Congress; Tribal, State, and local governments; Tribal and commercial gaming industry organizations; and individual citizens. In total, the submissions were separated into 607 individual comments.

Many Tribes commented to express appreciation for the hard work and consideration exhibited in the Notice of proposed rulemaking. Many Tribes also stated the Proposed Regulations are a step in the right direction, but do not go far enough to protect Tribal sovereignty and Indian gaming.

The Department acknowledges the comments.

Some non-Tribal commenters commented to discourage any allowance of Indian gaming.

The Department acknowledges the comments and notes IGRA provides statutory limits on Tribes' sovereign right to conduct gaming.

One commenter requested the Department publish a gaming handbook.

The Department is in the process of finalizing a handbook addressing the Department's part 292 regulations (25 CFR part 292), which implement IGRA's exceptions to its general prohibition on the conduct of gaming on lands acquired in trust after October 17, 1988, and revisions to the fee-to-trust regulations in part 151. The Department's part 292 regulations were promulgated in 2008 and are not impacted by this rule making or the Department's part 151 rulemaking.

Several commenters stated the process was not transparent and that Tribes received unfair special treatment. They suggest releasing detailed records of Tribal comments from June 2022. Some commenters asked if the Department had engaged with commercial gaming interests in addition to Tribal governments during the development of the proposed rule.

The Department followed the procedures outlined in the Administrative Procedure Act at 5 U.S.C. 553, 556, and 557, as well as relevant White House, Congressional, and Departmental policies on Tribal consultations. The Department's part 293 regulations address the Tribal-State gaming compact review and approval process. The Department's Notice of proposed rulemaking contained a detailed summary and response to comments received during the Tribal Consultation process. The Department also posted a copy of the Tribal Consultation materials on the BIA's public Tribal-Consultations website, including a copy of the Dear Tribal Leader Letter, consultation dates, and transcripts of the consultation sessions. *See https://www.bia.gov/service/tribal-consultations/nprm-25-cfr-151-land-acquisitions-and-25-cfr-293-class-iii-tribal.*

One commenter requested a process for Tribes to seek Department of Justice intervention as part of a *Seminole* fix.

The Department declines to adopt a formal codification of its practice of providing technical assistance to Tribes and States. The Department will continue to coordinate with the Department of Justice and the National Indian Gaming Commission regarding enforcement of IGRA.

Some Tribes believe that the proposed changes to part 293 will be hollow without changes to part 291.

The Department notes that a minority of Federal circuits have invalidated the Department's part 291 regulations (25 CFR part 291), which were promulgated to provide Tribes with Secretarial Procedures in response to the Supreme Court's decision in *Seminole Tribe of Florida* v. *Florida,* 517 U.S. 44 (1996), which found that Congress lacked the authority to subject States to suits by Indian Tribes under IGRA. The Department is considering all avenues, including technical amendments to part 291. The proposed rule reflects the Department's efforts to ensure all Tribes benefit from the goals of IGRA, while enforcing IGRA's limited scope of compacts. The inclusion of clear guidance and codification of key tests is a step in this direction. The Department declines to codify a formal process by which Tribes may submit evidence of bad faith in negotiations to the Department for its consideration and referral to the Department of Justice. The Department has long coordinated with the Department of Justice and the National Indian Gaming Commission regarding enforcement or non-enforcement of IGRA's requirement that a Tribe conduct class III gaming pursuant to a compact or secretarial procedures. *See, e.g.,* Statement of Indian Gaming in New Mexico, DOJ 95–459 (August 28, 1995); Statement of Indian Gaming in New Mexico, DOJ 95–553 (October 27, 1995); and Justice Department and California announce plan for orderly transition to legal Indian Gaming, DOJ 98–102 (March 6, 1998). The Department will continue to coordinate with the Department of Justice and the National Indian Gaming Commission regarding enforcement of IGRA.

Some non-Tribal commenters believe the Department has failed to conduct a detailed review of the economic effects of the proposed rule despite being required to conduct one under the law. Additionally, these commenters believe a NEPA analysis must be undertaken before adopting a final rule.

The Department acknowledges the comments and notes that the final rule codifies existing case law and Departmental process. The Department notes comments suggesting specific economic impacts of the proposed rule contained material misrepresentations of the effect of the proposed rule and conflated the Department's part 293 rulemaking with the Department's part 151 fee-to-trust rulemaking efforts as part of the assessment of economic impacts of the rule (25 CFR part 151). The Department also notes that the notice of proposed rulemaking addressed the Department's compliance with NEPA.

One commenter believes the Department is asserting too much authority in a way that challenges Tribal sovereignty.

The Department acknowledges the comment and notes that the Department strives to strengthen its government-to-government relationship with Tribes and recognizes their right to self-governance and Tribal sovereignty.

Several commenters asked various process and implementation questions. Other commenters included comments addressing the Department's part 151 fee-to-trust rulemaking efforts.

The Department addressed the comments on the proposed 25 CFR part 151 in the part 151 rulemaking

published December 12, 2023, at 88 FR 86222.

V. Summary of Changes by Section

The Department primarily proposed technical amendments to the existing process-based regulations, including the title. The proposed technical amendments are intended to clarify the submission and review process and conforming edits for internal consistency and improved readability. The Department also proposed to add 15 sections addressing substantive issues and to organize part 293 into 4 subparts. The Department proposed to amend the title of part 293 by removing the word ''process'' from the title to read: ''Part 293 Class III Tribal State Gaming Compacts.'' The Department's proposed amendments incorporated comments on the Consultation Draft that were received during Tribal consultation and were discussed in the notice of proposed rulemaking. The Department makes these changes in the final rule. The final rule incorporates comments received during the public comment period and during Tribal consultation on the proposed rule, and as discussed above in the summary and response to comments section.

A. Subpart A—General Provisions and Scope

The Department proposed to organize part 293 into 4 subparts with subpart A, titled ''General Provisions and Scope'' containing §§ 293.1 through 293.5. The Department implements this organizational change in the final rule.

Amendments to § 293.1—What is the purpose of this part?

The Department proposed technical amendments to clarify that the proposed part 293 regulations contain both procedural and substantive regulations for the submission and review of Tribal-State gaming compacts. The Department implements this change in the final rule with additional clarifying edits to improve readability.

Amendments to § 293.2—How are key terms defined in this part?

The Department proposed restructuring the existing § 293.2 by removing the subsection paragraph for the introductory sentence and editing that sentence for clarity. The restructuring improves clarity by using subsection paragraphs for each defined term. The Department proposed edits to the existing definitions for *Amendment, Compact* or *Tribal-State Gaming Compact,* and *Extension* to improve clarity and respond to comments received during the government-to-government Tribal consultation process. The Department also proposed seven new definitions: *gaming activity* or *gaming activities, gaming facility, gaming spaces, IGRA, meaningful concession, substantial economic benefit,* and *Tribe.* The Department implements these changes in the final rule with additional clarifying edits in response to comments received during the public comment period. Each defined term is discussed below:

- *Amendment* is a defined term in the 2008 Regulations. The Department proposed a clarifying revision to the definition, as well as adding a new § 293.2(a)(2) addressing agreements between a Tribe and a State to change the Tribe's Secretarial Procedures prescribed under 25 U.S.C. 2710(d)(7)(B)(vii). The Department implements these changes in the final rule.
- *Compact* or *Tribal-State Gaming Compact* is a defined term in the 2008 Regulations. The Department proposed clarifying and conforming edits to the definition. The Department implements these changes in the final rule.
- *Extension* is a defined term in the 2008 Regulations. The Department proposed clarifying and conforming edits to the definition. The Department implements these changes in the final rule.
- *Gaming activity* or *gaming activities* are interchangeable terms repeatedly used in IGRA, but not defined by IGRA or the Department's 2008 Regulations. The Department proposed defining these terms as used in part 293 and in Tribal-State gaming compacts as, ''the conduct of class III gaming involving the three required elements of chance, consideration, and prize.'' The Department includes this definition in the final rule.
- *Gaming Facility* is a term used in IGRA at 25 U.S.C. 2710(d)(3)(C)(vi) but is not defined by IGRA. The IGRA permits a compact to include ''standards for the operation of such activity and maintenance of the gaming facility, including licensing.'' As a result, compacting parties have occasionally used this provision to extend State regulatory standards beyond the maintenance and licensing of the physical structure where the Tribe is conducting gaming. The Department proposed defining *gaming facility* as ''the physical building or structure situated on Indian lands where the gaming activity occurs.'' [28] This definition of *gaming facility* addresses building maintenance and licensing under the second clause of 25 U.S.C. 2710(d)(3)(C)(vi) and is intended to be narrowly applied to only the building or structure where the gaming activity occurs. The Department includes this definition in the final rule.
- *Gaming spaces* is a term that the Department has used to clarify the physical spaces a compact may regulate. The Department proposed defining *Gaming Spaces* in the proposed rule and notes that proposed definition contained a typographical error. The Department includes *Gaming Spaces* as a defined term in the final rule with edits to correct the typographical error.
- *IGRA* is the commonly used acronym for the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701–2721 (1988)) and any amendments. The Department proposed including *IGRA* as a defined term to facilitate consistency and readability in the regulations. The Department includes this definition in the final rule.
- *Meaningful concession* is a term that the Department has adopted from Ninth Circuit case law as part of the Department's long-standing test for revenue sharing provisions. The Department proposed including *meaningful concession* as a defined term. The Department includes *meaningful concession* as a defined term. The Department revised the definition of *meaningful concession* in § 293.2(h)(2) of the final rule by adding the word ''activity'' in response to comments received on the proposed rule. The final rule defines *Meaningful concession* as:
  - Something of value to the Tribe;
  - Directly related to gaming activity;
  - Something that carries out the purposes of IGRA; and
  - Not a subject over which a State is otherwise obligated to negotiate under IGRA.
- *Substantial economic benefit* is a term that the Department has adopted from Ninth Circuit case law as part of the Department's long-standing test for revenue sharing provisions. The Department proposed (and includes in the final rule) defining *substantial economic benefit* as:
  - A beneficial impact to the Tribe;
  - Resulting from a meaningful concession;
  - Made with a Tribe's economic circumstances in mind;
  - Spans the life of the compact; and

[28] *See, e.g.,* Letter to the Honorable Peter S. Yucupicio, Chairman, Pascua Yaqui Tribe of Arizona, from the Director, Office of Indian Gaming, dated June 15, 2012, at 5, and fn. 9, discussing the American Recovery & Reinvestment Act of 2009 and the IRS's ''safe harbor'' language.

○ Demonstrated by an economic/market analysis or similar documentation submitted by the Tribe or the State.

• *Tribe* is a term the Department proposed as a defined term to facilitate consistency and readability in the regulations. The Department includes this definition in the final rule.

Amendments to § 293.3—What authority does the Secretary have to approve or disapprove compacts and amendments?

The Department proposed clarifying and conforming edits to the existing § 293.3. The Department implements these changes in the final rule and has added the phrase ''under IGRA'' to the first sentence of § 293.3.

Amendments to § 293.4—Are compacts and amendments subject to review and approval?

The Department proposed clarifying edits to the existing § 293.4 by combining paragraphs (a) and (b) from the 2008 Regulations into a new paragraph (a), adding a new paragraph (b) which was proposed during Tribal consultation, and adding a new paragraph (c) which creates a process by which the parties may seek a determination if an agreement or other documentation is a ''compact or amendment'' without submitting that agreement for review and approval pursuant to IGRA. This process is modeled on the National Indian Gaming Commission's practice of issuing declination letters for agreements which do not trigger the Chairman's review and approval of management contracts as required by IGRA at 25 U.S.C. 2711.

The Department implements these changes in the final rule with additional clarifying edits in response to comments received during the public comment period. These revisions include changes to the sentence structure in § 293.4(b)(1) through (4) for improved clarity including duplicative phrasing and starting each subsection sentence with a verb, and revisions to § 293.4(c) to clarify when the 30-day review period begins. The Department has also revised the timeline for a § 293.4(c) determination from 60 days to 30 days in response to comments received, and for consistency with 25 CFR 84.005, which implements the Departments review of ''section 81'' contracts. The Department has also included a clarification that if an agreement is determined to be a compact or amendment, it must be resubmitted for Secretarial review and approval.

Amendments to § 293.5—Are extensions to compacts subject to review and approval?

The Department proposed clarifying and conforming edits for consistency and readability to the existing § 293.5. The Department also proposed adding a sentence which codifies the Department's long-standing practice that notice of an extension must be published in the **Federal Register** to be in effect.[29] The Department implements these changes in the final rule with a conforming edit to the citation to § 293.8(a) through (c).

B. Proposed Subpart B—Submission of Tribal-State Gaming Compacts

The Department proposed to organize part 293 into 4 subparts with subpart B, titled ''Submission of Tribal-State Gaming Compacts'' containing §§ 293.6 through 293.9. The Department implements this organizational change in the final rule.

Amendments to § 293.6—Who can submit a compact or amendment?

The Department proposed a conforming edit for consistency to § 293.6. The Department implements this change in the final rule.

Amendments to § 293.7—When should the Tribe or State submit a compact or amendment for review and approval?

The Department proposed conforming edits for consistency to both the heading and the body of § 293.7. The Department implements these changes in the final rule.

Amendments to § 293.8—What documents must be submitted with a compact or amendment?

The Department proposed conforming edits for consistency to § 293.8. Additionally, the Department proposed to renumber the existing paragraphs and add a new paragraph (d). The proposed paragraph (d) clarifies that a compact submission package should include any agreements between the Tribe and the State, or its political subdivisions, which are required by the compact or amendment and either involve payments made by the Tribe from gaming revenue, or restricts or regulates the Tribe's use and enjoyment of its Indian lands, as well as any ancillary agreements, documents, ordinances, or laws required by the compact which the Tribe determines is relevant to the Secretary's review. The Department's review of the compact includes analyzing if the provision(s) requiring ancillary agreements, documents, ordinances, or laws violate IGRA or other Federal law because the underlying agreement includes provisions prohibited by IGRA, and therefore the Secretary may disapprove the compact.

The Department incorporates the proposed changes to § 293.8 with additional clarifying and conforming edits in the final rule.

Amendments to § 293.9—Where should a compact or amendment be submitted for review and approval?

The Department proposed conforming edits for consistency to § 293.9 and a proposed new sentence to permit electronic submission of compacts. The Office of Indian Gaming will accept and date stamp electronic submissions for the purpose of initiating the 45-day review period. The first copy of a compact or amendment that is received and date stamped initiates the 45-day review period. The Department notes, however, that § 293.8(a) requires submission of at least one original paper copy of the fully executed compact or amendment if the compact or amendment was submitted electronically and the compact or amendment was executed utilizing ''wet'' or ink signatures. The Department will accept digitally signed original copies provided digital signatures are consistent with applicable Tribal and State law. The Department implements these changes in the final rule.

C. Proposed Subpart C—Secretarial Review of Tribal-State Gaming Compacts

The Department proposed to organize part 293 into 4 subparts with subpart C, titled ''Secretarial Review of Tribal-State Gaming Compacts'' containing §§ 293.10 through 293.16. The proposed change included renumbering the existing § 293.14 *When may the Secretary disapprove a compact or amendment?* as § 293.16; renumbering and renaming the existing § 293.15 *When does an approved or considered-to-have-been-approved compact or amendment take effect?* as § 293.14 *When does a compact or amendment take effect?;* and adding a new § 293.15 *Is the Secretary required to disapprove a compact or amendment that violates IGRA?.* The Department implements these organizational changes in the final rule. The Department after further consideration declines to adopt proposed § 293.15 in the final rule. The existing § 293.14 *When may the Secretary disapprove a compact or amendment?* is redesignated as § 293.15 in the final rule.

[29] *See, e.g.,* final rule, 25 CFR part 293, 73 FR 74004, 74007 (Dec. 5, 2008).

Amendments to § 293.10—How long will the Secretary take to review a compact or amendment?

The Department proposed a conforming edit to § 293.10 for consistency. The Department implements this change in the final rule.

Amendments to § 293.11—When will the 45-day timeline begin?

The Department proposed conforming edits to § 293.11 for consistency with proposed changes to § 293.9, and a new sentence providing the Department will provide an email acknowledgement to the Tribe and the State of receipt and provide the date of the 45th day for electronically submitted compacts or amendments. The Department implements these changes, along with clarifying edits to § 293.11, in the final rule.

Amendments to § 293.12—What happens if the Secretary does not act on the compact or amendment within the 45-day review period?

The Department proposed clarifying edits to § 293.12 for consistency and readability. Additionally, the Department proposed a new provision codifying the Department's practice of issuing ministerial letters that inform the parties that the compact or amendment has been approved by operation of law after the 45th day. The proposed § 293.12, also codifies the Department's practice of occasionally including guidance to the parties, reflecting the Department's interpretation of IGRA—also known as ''Deemed Approved'' Letters. The Department implements these changes in the final rule.

Amendments to § 293.13—Who can withdraw a compact or amendment after it has been received by the Secretary?

The Department proposed conforming edits to § 293.13 for consistency. The Department implements these changes in the final rule.

Amendments to § 293.14—When does a compact or amendment that is affirmatively approved or approved by operation of law take effect?

The Department proposed redesignating the existing § 293.15 as § 293.14 to improve overall organization of the regulations. The Department also proposed clarifying and conforming edits for consistency and readability to both the heading and the body of § 293.14. The Department implements these changes in the final rule.

§ 293.15—When may the Secretary disapprove a compact or amendment?

The Department proposed redesignating and restructuring the existing § 293.14 as § 293.16 to improve the overall organization of the regulations, for the reasons stated above it is designated as § 293.15 in the final rule. Additionally, the Department proposed to renumber the existing paragraphs and add a new paragraph (b). The proposed paragraph (b) would clarify that if a compact submission package is missing the documents required by § 293.8 and the parties decline to cure the deficiency, the Secretary may conclude that the compact or amendment was not ''entered into'' by the Tribe and State as required by IGRA, 25 U.S.C. 2710(d)(1)(C) and will disapprove the compact or amendment on that basis. *See, e.g., Pueblo of Santa Ana* v. *Kelly,* 104 F.3d 1546, 1555 (10th Cir. 1997) (a compact or amendment must have been ''validly entered into'' before it can go into effect through Secretarial approval). The Department notes this is a change from an earlier practice of ''returning'' incomplete compact submission packages. The Department has reconsidered this practice so as to better fulfill Congress's goal of avoiding unnecessary delay in the Secretary's review process. If the Department cannot determine, based on the lack of documentation, that the compact was validly entered into, then approval—affirmative or by operation of law—exceeds the Secretary's authority. The Department implements these changes in the final rule, and in response to comments received has added clarifying language stating it provided the parties with an opportunity to supply those documents, the Secretary may conclude the compact or amendment was not validly entered into between the Tribe and the State and will disapprove the compact or amendment on those grounds.

D. Proposed Subpart D—Scope of Tribal-State Gaming Compacts

The Department proposed to organize part 293 into 4 subparts with subpart D, titled ''Scope of Tribal-State Gaming Compacts'' containing §§ 293.17 through 293.31. The Department proposed substantive provisions that address the appropriate scope of a compact under IGRA. These provisions continue the question-and-answer approach utilized in the existing regulations. These provisions codify existing Departmental practice and provide compacting parties with clear guidance on the appropriate scope of compact negotiations. The Department implements this organizational change, and consistent with the proposed rule, codifies the new substantive provisions in the final rule. These provisions are renumbered in the final rule consistent with the removal of § 293.15.

In response to comments received on the proposed rule, the Department has added two new sections in the final rule. The first is numbered § 293.24 and addresses rights of employees. The second is numbered § 293.25 and addresses licensing of employees. The Department also redesignated proposed § 293.29 as § 293.26. Proposed §§ 293.25 and 293.26 have been redesignated in the final rule as §§ 293.27 and 293.28 respectively. The Department after further consideration declines to adopt proposed § 293.27 in the final rule. Proposed § 293.28 has been redesignated in the final rule as § 2 93.29. Proposed §§ 293.30 and 293.31 retain these section numbers in the final rule. The Department makes this organizational change so that two provisions courts have determined are ''directly related to the operation of gaming activities'' are positioned with the Department's other sections addressing 25 U.S.C. 2710(d)(3)(C)(vii). The new § 293.24 titled ''May a compact or amendment include provisions addressing rights of employees?'' codifies case law and the Department's precedent that a compact may include provisions addressing rights of employees that have a direct connection to the operation of gaming activity. The new § 293.25 titled ''May a compact or amendment include provisions addressing employee licensing?'' clarifies, consistent with IGRA and the National Indian Gaming Commission's regulations, that compacts may include provisions addressing employee licensing. The redesignated § 293.26 titled ''May a compact or amendment include provisions addressing Statewide remote wagering or internet gaming?'' consistent with *West Flagler,* codifies the Department's positions that the negotiation between a Tribe and State over Statewide remote wagering or i-gaming falls under these broad categories of criminal and civil jurisdiction and is inherently directly related to the operation of gaming.

§ 293.16—May a compact include provisions addressing the application of the Tribe's or State's criminal and civil laws and regulations?

The Department has redesignated proposed § 293.17 as § 293.16 in the final rule for the reasons explained above in the summary of changes to

subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.16, clarifying the appropriate scope of terms that address the application of the criminal and civil laws and regulations in a compact. Congress, through IGRA at 25 U.S.C. 2710(d)(3)(C)(i), provided that, to the extent permitted by law, a compact may include provisions addressing the application of criminal and civil laws and regulations of the Tribe or the State that are directly related to, and necessary for, the licensing and regulation of the gaming activity. The Department codifies § 293.16 in the final rule with an edit to the reference to § 293.8 for constancy with revisions made to that section.

§ 293.17—May a compact include provisions addressing the allocation of criminal and civil jurisdiction between the Tribe and the State?

The Department has redesignated proposed § 293.18 as § 293.17 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.17, clarifying the appropriate scope of terms addressing the allocation of Tribal and State criminal and civil jurisdiction in a compact. Congress, through IGRA at 25 U.S.C. 2701(5), found that ''[T]ribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.'' Congress then provided that a compact may include provisions addressing the allocation of criminal and civil jurisdiction between the Tribe and the State that are necessary for the enforcement of laws and regulations described in section 2710(d)(3)(C)(ii). We note that a compact or compact amendment may not, however, alter otherwise applicable Federal law. The Department codifies § 293.17 in the final rule with conforming edits to the title and text for consistency with other provisions in part 293.

§ 293.18—May a compact include provisions addressing the State's costs for regulating gaming activities?

The Department has redesignated proposed § 293.19 as § 293.18 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.18, clarifying the appropriate scope of assessments by the State to defray the costs of regulating the Tribe's gaming activity. Congress, through IGRA at 25 U.S.C. 2710(d)(3)(C)(iii), provided that a compact may include provisions relating to the assessment by the State of the gaming activity in amounts necessary to defray the costs of regulating the gaming activity. Congress, through IGRA at 25 U.S.C. 2710(d)(4), clarified that any assessments must be negotiated, and at no point may a State or its political subdivisions impose any taxes, fees, charges, or other assessments upon a Tribe through the compact negotiations. The Department's proposed new section clarifies that the compact should include requirements for the State to show actual and reasonable expenses over the life of the compact, and that the absence of such provisions may be considered evidence of a violation of IGRA. The Department codifies § 293.18 in the final rule, and in response to comments received has added the phrase ''the lack of such a requirement shall be'' to the final sentence of § 293.18.

§ 293.19—May a compact include provisions addressing the Tribe's taxation of gaming?

The Department has redesignated proposed § 293.20 as § 293.19 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.19 clarifying the appropriate scope of provisions that address a Tribe's taxation of tribally licensed gaming activity. Congress, through IGRA at 25 U.S.C. 2710(d)(3)(C)(iv), provided that a compact may include provisions relating to the Tribe's taxation of gaming activities in amounts comparable to the State's taxation of gambling. A Tribal-State gaming compact may not be used to address the Tribe's taxation of other activities that may occur within or near the Tribe's gaming facility. The inclusion of provisions addressing the Tribe's taxation of other activities may be considered evidence of a violation of IGRA. The Department codifies § 293.19 in the final rule with a conforming edit.

§ 293.20—May a compact or amendment include provisions addressing the resolution of disputes for breach of the compact?

The Department has redesignated proposed § 293.21 as § 293.20 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.20, clarifying the appropriate scope of provisions addressing remedies for breach of the compact. Congress, through IGRA at 25 U.S.C. 2710(d)(3)(C)(v), provided that a compact may include provisions relating to remedies for breach of contract. Compacts often include alternative dispute resolution, including binding arbitration, as part of the parties' remedies for allegations of breach of contract. Despite the Department's existing regulations clarifying that compacts and all amendments are subject to Secretarial review, some compacting parties have resolved disputes in manners which seek to avoid Secretarial review. The Department proposed § 293.20 to clarify that any dispute resolution agreement, arbitration award, settlement agreement, or other resolution of a dispute outside of Federal court must be submitted for review and approval by the Secretary. Further, the proposed § 293.20 references the § 293.4 determination process for review, prior to a formal submission of a dispute resolution agreement as an amendment. The inclusion of provisions addressing dispute resolution in a manner that seeks to avoid the Secretary's review may be considered evidence of a violation of IGRA. The Department codifies § 293.20 in the final rule.

§ 293.21—May a compact or amendment include provisions addressing standards for the operation of gaming activity and maintenance of the gaming facility?

The Department has redesignated proposed § 293.22 as § 293.21 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.21, clarifying the appropriate scope of provisions addressing the Tribe's standards for the operation of the gaming activity, as well as the Tribe's standards for the maintenance of the gaming facility, including licensing in a compact. Congress, through IGRA at 25 U.S.C. 2710(d)(3)(C)(vi), provided that a compact may include provisions relating to standards for the operation of such activity and maintenance of the gaming facility, including licensing. The Department interprets section 2710(d)(3)(C)(vi) narrowly and as two separate clauses addressing separate Tribal and State interests. First, a compact may include provisions addressing the standards for the operation and licensing of the gaming

activity. Second, a compact may include provisions addressing the maintenance and licensing of the gaming facility building or structure. The final rule in § 293.2 includes definitions of both *gaming facility* and *gaming spaces* to provide parties with clarity regarding the appropriate limits of a State's oversight under IGRA. Any compact provisions addressing the maintenance and licensing of a building or structure must be limited to the building or structure situated on Indian lands where the gaming activity occurs—the *gaming facility.* Further, if a compact or amendment mandates that the Tribe adopt standards equivalent or comparable to the standards set forth in a State law or regulation, the parties must show that these mandated Tribal standards are both directly related to and necessary for the licensing and regulation of the gaming activity. The Department codifies § 293.21 in the final rule, and in response to comments received, has added the phrase ''within gaming spaces'' to the second sentence.

§ 293.22—May a compact or amendment include provisions that are directly related to the operation of gaming activities?

The Department has redesignated proposed § 293.23 as § 293.22 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.22, clarifying that a compact may include provisions that are directly related to the operation of gaming activities. Congress, through IGRA at 25 U.S.C. 2710(d)(3)(C)(vii), provided that a compact may include provisions relating to any other subjects that are directly related to the operation of gaming activities, including activities occurring off Indian lands. The Department also proposed a new § 293.23, codifying the Department's longstanding narrow interpretation of section 2710(d)(3)(C)(vi). The Department codifies § 293.22 in the final rule.

§ 293.23—What factors will be used to determine whether provisions in a compact or amendment are directly related to the operation of gaming activities?

The Department has redesignated proposed § 293.24 as § 293.23 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.23, codifying existing case law and the Department's longstanding narrow interpretation of section 2710(d)(3)(C)(vi) of IGRA as requiring a ''direct connection.'' The Department notes that the Ninth Circuit in *Chicken Ranch* found the Department's longstanding direct connection test persuasive and consistent with the Court's own independent analysis of IGRA and case law. The proposed § 293.23 provides compacting parties with examples of provisions which have a direct connection to the Tribe's conduct of class III gaming activities, as well as examples the Department has found that do not satisfy the direct connection test. The Department codifies § 293.23 in the final rule, and in response to comments received has made some clarifying edits.

§ 293.24—May a compact or amendment include provisions addressing the rights of employees?

In response to comments received on the proposed rule, the Department has added a new § 293.24, which addresses organizational and representational rights of employees in the final rule. This provision continues the question-and-answer approach utilized in the existing regulations and the remainder of the final rule. The new § 293.24 titled ''May a compact or amendment include provisions addressing rights of employees?'' The text of § 293.24 states that, yes, notwithstanding § 293.23(c)(8), a compact or amendment may include provisions or procedures addressing the organizational and representational rights of employees, including service or hospitality workers, where such provisions or procedures are ''directly related'' to the operation of gaming activities as articulated by the Ninth Circuit in *Chicken Ranch Rancheria of Me-Wuk Indians* v. *California,* 42 F.4th 1024, 1035–1040 & n.2 (citing *Coyote Valley Band of Pomo Indians* v. *California (In re Indian Gaming Related Cases Chemehuevi Indian Tribe),* 331 F.3d 1094, 1116 (9th Cir. 2003)). The Department notes this provision codifies case law that a compact may include provisions addressing organizational and representational rights of employees.

§ 293.25—May a compact or amendment include provisions addressing employee licensing?

In response to comments received on the proposed rule, the Department has added a new § 293.25, which addresses standards for employee licensing. The Department notes the National Indian Gaming Commission's regulations at 25 CFR part 556 and part 558 set minimum standards for background investigations and suitability determinations for tribally issued licenses. The final rule includes a reference to these minimum standards as a baseline for employee background investigations and licenses issued pursuant to a compact to allow flexibility in the compact negotiation process while ensuring appropriate vetting and licensing of employees.

§ 293.26—May a compact or amendment include provisions addressing Statewide remote wagering or internet gaming?

The Department has redesignated proposed § 293.29 as § 293.26 in the final rule for the reasons explained above in the summary of changes to subpart D. This summary reflects the final rule section number.

The Department proposed a new § 293.26, which clarifies that a compact may include provisions allocating jurisdiction to address Statewide remote wagering or internet gaming. The IGRA provides that a Tribe and State may negotiate for ''the application of the criminal and civil laws and regulations of the Indian Tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity'' and ''the allocation of criminal and civil jurisdiction between the State and the Indian Tribe necessary for the enforcement of such laws and regulations.'' 25 U.S.C. 2710(d)(3)(c)(i)–(ii). The IGRA also provides that a Tribe and State may negotiate over ''any other subjects that are directly related to the operation of gaming activities.'' 25 U.S.C. 2710(d)(3)(c)(vii). The Department's position, consistent with the D.C. Circuit's decision in *West Flagler Associates, Ltd.* v. *Haaland,* 71 F. 4th 1059 (D.C. Cir. 2023), is that Tribes and States may negotiate, consistent with IGRA and other Federal law, over how wagers placed outside Indian land within a State and received by a Tribe on Indian lands are treated for purposes of State and Tribal law, and how regulation of such activity is allocated between Tribes and States. Such topics fall under these broad categories of criminal and civil jurisdiction and such wagering is inherently directly related to the operation of gaming. Accordingly, provided that a player is not physically located on another Tribe's Indian lands, a Tribe should have the opportunity to engage in this type of gaming pursuant to a Tribal-State gaming compact. The Department notes that the ultimate legality of gaming activity occurring off Indian lands remains a question of State law, notwithstanding that a compact discusses the activity. However, in enacting IGRA, Congress did not contemplate the Department would

address or resolve complex issues of State law during the 45-day review period,[30] and such issues are outside the scope of the Secretary's review. *West Flagler,* 71 F. 4th at 1065. Further, non-IGRA Federal law may also place restrictions on that activity. The Department codifies § 293.26 in the final rule, with edits for consistency with *West Flagler,* and, in response to comments, includes the phrase ''unless that Tribe has lawfully consented'' to paragraph (c).

§ 293.27—What factors will the Secretary analyze to determine if revenue sharing is lawful?

The Department has redesignated proposed § 293.25 as § 293.27 in the final rule. This summary reflects the final rule section number.

The Department proposed a new § 293.27, clarifying the appropriate scope of provisions addressing revenue sharing. Congress, through IGRA at 25 U.C.S. 2710 (d)(4), prohibited States from seeking to impose any tax, fee, charge, or other assessment upon an Indian Tribe or upon any other person or entity authorized by an Indian Tribe to engage in a class III gaming activity. The proposed § 293.27 codifies the Department's longstanding rebuttable presumption that any revenue sharing provisions are a prohibited tax, fee, charge, or other assessment. The proposed § 293.27 also contains the Department's test to rebut that presumption. The Department codifies § 293.27 in the final rule with edits to improve readability.

§ 293.28—May a compact or extension include provisions that limit the duration of the compact?

The Department has redesignated proposed § 293.26 as § 293.28 in the final rule. This summary reflects the final rule section number.

The Department proposed a new § 293.28, addressing the appropriate duration of a compact. The Department and IGRA anticipate that compacts are long-term agreements between a Tribe and a State that reflect carefully negotiated compromises between sovereigns. The Department codifies § 293.28 in the final rule.

§ 293.29—May any other contract outside of a compact regulate Indian gaming?

The Department has redesignated proposed § 293.28 as § 293.29 in the final rule. This summary reflects the final rule section number.

The Department proposed a new § 293.29, clarifying that any agreement between a Tribe and a State, or its political subdivisions, which seeks to regulate a Tribe's right to conduct gaming—as limited by IGRA—is a gaming compact that must comply with IGRA and be submitted for review and approval by the Secretary. The Department codifies § 293.29 in the final rule with edits to improve readability.

§ 293.30—What effect does this part have on pending requests, final agency decisions already issued, and future requests?

The Department proposed a new § 293.30, clarifying that the proposed regulations are prospective and establishing the effective date of the regulations is 30 days after this final rule is published. The proposed § 293.30(b) includes a grandfather clause, which clarifies that the final rule does not alter prior Departmental decisions on compacts submitted under the 2008 Regulations. The Department codifies § 293.30 in the final rule with edits to improve certainty and clarity.

Proposed § 293.31—How does the Paperwork Reduction Act affect this part?

The Department proposed renumbering the existing § 293.16 as § 293.31 to improve overall organization of the regulations. The Department implements this change in the final rule.

VI. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA determined that this rule is significant under E.O. 12866 section 3(f), but not significant under section 3(f)(1).

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The Department and BIA developed this final rule in a manner consistent with these requirements.

Summary of Final Rule and Need for Rulemaking

The Department of the Interior (Department) is issuing revisions to its regulations located at 25 CFR part 293, which govern the Department's review and approval of Tribal-State gaming compacts under IGRA. The final rule includes revisions to the Department's existing part 293 regulations and adds provisions clarifying how the Department reviews Tribal-State gaming compacts or compacts.

The regulations that codify the Department's review process for Tribal-State gaming compacts are found at 25 CFR part 293 and were promulgated in 2008 (''2008 Regulations''). 73 FR 74004 (Dec. 5, 2008). The Department's 2008 Regulations were designed to address the process for submission by Tribes and States and consideration by the Secretary of Class III Tribal-State Gaming Compacts, and are not intended to address substantive issues. 73 FR 74004–5. The Department's consideration of substantive issues appears in decision letters, ''deemed approved'' letters, and technical assistance letters. In addition, a body of case law has developed that addresses the appropriate boundaries of class III gaming compacts. Negotiating parties have been forced to review both the body of case law as well as the Department's library of decision letters, ''deemed approved'' letters, and technical assistance letters to evaluate how the Department views both routine and more novel issues in compacts. With this final rule, the Department codifies longstanding Departmental policies and interpretation of case law in the form of substantive regulations, which will provide certainty and clarity on how the Secretary will review certain provisions in a compact.

In addition, with this final rule, the Department makes primarily technical amendments to the existing process-based regulations, including the title. The technical amendments clarify and modernize the submission and review process and contain conforming edits for internal consistency and improved readability. Some of the key process improvements include:

- updated definitions;
- clarifications of when ancillary agreements or documents are *amendments* requiring Secretarial review under IGRA;

[30] *See, e.g., Pueblo of Santa Ana* v. *Kelly,* 104 F.3d 1546, 1556 (10th Cir. 1997).

• updates to the submission process and documents required with a submission;
• a process change requiring the Department to provide an email acknowledging receipt of a compact and provide the date on which the 45 day review period expires;
• a process change requiring the Department to issue a letter to the parties if the compact or amendment has been approved by operation of law due to the 45-day review period expiring; and
• clarification that Tribes may submit any document or agreement to the Department for technical assistance and a determination if the agreements or documents are *amendments.*

With this final rule, the Department adds 15 sections addressing substantive issues and organizes part 293 into 4 subparts. Some of the key longstanding Departmental policies and interpretation of case law codified in the final rule include:
• requiring the parties to show that for any compact or amendment that requires the Tribe to adopt standards equivalent to State law or regulation, these mandated Tribal standards are both directly related to and necessary for the licensing and regulation of the gaming activity; *see* final rule § 293.21;
• distinguishing between compact provisions that are and are not directly related to the operation of gaming activities, based on specific factors and providing specific examples (including a section confirming that gaming compacts may include statewide remote wagering or internet gaming); *see* final rule §§ 293.22, 293.23, 293.24, 293.25, and 293.26;
• requiring the parties justify any revenue sharing provisions by demonstrating that the Tribe is the primary beneficiary of the gaming; *see* final rule § 293.27; and
• clarifying the final rule does disrupt or alter previously issued agency decisions; *see* final rule § 293.30.

Anticipated Benefits

With this final rule, the Department upholds the Federal-Tribal government to government trust relationship by codifying longstanding Departmental policies and interpretation of case law in the form of substantive regulations. The substantive provisions in the final rule will provide nationwide certainty and clarity on how the Secretary will review certain provisions in a compact. The final rule also reinforces Congress's intent that Indian gaming continue to provide a critical revenue source for Tribal government and reflect an exercise of Tribal sovereignty and governance. 25 U.S.C. 2702(1). States, similarly, exercise State sovereignty and generate State revenue through State lotteries and tax revenue from State licensed gaming.

The Department also expects the final rule will reduce the need for protracted litigation and dispute resolution between Tribes, States, and third parties over permissible topics in a compact. The Department notes the body of Departmental policy and interpretations of case law codified in the final rule is built on numerous examples of protracted litigation and dispute resolution. Both *West Flagler* and *Chicken Ranch* are recent examples of this type of litigation. The final rule will improve employee licensing by requiring compacts to be consistent with NIGC's licensing regulations.

Anticipated Costs

The Department anticipates the final rule will have minimal costs because the final rule codifies longstanding Departmental policies and interpretation of case law. Tribes and States seeking to negotiate a compact will be able to rely on the substantive provisions in the final rule for guidance on what may or may not be included in a compact or amendment. Section 293.26, which addresses remote wagering or internet gaming, is consistent with existing case law. Additionally, States will remain free to choose whether or not to permit mobile or internet gaming in the State as well as if such gaming will be State-licensed and taxed or compact based Tribal gaming potentially with government-to-government revenue sharing.

The Department does expect the Office of Indian Gaming will experience a slight increase in requests for technical assistance. However, that increased demand will be offset by the Department's ability to rely on the final rule to provide such guidance rather than the existing body of case law and Department policy statements in decision letters and other guidance letters. Additionally, this increased demand for technical assistance will be offset by an expected reduction in legal counsel costs for Tribes and States during negotiations.

Alternatives Considered

The Department considered but ultimately rejected three rule making alternatives to the final rule. The first alternative the Department considered was to not engage in an update to the part 293 Rule, effectively take no rule making action. The Department rejected this alternative because it would not allow for modernization of the Department's process and would not resolve some of the key issues which continue to result in litigation between Tribes, States, and some third parties. The second alternative the Department considered was to update the existing process-based regulations, to allow for modernizations to the Department's compact submission and acceptance process including digital submission. This alternative would codify some of the process improvements the Department has made including accepting email submissions. However, this alternative would not codify any of the Department's longstanding policy and case law interpretation resulting in continued litigation. The third alternative the Department considered was to update the existing process-based regulations with some substantive provisions but excluding § 293.26, which addresses remote wagering or internet gaming. The Department notes, the rule making effort as well as the inclusion of remote wagering or internet gaming received overwhelming support form Tribal leaders.

B. Regulatory Flexibility Act

The Department certifies that this final rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule codifies longstanding Departmental policies and interpretation of case law in the form of substantive regulations, which would provide certainty and clarity on how the Secretary will review certain provisions in a compact.

C. Congressional Review Act (CRA)

This rule does not meet the criteria in 5 U.S.C. 804(2). Specifically, it:
• Does not have an annual effect on the economy of $100 million or more.
• Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
• Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

The Administrative Pay-As-You-Go Act of 2023 (Fiscal Responsibility Act of 2023, Pub. L. 118–5, div. B, title II). applies to actions that meet the definition of a rule under 5 U.S.C. 804(3). The rule does not affect direct spending and does not have any mandatory net outlays because there will be no additional full-time equivalent (FTE) costs or any other additional administrative costs to

review Class III Tribal State Gaming Compacts. The rule clarifies case law, Department Policy, and other related guidance over the last 30 plus years, so the review and approval of Class III Tribal Gaming Compacts is more efficient and better streamlined.

D. Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630 because this rulemaking, if adopted, does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required because the Department seeks to codify longstanding Departmental policies and interpretation of case law in the form of substantive regulations which would provide certainty and clarity on how the Secretary will review certain provisions in a compact.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

- Meets the criteria of section 3(a), requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- Meets the criteria of section 3(b)(2), requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

The Department conducted two virtual session, one in-person consultation, and accepted oral and written comments. The consultations sessions were open to Tribal leadership and representatives of federally recognized Indian Tribes and Alaska Native Corporations.

- *In-Person Session:* The in-person consultation was held on January 13, 2023, from 1 p.m. to 4 p.m. MST, at the BLM National Training Center (NTC), 9828 N 31st Ave, Phoenix, AZ 85051.
- *1st Virtual Session:* The first virtual consultation session was held on January 19, 2023, from 1 p.m. to 4 p.m. EST.
- *2nd Virtual Session:* The second virtual consultation was held on January 30, 2023, from 2 p.m. to 5 p.m. EST.
- The Department also accepted written comments until March 1, 2023.

The Department strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. The Department evaluated this rule under its consultation policy and the criteria in E.O. 13175 and hosted extensive consultation with federally recognized Indian Tribes in preparation of this final rule, including through two Dear Tribal Leader letters delivered to every federally recognized Tribe in the country. The Department held two listening sessions and four formal consultation sessions on the Consultation Draft. The Department has included and addressed those comments as part of the public comment record for the proposed rule. The Department then held three consultation sessions on the proposed rule. The Department has included and addressed those comments as part of the public comment record for the final rule.

I. Paperwork Reduction Act

OMB Control No. 1076–0172 currently authorizes the collection of information related to the Class III Tribal-State Gaming Compact Process, with an expiration of August 31, 2024. This rule does not require a change to that approved information collection under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*

J. National Environmental Policy Act (NEPA)

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). The Department also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

The Department is required by Executive Orders 12866 (section 1 (b)(12)), 12988 (section 3(b)(l)(B)), and 13563 (section l(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use common, everyday words and clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

List of Subjects 25 CFR Part 293

Administrative practice and procedure, Gambling, Indians-Tribal government, State and local governments.

■ For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, revises 25 CFR part 293 to read as follows:

PART 293—CLASS III TRIBAL-STATE GAMING COMPACTS

Subpart A—General Provisions and Scope

Subpart B—Submission of Tribal-State Gaming Compacts

Subpart C—Secretarial Review of Tribal-State Gaming Compacts

Subpart D—Scope of Tribal-State Gaming Compacts

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 2710.

Subpart A—General Provisions and Scope

§ 293.1 What is the purpose of this part?

This part contains:

(a) Procedures that Indian Tribes and States must use when submitting Tribal-State gaming compacts and compact amendments to the Department of the Interior (Department); and

(b) Procedures and criteria that the Secretary of the Interior (Secretary) will use for reviewing such Tribal-State gaming compacts or compact amendments.

§ 293.2 How are key terms defined in this part?

This part relies on but does not restate all defined terms set forth in the definitional section of IGRA.

(a) *Amendment* means:

(1) A change to a class III Tribal-State gaming compact other than an extension, or

(2) A change to secretarial procedures prescribed under 25 U.S.C. 2710(d)(7)(B)(vii) when such change is agreed upon by the Tribe and State.

(b) *Compact* or *Tribal-State Gaming Compact* means an intergovernmental agreement executed between Tribal and State governments under IGRA that establishes between the parties the terms and conditions for the operation and regulation of the Tribe's class III gaming activities.

(c) *Extension* means an intergovernmental agreement executed between Tribal and State governments under IGRA to change the duration of a compact or amendment.

(d) *Gaming activity* or *gaming activities* means the conduct of class III gaming involving the three required elements of chance, consideration, and prize or reward.

(e) *Gaming facility* means the physical building or structure situated on Indian lands where the gaming activity occurs.

(f) *Gaming spaces* means the areas within a gaming facility (as defined in paragraph (e) of this section) that are directly related to and necessary for the conduct of class III gaming such as: the casino floor; vault; count room; surveillance, management, and information technology areas; class III gaming device and supplies storage areas; and other secured areas where the operation or management of class III gaming takes place.

(g) *IGRA* means the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701–2721 (1988)) and any amendments.

(h) *Meaningful concession* means:

(1) Something of value to the Tribe;

(2) Directly related to gaming activity;

(3) Something that carries out the purposes of IGRA; and

(4) Not a subject over which a State is otherwise obligated to negotiate under IGRA.

(i) *Substantial economic benefit* means:

(1) A beneficial impact to the Tribe;

(2) Resulting from a meaningful concession;

(3) Made with a Tribe's economic circumstances in mind;

(4) Spans the life of the compact; and

(5) Demonstrated by an economic/market analysis or similar documentation submitted by the Tribe or the State.

(j) *Tribe* means Indian Tribe as defined in 25 U.S.C. 2703(5).

§ 293.3 What authority does the Secretary have to approve or disapprove compacts and amendments?

The Secretary has the authority to approve a compact or amendment ''entered into'' by a Tribe and a State under IGRA. See § 293.15 for the Secretary's authority to disapprove compacts or amendments.

§ 293.4 Are compacts and amendments subject to review and approval?

(a) Yes. All compacts and amendments, regardless of whether they are substantive or technical, must be submitted for review and approval by the Secretary.

(b) If an ancillary agreement or document:

(1) Modifies a term in a compact or an amendment, then it must be submitted for review and approval by the Secretary.

(2) Implements or clarifies a provision within a compact or an amendment and is not inconsistent with an approved compact or amendment, it does not constitute a compact or an amendment and need not be submitted for review and approval by the Secretary.

(3) Is expressly contemplated within an approved compact or amendment, such as internal controls or a memorandum of agreement between the Tribal and State regulators, then such agreement or document is not subject to review and approval so long as it is not inconsistent with the approved compact or amendment.

(4) Interprets language in a compact or an amendment concerning a Tribe's revenue sharing to the State, its agencies, or political subdivisions under § 293.27 or includes any of the topics identified in § 293.23, then it may constitute an amendment subject to review and approval by the Secretary.

(c) If a Tribe or a State (including its political subdivisions) is concerned that

its agreement or other document may be considered a ''compact'' or ''amendment,'' either party may request in writing a determination from the Department if their agreement or other document is a compact or amendment and therefore must be approved and a notice published in the **Federal Register** prior to the agreement or other document becoming effective. The Department will issue a letter within 30 days of receipt of the written request, providing notice of the Secretary's determination. If the agreement or other document is determined to be a compact or amendment, it must be resubmitted for Secretarial review and approval consistent with the requirements of subpart B of this part.

§ 293.5 Are extensions to compacts or amendments subject to review and approval?

No. Approval of an extension to a compact or amendment is not required if the extension does not include any changes to any of the other terms of the compact or amendment. However, the parties must submit the documents required by § 293.8(a) through (c). The extension becomes effective only upon publication in the **Federal Register**.

Subpart B—Submission of Tribal-State Gaming Compacts

§ 293.6 Who can submit a compact or amendment?

Either party (Tribe or State) to a compact or amendment can submit the compact or amendment to the Secretary for review and approval.

§ 293.7 When should the Tribe or State submit a compact or amendment for review and approval?

The Tribe or State should submit the compact or amendment after it has been duly executed by the Tribe and the State in accordance with applicable Tribal and State law or is otherwise binding on the parties.

§ 293.8 What documents must be submitted with a compact or amendment?

Documentation submitted with a compact or amendment must include:

(a) At least one original compact or amendment executed by both the Tribe and the State;

(b) A Tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies that the Tribe has approved the compact or amendment in accordance with applicable Tribal law and IGRA;

(c) Certification from the Governor or other representative of the State that they are authorized to enter into the compact or amendment in accordance with applicable State law;

(d) Any agreement between a Tribe and a State, its agencies, or its political subdivisions required by a compact or amendment if the agreement:

(1) Requires the Tribe to make payments to the State, its agencies, or its political subdivisions; or

(2) Restricts or regulates a Tribe's use and enjoyment of its Indian lands, and any other ancillary agreements, documents, ordinances, or laws required by the compact or amendment that the Tribe determines are relevant to the Secretary's review; and

(e) Any other documentation requested by the Secretary that is necessary to determine whether to approve or disapprove the compact or amendment. If a compact includes revenue sharing, a market analysis or similar documentation as required by § 293.27.

§ 293.9 Where should a compact or amendment or other requests under this part be submitted for review and approval?

Submit compacts, amendments, and all other requests under this part to the Director, Office of Indian Gaming, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 3543, Washington, DC 20240. If this address changes, a document with the new address will be sent for publication in the **Federal Register** within five business days. Compacts and amendments may also be submitted electronically to *Indian Gaming@bia.gov* as long as the original copy is submitted to the address listed in this section.

Subpart C—Secretarial Review of Tribal-State Gaming Compacts

§ 293.10 How long will the Secretary take to review a compact or amendment?

(a) The Secretary must approve or disapprove a compact or amendment within 45 calendar days after receiving the compact or amendment.

(b) The Secretary will notify the Tribe and the State in writing of the decision to approve or disapprove a compact or amendment.

§ 293.11 When will the 45-day timeline begin?

The 45-day timeline will begin when a compact or amendment is received either electronically or hard copy submission and date stamped by the Office of Indian Gaming. The Department will provide an email acknowledgement to the Tribe and the State of receipt and provide the date on which the Secretary's 45-day review period will expire for electronically submitted compacts or amendments.

§ 293.12 What happens if the Secretary does not act on the compact or amendment within the 45-day review period?

If the Secretary does not take action to approve or disapprove a compact or amendment within the 45-day review period, the compact or amendment is approved by operation of law, but only to the extent the compact or amendment is consistent with the provisions of IGRA. The Secretary will issue a letter informing the parties that the compact or amendment has been approved by operation of law after the 45th day and before the 90th day. The Secretary's letter may include guidance to the parties reflecting the Department's interpretation of IGRA. The compact or amendment that is approved by operation of law becomes effective only upon publication in the **Federal Register**.

§ 293.13 Who can withdraw a compact or amendment after it has been received by the Secretary?

To withdraw a compact or amendment after it has been received by the Secretary, the Tribe and the State must both submit a written request to the Director, Office of Indian Gaming at the address listed in § 293.9.

§ 293.14 When does a compact or amendment take effect?

(a) A compact or amendment, that is affirmatively approved or approved by operation of law, takes effect on the date that notice of its approval is published in the **Federal Register**.

(b) The notice of affirmative approval or approval by operation of law must be published in the **Federal Register** within 90 days from the date the compact or amendment is received by the Office of Indian Gaming.

§ 293.15 When may the Secretary disapprove a compact or amendment?

The Secretary may disapprove a compact or amendment only if:

(a) It violates:

(1) Any provision of IGRA;

(2) Any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands; or

(3) The trust obligations of the United States to Indians; or

(b) The documents required in § 293.8 are not submitted and the parties have been informed in writing of the missing documents and are provided with an opportunity to supply those documents.

Subpart D—Scope of Tribal-State Gaming Compacts

§ 293.16 May a compact or amendment include provisions addressing the application of the Tribe's or the State's criminal and civil laws and regulations?

Yes. A compact or amendment may include provisions addressing the application of the criminal and civil laws and regulations of the Tribe or the State that are directly related to and necessary for the licensing and regulation of the gaming activity. At the request of the Secretary pursuant to § 293.8(e), the parties must show that these laws and regulations are both directly related to and necessary for the licensing and regulation of the gaming activity.

§ 293.17 May a compact or amendment include provisions addressing the allocation of criminal and civil jurisdiction between the Tribe and the State?

Yes. A compact or amendment may include provisions allocating criminal and civil jurisdiction between the Tribe and the State necessary for the enforcement of the laws and regulations described in § 293.16.

§ 293.18 May a compact or amendment include provisions addressing the State's costs for regulating gaming activities?

Yes. If the compact or amendment includes a negotiated allocation of jurisdiction to the State for the regulation of the gaming activity, the compact or amendment may include provisions to defray the State's actual and reasonable costs for regulating the specific Tribe's gaming activity. If the compact does not include requirements for the State to show actual and reasonable annual expenses for regulating the specific Tribe's gaming activity over the life of the compact, the lack of such a requirement may be considered evidence of a violation of IGRA.

§ 293.19 May a compact or amendment include provisions addressing the Tribe's taxation of gaming?

Yes. A compact or amendment may include provisions addressing the Tribe's taxation of tribally licensed gaming activity in amounts comparable to the State's taxation of State licensed gaming activities. A compact may not include provisions addressing the Tribe's taxation of other activities that may occur within or near the Tribe's gaming facility. The inclusion of provisions addressing the Tribe's taxation of other activities may be considered evidence of a violation of IGRA.

§ 293.20 May a compact or amendment include provisions addressing the resolution of disputes for breach of the compact?

Yes. A compact or amendment may include provisions addressing how the parties will resolve a breach of the compact or other disputes arising from the compact including mutual limited waivers of sovereign immunity. If a Tribe is concerned that an agreement or other document including, but not limited to, any dispute resolution, settlement agreement, or arbitration decision, constitutes a compact or amendment, or if the Tribe is concerned that the agreement or other document interprets the Tribe's compact or amendment to govern matters that are not directly related to the operation of gaming activities, the Tribe may submit the document to the Department as set forth in § 293.4. The inclusion of provisions addressing dispute resolution outside of Federal court in a manner that seeks to avoid the Secretary's review may be considered evidence of a violation of IGRA.

§ 293.21 May a compact or amendment include provisions addressing standards for the operation of gaming activity and maintenance of the gaming facility?

Yes. A compact or amendment may include provisions addressing the Tribe's standards for the operation of the gaming activity within gaming spaces, as well as the Tribe's standards for the maintenance of the gaming facility, including licensing. If a compact or amendment mandates that the Tribe adopt standards equivalent or comparable to the standards set forth in a State law or regulation, the parties must show that these mandated Tribal standards are both directly related to and necessary for the licensing and regulation of the gaming activity.

§ 293.22 May a compact or amendment include provisions that are directly related to the operation of gaming activities?

Yes. A compact or amendment may include provisions that are directly related to the operation of gaming activities; such provisions may address activities occurring off of Indian lands.

§ 293.23 What factors will be used to determine whether provisions in a compact or amendment are directly related to the operation of gaming activities?

(a) The parties must show that these provisions described in § 293.22 are directly connected to the Tribe's conduct of class III gaming activities. Examples include, but are not limited to:

(1) Minimum age for patrons to participate in gaming;

(2) Transportation of gaming devices and equipment; or

(3) Exclusion of patrons.

(b) Mutually beneficial proximity, or even co-management alone is insufficient to establish a ''direct connection'' between the Tribe's class III gaming and adjacent business or amenities. Additionally, Tribal infrastructure projects or economic development activities that are funded by gaming revenue and may service or otherwise provide a benefit to the gaming activity are not directly related to the conduct of gaming without other evidence of a direct connection.

(c) Provisions which are not directly related to the operation of gaming activities include, but are not limited to:

(1) Expressly limiting third party Tribes' rights to conduct gaming activities under IGRA;

(2) Relating to treaty rights;

(3) Relating to tobacco sales;

(4) Requiring compliance with or adoption of State environmental regulation of projects or activities that are not directly related to the Tribe's operation of gaming activities and maintenance of the gaming facility;

(5) Requiring memorandum of understanding, intergovernmental agreements, or similar agreements with local governments;

(6) Requiring enforcement of State court orders garnishing employee wages or patron winnings;

(7) Granting State court jurisdiction over tort claims arising from the Tribe's conduct of class III gaming activities;

(8) Regulating non-gaming conduct not within gaming spaces or non-gaming Tribal economic activities, including activities in or adjacent to the gaming facility, including, but not limited to, restaurants, nightclubs, hotels, event centers, water parks, gas stations, and convenience stores; or

(9) Relating to the conduct of Tribal class I or class II gaming activities.

(d) The inclusion of provisions for which the parties cannot show a direct connection to the Tribe's conduct of class III gaming activities may be considered evidence of a violation of IGRA.

§ 293.24 May a compact or amendment include provisions addressing rights of employees?

Yes. Notwithstanding § 293.23(c)(8), a compact or amendment may include provisions or procedures addressing the organizational and representational rights of employees, including service or hospitality workers, where such provisions or procedures are ''directly related'' to the operation of gaming activities as articulated by the Ninth

Circuit in *Chicken Ranch Rancheria of Me-Wuk Indians* v. *California,* 42 F.4th 1024, 1035–1040 & n.2 (citing *Coyote Valley Band of Pomo Indians* v. *California (In re Indian Gaming Related Cases Chemehuevi Indian Tribe),* 331 F.3d 1094, 1116 (9th Cir. 2003)).

§ 293.25 May a compact or amendment include provisions addressing employee background investigations and licensing?

Yes. Consistent with 25 CFR 558.1, a compact or amendment may include provisions addressing the Tribe's standards and requirements for employee background investigations and licensing. If the compact or amendment includes a negotiated allocation to the State for concurring in or processing employee background investigations or licenses, the parties must show that the licensing process is as stringent and timely as the background investigation and licensing requirements of 25 CFR parts 556 and 558. The compact may also include provisions for the reasonable reimbursement of background investigation and licensing fees.

§ 293.26 May a compact or amendment include provisions addressing statewide remote wagering or internet gaming?

Yes. A compact or amendment consistent with §§ 293.16 and 293.22 may include provisions addressing statewide remote wagering or internet gaming that is directly related to the operation of gaming activity on Indian lands. A compact or compact amendment may not, however, alter otherwise applicable Federal law. A compact may specifically include, for regulatory purposes, provisions allocating State and Tribal jurisdiction within the State over remote wagering or internet gaming originating outside Indian lands where:

(a) State law and the compact or amendment deem the gaming to take place, for the purposes of State and Tribal law, on the Tribe's Indian lands where the server accepting the wagers is located;

(b) The Tribe regulates the gaming; and

(c) The player initiating the wager is not located on another Tribe's Indian lands within the State, unless that Tribe has lawfully consented.

§ 293.27 What factors will the Secretary analyze to determine if revenue sharing is lawful?

(a) A compact or amendment may include provisions that address revenue sharing in exchange for a State's meaningful concessions resulting in a substantial economic benefit for the Tribe.

(b) The Department reviews revenue sharing provisions with great scrutiny beginning with the presumption that a Tribe's payment to a State or local government for anything beyond § 293.18 regulatory fee is a prohibited ''tax, fee, charge, or other assessment.'' In order for the Department to approve revenue sharing the parties must show through documentation, such as a market study or other similar evidence, that:

(1) The Tribe has requested and the State has offered specific meaningful concessions the State was otherwise not required to negotiate;

(2) The value of the specific meaningful concessions offered by the State provides substantial economic benefits to the Tribe in a manner justifying the revenue sharing required by the compact; and

(3) The Tribe is the primary beneficiary of the gaming measured by projected revenue to the Tribe against projected revenue shared with the State.

(c) The inclusion of revenue sharing provisions to the State that is not justified by meaningful concessions of substantial economic benefit to the Tribe may be considered evidence of a violation of IGRA.

§ 293.28 May a compact or extension include provisions that limit the duration of the compact?

Yes. However, IGRA anticipates compacts are long-term agreements between a Tribe and a State. These agreements reflect carefully negotiated compromises between sovereigns. A refusal to negotiate a long-term compact, or a short-term extension of at least one year to allow for negotiations to continue, may be considered evidence of a violation of IGRA.

§ 293.29 May any other contract outside of a compact regulate Indian gaming?

No. Subject to §§ 293.4(b) and 293.8(d), any contract or other agreement between a Tribe and a State, its agencies, or its political subdivisions that seeks to regulate a Tribe's right to conduct gaming—as limited by IGRA—is a gaming compact that must comply with IGRA and be submitted for review and approval by the Secretary consistent with § 293.8. A Tribe may submit any other agreement between the Tribe and the State, its agencies, or its political subdivisions for a determination if the agreement is a compact or amendment under § 293.4(c). This includes agreements mandated or required by a compact or amendment, which contain provisions for the payment from a Tribe's gaming revenue or restricts or regulates a Tribe's use and enjoyment of its Indian lands, including a Tribe's conduct of gaming.

§ 293.30 What effect does this part have on pending requests, final agency decisions already issued, and future requests?

(a) Compacts and amendments pending on March 22, 2024, will continue to be processed under this part, promulgated on December 5, 2008, and revised June 4, 2020, unless the Tribe or the State requests in writing to proceed under this part. Upon receipt of such a request, the Secretary shall process the pending compact or amendment under this part.

(b) This part does not alter final agency decisions made pursuant to this part before March 22, 2024.

(c) All compacts and amendments submitted after March 22, 2024 will be processed under this part.

§ 293.31 How does the Paperwork Reduction Act affect this part?

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned control number 1076–0172. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–03456 Filed 2–20–24; 8:45 am]

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Federal Register

Vol. 89, No. 35

Wednesday, February 21, 2024

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Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**

Presidential Documents

Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**

Other Services

Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

6401–7266 1
7267–7598 2
7599–8064 5
8065–8328 6
8329–8524 7
8525–8988 8
8989–9738 9
9739–10004 12
10005–11162 13
11163–11700 14
11701–12230 15
12231–12742 16
12743–12948 20
12949–13260 21

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10698 7599
10699 7601
10700 7603
10701 9739

Executive Orders:
14115 7605

Administrative Orders:
Memorandums:
Memorandum of February 14, 2024 12743
Notices:
Notice of February 7, 2024 8989
Notice of February 7, 2024 8991

5 CFR

Ch. XIV 11701
532 8065
1201 11163
2417 11701
2429 11701
2471 11701
7001 7267

Proposed Rules:
300 8352
890 6436
1201 8083
2471 12287
2472 12287

7 CFR

1005 6401
1006 6401
1007 6401
1145 12949

Proposed Rules:
210 13150
215 13150
220 13150
225 13150
226 13150
905 6440
1216 12758
1217 12987

8 CFR

214 7456

9 CFR

390 12745

10 CFR

50 ..... 8065, 8329
52 ..... 8065, 8329
430 11434

Proposed Rules:
2 12759
15 12759
37 12759
73 12759
110 12759
140 12759
170 12759
171 12759
430 11548

11 CFR

Proposed Rules:
102 11227
104 11227
106 11227
109 11227
110 11227
9008 11227
9012 11227

12 CFR

25 6574
228 6574
345 6574

Proposed Rules:
Ch. I 8084
Ch. II 8084
Ch. III 8084
5 10010

13 CFR

115 11703
121 11703

14 CFR

21 12634
25 10005
38 12634
39 ..... 6411, 6413, 6416, 6420, 6422, 6425, 8066, 9741, 11164, 11713, 11715, 11718, 11720, 11722, 12951
71 ..... 6428, 6429, 8070, 8993, 12953, 12954
97 ..... 11726, 11727
121 12634
125 12634

Proposed Rules:
1 8559
3 8560
21 ..... 8559, 8560
22 8559
25 6443
36 8559
39 ..... 6450, 6452, 7297, 7299, 7302, 7305, 7636, 8109, 8361, 9074, 9077, 9795, 9798, 11228, 11231, 12785, 12788, 12792, 12993
43 ..... 8559, 8560
45 8559
60 8560
61 ..... 8559, 8560
63 8560
65 ..... 8559, 8560

67 8560
89 8560
91 8559
107 8560
111 8560
119 8559
120 8560
121 8560
139 8560
142 8560
145 8560
413 8560

15 CFR

400 8525

Proposed Rules:

700 8363

16 CFR

1 8530
305 7267
801 7609
803 7609

Proposed Rules:

1 8578
305 7566
1264 8582
1408 8583
1461 9078

17 CFR

Proposed Rules:

Ch. I 8026
39 8111
146 7307
270 12995

19 CFR

356 11729

20 CFR

802 8533

Proposed Rules:

404 11773
416 11773
422 11773
656 11788

21 CFR

4 7496
73 8537
601 9743
820 7496
1301 8538

Proposed Rules:

117 7315

23 CFR

Proposed Rules:

490 10018
924 13000

24 CFR

5 7612
202 7274
Chap IX 7612
1006 9757

25 CFR

293 13232

26 CFR

Proposed Rules:

1 12795

27 CFR

9 7618

28 CFR

0 7277
27 7277
85 9764
543 8330

Proposed Rules:

94 7639
541 6455

29 CFR

1601 ..... 11167, 12231, 12232
1602 11167
1603 11167
1610 11167
1611 11167
1614 11167
1626 ..... 11167, 12232

Proposed Rules:

1910 7774

30 CFR

870 8071

31 CFR

208 12955
510 12233

Proposed Rules:

Ch. X 12424
1010 12108
1032 12108

32 CFR

161 11172

Proposed Rules:

170 13013
1662 8112
1665 7653

33 CFR

100 12236
117 ..... 7287, 7620, 8074
165 ..... 7288, 8332, 8994, 9769, 9798, 12241, 12747

Proposed Rules:

117 13013
165 ..... 9800, 13015
166 10019
167 10019
234 12066
325 9079
330 9079

34 CFR

5 12243

Proposed Rules:

Ch. VI 6470, 7317

37 CFR

Proposed Rules:

42 13017
201 11789
202 11789

38 CFR

Proposed Rules:

3 9803
38 8126
39 8126
70 11729

39 CFR

3040 11730

Proposed Rules:

3000 8377
3010 8377
3040 8377
3041 8377
3050 12289

40 CFR

16 8075
52 ..... 7289, 7622, 8076, 8078, 8996, 8999, 9771, 12244
60 11198
70 9771
141 7624
180 ..... 7291, 7625, 9773
271 8540
272 8540
300 12246
700 12961
723 12248

Proposed Rules:

2 12795
52 ..... 6475, 7318, 7320, 7655, 8131, 9813, 12291, 12666, 13022
62 12796
63 9088
70 12291
81 9815
97 12666
99 12795
141 8584
180 9103
260 8598
261 ..... 8598, 8606
270 8598
271 ..... 8606, 8621
272 8621
300 12293

41 CFR

Ch. 301 12250
300 12250
301 12250
302 12250
303 12250
304 12250
305 12250
306 12250
307 12250
308 12250
309 12250
310 12250
311 12250
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365 12250
366 12250
367 12250
368 12250
369 12250
370 12250
371 12250
372 12250
373 12250
374 12250
375 12250
376 12250

Proposed Rules:

102 12296
103 12296
104 12296
105 12296
106 12296
107 12296
108 12296
109 12296
110 12296
111 12296
112 12296
113 12296
114 12296
115 12296
116 12296
117 12296
118 12296

42 CFR

2 12472
8 7528
405 ..... 9002, 9776
410 ..... 9002, 9776
411 9776
414 9776
415 9776
416 9002
418 9776
419 9002
422 ..... 8758, 9776
423 9776
424 ..... 9002, 9776
425 9776
431 8758

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List February 14, 2024

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