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Title 3—

The President

Memorandum of February 16, 2024

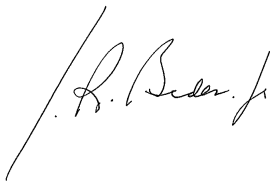
Delegation of Authority Under Section 1230 of the National Defense Authorization Act for Fiscal Year 2024

Memorandum for the Secretary of State[,] the Secretary of Defense[, and] the Attorney General

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Defense, in consultation with the Secretary of State and, as appropriate, the Attorney General, the authority to transmit to certain congressional committees the report required by section 1230 of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31).

The delegation in this memorandum shall apply to any provision of any future public law that is the same or substantially the same as the provision referenced in this memorandum.

The Secretary of Defense is authorized and directed to publish this memorandum in the *Federal Register*.



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Washington, February 16, 2024

[FR Doc. 2024–03754
Filed 2–21–24; 8:45 am]
Billing code 6001–FR–P

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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Chapter X

Supervisory Appeals Process

AGENCY: Consumer Financial Protection Bureau.

ACTION: Supervisory appeals process; update.

SUMMARY: The Consumer Financial Protection Bureau (CFPB or Bureau) is updating its internal supervisory appeals process for institutions seeking to appeal a compliance rating or an adverse material finding.

DATES: This revised supervisory appeals process is applicable as of February 22, 2024.

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

SUPPLEMENTARY INFORMATION:

I. Overview

The CFPB first published its process for supervisory appeals on October 31, 2012, as Bureau Bulletin 2012–07.[1] The process was substantially modeled upon the practices of the prudential regulators. On November 3, 2015, the Bureau revised its process, superseding the 2012 Bulletin.[2] The Bureau has reviewed its current process and the revisions made by prudential regulators since 2015. As a result, the Bureau is revising its process to broaden the Bureau officials eligible to evaluate appealed matters, the options for resolving an appeal, and the matters subject to appeal.

The main changes in the revised supervisory appeals process, which is set out in part II below, are as follows. First, the revised process broadens the pool of potential members of the appeals committee to include any CFPB manager who did not participate in the underlying matter being appealed and who has relevant expertise on the issue(s) raised by the appeal, not only managers from Supervision as under the previous process. The Supervision Director will select three CFPB managers who meet the criteria to serve on the appeals committee, which will advise the Supervision Director on how to resolve the appeal. The CFPB's General Counsel will designate legal counsel to advise the committee. Second, under the revised process there is a new option for resolving the appeal, which is remanding the matter to Supervision staff for consideration of a modified finding, in addition to the existing options of upholding or rescinding the finding. Third, under the revised process institutions may file an appeal as to any compliance rating issued to the institution, not only an adverse rating (*e.g.,* 3, 4, or 5 rating) as under the previous process. Finally, the revised process includes additional clarifying changes and specifies that it applies to appeals pending on the date it is published.

II. Appeals of Supervisory Matters [3]

A. General Purpose

To promote a constructive supervisory relationship with the financial service providers, including depository institutions, under its jurisdiction, the Consumer Financial Protection Bureau (CFPB or Bureau) provides a supervisory appeals process.

Throughout the supervisory process, the CFPB and its supervised entities should engage in an open and candid dialogue on a continuing basis. During an examination or review, CFPB examiners and regional management should ensure that supervised entities understand examiner concerns and issues that arise. In turn, supervised entities should present all relevant information in a timely manner during the examination or review process to ensure that examiners' analyses are complete.

After an examination or targeted review, if a supervised entity disagrees with a compliance rating [4] or any underlying adverse findings set forth in the relevant examination report, or adverse findings set forth in a supervisory letter,[5] the entity may appeal. The key aspects of the appeals process as outlined in this document are:

- CFPB managers who did not participate in the supervisory matter and whose knowledge and background enable them to meaningfully evaluate supervisory matters will be involved in reviewing appeals;
- The CFPB will only entertain appeals in writing, with documentation supporting the appeal, and within specified timeframes; and
- The CFPB will take measures to ensure that an entity's filing of an appeal does not have an adverse effect on the entity's relationship with the CFPB.

B. Entities Who May Initiate Appeals

Under the circumstances noted below, any entity subject to an examination under the CFPB's supervisory authority may use the appeals process.

C. Supervisory Matters Subject to Appeal

An entity may appeal final CFPB compliance ratings or any underlying adverse findings, or adverse findings conveyed to an entity in a supervisory letter. Adverse findings are those that result in a Matter Requiring Attention by the board of directors or principal(s) of the entity.

[1] *https://files.consumerfinance.gov/f/201210_cfpb_bulletin_supervisory-appeals-process.pdf.*

[2] *https://files.consumerfinance.gov/f/201510_cfpb_appeals-of-supervisory-matters.pdf.*

[3] This supervisory appeals process is not intended to nor should it be construed to: (1) restrict or limit in any way the CFPB's discretion in exercising its authorities; (2) limit the CFPB Director's authority to provide direction to CFPB staff at any time; (3) constitute an interpretation of law; or (4) create or confer upon any person, including one who is the subject of CFPB supervisory, investigation or enforcement activity, any substantive or procedural rights or defenses that are enforceable in any manner.

[4] See the *CFPB Supervision and Examination Manual*'s chapter on the examination process. *http://www.consumerfinance.gov/guidance/supervision/manual/.*

[5] Supervision may issue supervisory letters for its reviews of consumer compliance matters that do not result in the issuance of the compliance rating. Supervised entities may appeal adverse findings described in a supervisory letter in the same manner as such findings in an examination report. Adverse findings are those that result in a Matter Requiring Attention.

An entity may not use this supervisory appeals process to appeal:

- Preliminary supervisory matters (including preliminary findings);
- CFPB examiners' decisions to initiate supervisory measures, such as memoranda of understanding;
- Enforcement-related actions and decisions, including cease-and-desist orders and determinations to proceed with an investigation or public enforcement action;
- Adverse findings or an unsatisfactory rating contained in a supervisory letter or examination report related [6] to a recommended or pending investigation or public enforcement action; [7] or
- Referrals of information to other law enforcement and regulatory agencies.

An entity may only appeal a finding once. For example, an entity that receives a rating in an examination report that is based on an earlier finding memorialized in a supervisory letter may appeal the letter or the report, but not both.

D. Pre-Appeal Resolution Efforts

The CFPB expects its supervisory staff, including examiners and regional management, to discuss with supervised entities their preliminary findings and any proposed ratings before an examination or supervisory review is completed. In addition, the CFPB encourages supervised entities to fully engage in this dialogue and, when disagreements occur, to present all available information to support this position. Through such communication, the CFPB anticipates that most disputes can be resolved before an examination is final.

E. Appeal Process

Within 30 business days of the date of the email transmitting an appealable examination report containing a compliance rating, or an appealable supervisory letter, the supervised entity may submit a written appeal via email to: *CFPB_supervisoryappeals@cfpb.gov.*[8] The subject line of the email should state the name of the supervised entity and include the words: ''APPEAL OF SUPERVISORY MATTER.'' The appeal request should include:

a. A description of the issues in dispute and appropriate supporting information; [9]

b. A summary of informal efforts made to resolve the dispute with examiners or other CFPB Supervision staff;

c. A copy of a board resolution or other appropriate formal document issued by the entity's board of directors or principal(s), which authorizes the filing of an appeal; and

d. A statement of whether or not the entity's board of directors or principal(s) requests an oral presentation to the CFPB. If an oral presentation is requested, a member of the board or principal must participate in and lead the oral presentation.

This revised supervisory appeals process applies to any appeal pending with Supervision on the date it is published in the **Federal Register**.

Within five business days of receipt of an appeal, the Supervision Director [10] will designate a committee composed of three CFPB managers who were not involved in the supervisory matter being appealed and who have relevant experience on the issue raised by the appeal. The General Counsel [11] will designate legal counsel to advise the committee. The committee will:

a. Review the supervised entity's written appeal, the examination report or supervisory letter at issue, and supporting documentation for both;

b. If applicable, send a copy of the appeal to the prudential regulator of the appealing entity and solicit its views;

c. Solicit input from other CFPB personnel, such as examination staff and CFPB Headquarters staff (including those involved in the specific matter under appeal); and

d. Hear a presentation from the appealing entity,[12] if requested.

The committee will review the supervisory letter or examination report for consistency with the policies, practices, and mission of the CFPB and the overall reasonableness of the examiners' determinations, and support offered for, the supervisory findings. Only the facts and circumstances upon which a supervisory finding was made will be considered by the committee. It is the appellant's burden to show that the contested supervisory findings should be modified or set aside.

Upon conclusion of the review, the committee will advise the Supervision Director in formulating a written decision on the appeal. The decision may uphold or rescind the finding; alternatively, the decision may remand the finding to Supervision staff who will consider a modified finding. The decision will be transmitted to the appealing entity by email, copying appropriate internal parties and the prudential regulator or state regulator where appropriate. The CFPB expects that a decision will be issued within 60 business days from the assignment of the appeal to the committee, but the committee will notify the supervised entity by email if a longer period will be needed.

The decision under the previous paragraph cannot be the subject of another appeal under this supervisory appeals process.

F. Confidentiality

The appeals process will be confidential and submissions by supervised entities will be treated in accordance with the CFPB regulations and guidance on confidential supervisory information.[13] The CFPB may in the future publish summaries of issues raised in appeals, and the outcomes of such appeals, in a manner that will protect from disclosure the identity of the appealing entity and any other confidential information.

G. Role of the CFPB Ombudsman Office

The CFPB Ombudsman Office serves as an independent, impartial, and confidential resource. It will act as a liaison between supervised entities and the CFPB, providing information about the appeals process. The Ombudsman will facilitate resolution of any process-related issues *before* an appeal is filed with the CFPB and will address process-related issues during the appeal. A supervised entity's reaching out to the

[6] A supervisory letter or an examination report is related to an investigation or enforcement action when it contains any part of the underlying facts and circumstances that form the basis of the investigation or enforcement action.

[7] After an investigation or enforcement action has been resolved, the supervisory findings in a related supervisory letter or examination report may be appealed. In that case, the date of resolution of the investigation or public enforcement action will be treated as the date of the email transmitting an appealable supervisory letter or examination report for the purpose of determining the deadline for a written record.

[8] The date that the entity or CFPB receives by email any material referenced in this supervisory appeals process will be considered the receipt date.

[9] If the staff reviewing the appeal notifies the supervised entity that the entity has not submitted sufficient supporting information, the entity will have 10 business days within which to resubmit the appeal with supporting information.

[10] The position of ''Supervision Director'' encompasses the combined positions of the Assistant Director for Supervision Policy and the Assistant Director for Supervision Examinations. Previously, these positions were occupied by the same individual, and the Bureau is in the process of consolidating these two positions into one Supervision Director position. In this supervisory appeals process, the Supervision Director means the Supervision Director or another CFPB employee designated by the CFPB Director or by the Supervision Director.

[11] In this supervisory appeals process, the ''General Counsel'' means the General Counsel of the CFPB or that person's designee.

[12] Any such presentation must be brief and must be limited to issues raised in the written appeal.

[13] 12 CFR 1070.40–48.

Ombudsman will not delay or stay any statutory, regulatory, or agency timeframes.

H. Effect on the Supervisory Relationship

As noted previously, the CFPB encourages an open dialogue with its supervised entities and views appeals as one aspect of such dialogue. As such, the CFPB will take measures to ensure that an entity's filing of an appeal does not have a negative effect on its supervisory relationship with the CFPB. Any entity with concerns about its relationship with the CFPB should contact the CFPB's Ombudsman who will handle such concerns in a confidential manner, if requested. Information on how to contact the Ombudsman can be found at *http://www.consumerfinance.gov/ombudsman/.*

III. Regulatory Matters

This supervisory appeals process is a rule of agency organization, procedure, or practice under the Administrative Procedure Act.[14]

The CFPB has determined that this supervisory appeals process does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[15]

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2024–03615 Filed 2–21–24; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2002; Project Identifier MCAI–2023–00176–E; Amendment 39–22668; AD 2024–02–04]

RIN 2120–AA64

Airworthiness Directives; GE Aviation Czech s.r.o. (Type Certificate Previously Held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–13–07 for all GE Aviation Czech s.r.o. (GEAC) (type certificate previously held by WALTER Engine a.s., Walter a.s., and MOTORLET a.s.) Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. AD 2021–13–07 required recalculating the life of critical parts and, depending on the results of the recalculation, replacing those critical parts. AD 2021–13–07 also required replacing a certain compressor case. Since the FAA issued AD 2021–13–07, the manufacturer published the airworthiness limitations section (ALS) of the existing engine maintenance manual (EMM), which includes the calculations for the life of critical parts addressed by AD 2021–13–07 and prompted this AD. This AD continues to require the replacement of a certain centrifugal compressor case. This AD also includes an additional part number as an option for the replacement, and limits the applicability of this AD, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 28, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 28, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2002; 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 EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this 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–2023–2002.

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 to supersede AD 2021–13–07, Amendment 39–21612 (86 FR 31601, June 15, 2021), (AD 2021–13–07). AD 2021–13–07 applied to all GEAC Model M601D–11, M601E–11, M601E–11A, M601E–11AS, M601E–11S, and M601F engines. AD 2021–13–07 required recalculating the life of critical parts and, depending on the results of the recalculation, replacing critical parts. AD 2021–13–07 also requires replacing a certain compressor case. The FAA issued AD 2021–13–07 to prevent the failure of the engine.

The NPRM published in the **Federal Register** on October 27, 2023 (88 FR 73778). The NPRM was prompted by EASA AD 2021–0125R1, dated January 30, 2023 (EASA AD 2021–0125R1) (also referred to as the MCAI), issued by EASA, which is the Technical Agent for the Member States of the European Union. The MCAI states that the manufacturer published the ALS, which incorporates certain requirements addressed by EASA Emergency AD 2021–0125–E, and that EASA published EASA AD 2023–0020, dated January 23, 2023 (EASA AD 2023–0020), which requires accomplishment of the actions specified in the ALS. The MCAI limits the applicability to M601E engines with a centrifugal compressor case having part number M601–154.61 installed and removes the requirements that have been incorporated in the ALS.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2002.

In the NPRM, the FAA proposed to continue to require the replacement of a certain centrifugal compressor case. In the NPRM, the FAA also proposed to require accomplishing the actions specified in the MCAI.

Discussion of Final Airworthiness Directive

Comments

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

[14] 5 U.S.C. 553(b).

[15] 44 U.S.C. 3501–3521.

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 EASA AD 2021–0125R1, which specifies procedures for replacing the centrifugal compressor case, limits the applicability to certain M601E engines, and removes the requirements that have been incorporated in the ALS.

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**.

Differences Between This AD and the MCAI

The MCAI applies to GEAC Model M601E engines, and this AD does not because they do not have an FAA type certificate.

Costs of Compliance

The FAA estimates that this AD affects 13 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
Recalculate centrifugal compressor case equivalent flight cycles.	1 work-hour × $85 per hour = $85	$0	$85	$1,105
Replace centrifugal compressor case	10 work-hours × $85 per hour = $850	65,000	65,850	856,050

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 has determined that 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:

■ a. Removing Airworthiness Directive 2021–13–07, Amendment 39–21612 (86 FR 31601, June 15, 2021); and

■ b. Adding the following new airworthiness directive:

2024–02–04 GE Aviation Czech s.r.o. (Type Certificate Previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.): Amendment 39–22668; Docket No. FAA–2023–2002; Project Identifier MCAI–2023–00176–E.

(a) Effective Date

This airworthiness directive (AD) is effective March 28, 2024.

(b) Affected ADs

This AD replaces AD 2021–13–07, Amendment 39–21612 (86 FR 31601, June 15, 2021) (AD 2021–13–07).

(c) Applicability

This AD applies to GE Aviation Czech s.r.o. (type certificate previously held by WALTER Engines a.s., Walter a.s., and MOTORLET a.s.) Model M601E–11, M601E–11A, M601E–11AS, and M601E–11S engines with a centrifugal compressor case having part number (P/N) M601–154.61 installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the manufacturer determining that the life limit of a compressor case having P/N M601–154.61 is not listed in the airworthiness limitations section of the existing engine maintenance manual. The FAA is issuing this AD to prevent the failure of the engine. The unsafe condition, if not addressed, could result in uncontained release of a critical part, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0125R1, dated January 30, 2023 (EASA AD 2021–0125R1).

(h) Exceptions to EASA AD 2021–0125R1

(1) Where EASA AD 2021–0125R1 refers to May 11, 2021 (the effective date of EASA Emergency AD 2021–0125–E, dated May 7, 2021), this AD requires using June 30, 2021 (the effective date of AD 2021–13–07).

(2) This AD does not adopt the Remarks paragraph of EASA AD 2021–0125R1.

(i) 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 (j) 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.

(j) 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.*

(k) 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 the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0125R1, dated January 30, 2023.

(ii) [Reserved]

(3) For EASA AD 2021–0125R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* website: *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on January 29, 2024.

Victor Wicklund,

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

[FR Doc. 2024–03562 Filed 2–21–24; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 463

RIN 3084–AB72

Combating Auto Retail Scams Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 4, 2024, the Federal Trade Commission (''FTC'' or ''Commission'') published a Final Rule in the **Federal Register**, titled ''Combating Auto Retail Scams Trade Regulation Rule'' (''CARS Rule,'' ''Rule,'' or ''Final Rule''), in order to curtail certain unfair or deceptive acts or practices by motor vehicle dealers. The CARS Rule was to become effective on July 30, 2024. Because of a pending legal challenge, this document announces that the effective date of the Final Rule is delayed until further notice.

DATES: The effective date of the final rule adding 16 CFR part 463, published at 89 FR 590, January 4, 2024, is delayed indefinitely. The FTC will publish a subsequent notification in the **Federal Register** announcing the CARS Rule's effective date.

FOR FURTHER INFORMATION CONTACT: Daniel Dwyer or Sanya Shahrasbi, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 202–326–2957 (Dwyer), 202–326–2709 (Shahrasbi), *ddwyer@ftc.gov, sshahrasbi@ftc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background [1]

On January 4, 2024, the Commission published a Final Rule in the **Federal Register,** titled ''Combating Auto Retail Scams Trade Regulation Rule,'' to curtail certain unfair or deceptive acts or practices by motor vehicle dealers. *See* 89 FR 590 (Jan. 4, 2024).[2] The CARS Rule was to become effective on July 30, 2024.

On or about January 5, 2024, the National Automobile Dealers Association and the Texas Automobile Dealers Association (''Petitioners'') filed a Petition for Review (''PFR'') in the United States Court of Appeals for the Fifth Circuit. *Nat'l Auto. Dealers Ass'n* v. *FTC,* No. 24–60013 (5th Cir. filed Jan. 5, 2024). On January 8, 2024, the Petitioners filed a motion with the Fifth Circuit seeking a stay of the Rule and expedited consideration of their PFR. Although Petitioners did not seek a stay from the Commission in the first instance as required by Rule 18(a)(1) of the Federal Rules of Appellate Procedure, the Commission has nonetheless reviewed Petitioners' motion, construing it as though it were a stay request submitted under Commission Rule 4.2(d), 16 CFR 4.2(d).

The Administrative Procedure Act (''APA'') provides, in relevant part, that ''[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.'' *See* 5 U.S.C. 705. The Commission believes the Rule will provide consumers with critical protections from auto retail scams, Petitioners' challenges to the Rule lack merit, and undue delay in the Rule's effective date will harm consumers and honest businesses. Petitioners' arguments for a stay rest on mischaracterizations of what the Rule requires of covered motor vehicle dealers, including inaccurate claims that the Rule will require dealers to overhaul their practices and will substantially increase compliance costs. In fact, the Rule does not impose substantial costs, if any, on dealers that presently comply with the law, and to the extent there are costs, those are outweighed by the benefits to consumers, to law-abiding dealers, and to fair competition—because honest dealers will no longer be at a competitive disadvantage relative to dishonest dealers. Nonetheless, Petitioners have created uncertainty through their assertions and suggestions that legally compliant dealers must make unnecessary changes to satisfy Petitioners' misunderstandings of the Rule. Additionally, Petitioners are seeking expedited consideration of the PFR, and, if that request is granted, the stay of the effective date should not postpone implementation of the Rule by more than a few months, if at all. Balancing the equities here, the Commission has determined it is in the interests of justice to stay the effective date of the Rule to allow for judicial review. Once the PFR's merits are resolved, the Commission will publish a

[1] This section is substantively identical to the order that the Commission issued on January 18, 2024. *See* Order Postponing Effective Date of Final Rule Pending Judicial Review, In re Combating Auto Retail Scams Trade Regulation Rule, No. P204800 (Jan. 18, 2024), *https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf.*

[2] In accordance with its rulemaking authority under 12 U.S.C. 5519(d), the Commission promulgated the CARS Rule pursuant to 15 U.S.C. 45 and 57a(a)(1)(B) and 5 U.S.C. 553. 12 U.S.C. 5519(f)(1) and (f)(2) contain the pertinent definitions of ''motor vehicle'' and ''motor vehicle dealer,'' and the Rule applies only to a ''covered'' subset. *See* 89 FR 590, 693–94 (Jan. 4, 2024) (to be codified at 16 CFR 462.3(e) through (f)).

document in the **Federal Register** establishing a new effective date.

II. Administrative Procedure Act

Notice and comment is not required when an agency delays the effective date of a rule under section 705 of the APA because such a stay is not substantive rulemaking; it merely maintains the status quo to allow for judicial review.[3]

To the extent that a delay in the effective date may be deemed a rule, such action is also exempt from notice and comment as a rule of procedure under 5 U.S.C. 553(b)(A).[4] Alternatively, the Commission finds, for good cause, for the reasons stated above, that notice and solicitation of public comment regarding the delay of the effective date for the CARS Rule are impracticable, unnecessary, or contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). Balancing the equities here, the Commission has determined that it is in the interests of justice to stay the effective date of the Rule to allow for judicial review.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2024–03559 Filed 2–21–24; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA-2024–N–0017]

Advisory Committee; Digital Health Advisory Committee; Addition to List of Standing Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or Agency) is amending the standing advisory committees regulations to add the establishment of the Digital Health Advisory Committee (the Committee) to the list of standing advisory committees.

DATES: This rule is effective February 22, 2024.

FOR FURTHER INFORMATION CONTACT: James Swink, Office of Management, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993, 301–796–6313, *James.swink@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee was established on October 11, 2023, and notice of establishment was published in the **Federal Register** on October 12, 2023 (88 FR 70679).

The Committee will provide advice to the Commissioner, or designee, on complex scientific and technical issues related to digital health technologies (DHTs). This also may include advice on the regulation of DHTs and/or their use, including use of DHTs in clinical trials or postmarket studies subject to FDA regulation. Topics relating to DHTs, such as artificial intelligence/machine learning, augmented reality, virtual reality, digital therapeutics, wearables, remote patient monitoring, and software, may be considered by the Committee. The Committee will advise the Commissioner on issues related to DHTs, including, for example, real-world data, real-world evidence, patient-generated health data, interoperability, personalized medicine/genetics, decentralized clinical trials, use of DHTs in clinical trials for medical products, cybersecurity, DHT user experience, and Agency policies and regulations regarding these technologies. The Committee will provide relevant expertise and perspective to improve Agency understanding of the benefits, risks, and clinical outcomes associated with use of DHTs. The Committee will perform its duties by providing advice and recommendations on new approaches to develop and evaluate DHTs and to promote innovation of DHTs, as well as identifying risks, barriers, or unintended consequences that could result from proposed or established Agency policy or regulation for topics related to DHTs.

The Committee shall consist of a core of nine voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of digital health, such as artificial intelligence/machine learning, augmented reality, virtual reality, digital therapeutics, wearables, remote patient monitoring, software development, user experience, real-world data, real-world evidence, patient-generated health data, interoperability, personalized medicine/genetics, decentralized clinical trials, cybersecurity, and implementation in clinical practice of and patient experience with digital health, as well as other relevant areas. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve either as special government employees or non-voting representatives. Federal members will serve as regular government employees. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who serves as an individual, but who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.

The Commissioner or designee shall also have the authority to select from a group of individuals nominated by industry to serve temporarily as non-voting members who are identified with and represent industry interests. The number of temporary members selected for a particular meeting will depend on the meeting topic.

The Committee name and function have been established with the establishment of the Committee charter. The change became effective October 11, 2023. Therefore, the Agency is amending § 14.100 (21 CFR 14.100) to add the Committee name and function to its current list as set forth in the regulatory text of this document.

Under 5 U.S.C. 553(b)(3)(B) and (d) and 21 CFR 10.40(d) and (e), the Agency finds good cause to dispense with notice and public comment procedures and to proceed to an immediate effective date on this rule. Notice and public comment and a delayed effective date are unnecessary and are not in the public interest as this final rule merely amends § 14.100 to include the name of the committee and its function that will be added consistent with the committee charter.

Therefore, the Agency is amending § 14.100 as set forth in the regulatory text of this document.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

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

[3] *See Bauer* v. *DeVos,* 325 F. Supp.3d 74, 106–07 (D.D.C. 2018); *Sierra Club* v. *Jackson,* 833 F. Supp. 2d 11, 28 (D.D.C. 2012).

[4] Because a notice of proposed rulemaking is not necessary for this delay of effective date, the Commission is not required to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 603(a), 604(a).

Authority: 5 U.S.C. 1001 *et seq.;* 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264, 284m, 284m–1; Pub. L. 107–109, 115 Stat. 1419.

■ 2. In § 14.100, add paragraph (d)(6) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(d) * * *

(6) Digital Health Advisory Committee.

(i) Date established: October 11, 2023.

(ii) Function: Advises the Commissioner of Food and Drugs or designee in discharging responsibilities as they relate to ensuring that digital health technologies (DHTs) intended for use as a stand-alone medical product, as part of a medical product, or as a companion, complement, or adjunct to a medical product are safe and effective for human use.

* * * * *

Dated: February 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–03618 Filed 2–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 525

Publication of Burma Sanctions Regulations Web General License 6

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Burma Sanctions Regulations: GL 6, which was previously made available on OFAC's website.

DATES: GL 6 was issued on January 31, 2024.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 31, 2024, OFAC issued GL 6 to authorize certain transactions otherwise prohibited by the Burma Sanctions Regulations, 31 CFR part 525. GL 6 was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The reference to 31 CFR part 594 in paragraph (a) of the GL rather than 31 CFR part 525 was an error in the original GL, which is reproduced in this publication. The text of the GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Burma Sanctions Regulations

31 CFR Part 525

GENERAL LICENSE NO. 6

Authorizing the Wind Down of Transactions Involving Shwe Byain Phyu Group of Companies

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Burma Sanctions Regulations, 31 CFR part 594 (BuSR), that are ordinarily incident and necessary to the wind down of any transaction involving Shwe Byain Phyu Group of Companies (SBPG) or any entity in which SBPG owns, directly or indirectly, a 50 percent or greater interest, are authorized through 12:01 a.m. eastern standard time, March 1, 2024, provided that any payment to a blocked person is made into a blocked account in accordance with the BuSR.

(b) This general license does not authorize any transactions otherwise prohibited by the BuSR, including transactions involving any person blocked pursuant to the BuSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 31, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–03625 Filed 2–21–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General License 87

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 87, which was previously made available on OFAC's website.

DATES: GL 87 was issued on February 8, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On February 8, 2024, OFAC issued GL 87 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 87 was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 87

Authorizing Limited Safety and Environmental Transactions Involving Certain Persons or Vessels Blocked on February 8, 2024

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to one of the following activities involving the blocked persons described in paragraph (b) are authorized through 12:01 a.m. eastern daylight time, May 8, 2024, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations (RuHSR):

(1) The safe docking and anchoring in port of any vessels in which any person or entity listed in paragraph (b) of this

general license has a property interest (''blocked vessels'');

(2) The preservation of the health or safety of the crew of any of the blocked vessels; or

(3) Emergency repairs of any of the blocked vessels or environmental mitigation or protection activities relating to any of the blocked vessels.

(b) The authorization in paragraph (a) of this general license applies to the following blocked persons listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List and any entity in which any of the following persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest:

(1) Oil Tankers SCF MGMT FZCO; and

(2) NS Leader Shipping Incorporated.

(c) This general license does not authorize:

(1) The entry into any new commercial contracts involving the property or interests in property of any blocked persons, including the blocked entities described in paragraph (b) of this general license, except as authorized by paragraph (a);

(2) The offloading of any cargo onboard any of the blocked vessels, including the offloading of crude oil or petroleum products of Russian Federation origin, except for the offloading of cargo that is ordinarily incident and necessary to address vessel emergencies authorized pursuant to paragraph (a) of this general license;

(3) Any transactions related to the sale of crude oil or petroleum products of Russian Federation origin;

(4) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(5) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(6) Any transactions otherwise prohibited by the RuHSR, including transactions involving the property or interests in property of any person blocked pursuant to the RuHSR, other than transactions involving the blocked persons in paragraph (b) of this general license, unless separately authorized.

Lisa M. Palluconi,

Deputy Director, Office of Foreign Assets Control.

Dated: February 8, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–03628 Filed 2–21–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 13H and 86

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 13H and 86, each of which was previously made available on OFAC's website.

DATES: GLs 13H and 86 were issued on January 18, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 18, 2024, OFAC issued GLs 13H and 86 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. Each GL has an expiration date of April 17, 2024 and was made available on OFAC's website (*https://ofac.treasury.gov/*) at the time of publication. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 13H

Authorizing Certain Administrative Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, certifications, or tax refunds to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern daylight time, April 17, 2024.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective January 18, 2024, General License No. 13G, dated November 2, 2023, is replaced and superseded in its entirety by this General License No. 13H.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 18, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 86

Authorizing Limited Safety and Environmental Transactions Involving Certain Persons or Vessels Blocked on January 18, 2024

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to one of the following activities involving the blocked persons described in paragraph (b) are authorized through 12:01 a.m. eastern daylight time, April 17, 2024, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations (RuHSR):

(1) The safe docking and anchoring in port of any vessels in which any person or entity listed in paragraph (b) of this general license has a property interest (''blocked vessels'');

(2) The preservation of the health or safety of the crew of any of the blocked vessels; or

(3) Emergency repairs of any of the blocked vessels or environmental mitigation or protection activities relating to any of the blocked vessels.

(b) The authorization in paragraph (a) of this general license applies to Hennesea Holdings Limited (Hennesea) and any entity in which Hennesea owns, directly or indirectly, a 50 percent or greater interest.

(c) This general license does not authorize:

(1) The entry into any new commercial contracts involving the property or interests in property of any blocked persons, including the blocked persons described in paragraph (b) of this general license, except as authorized by paragraph (a);

(2) The offloading of any cargo onboard any of the blocked vessels, including the offloading of crude oil or petroleum products of Russian Federation origin, except for the offloading of cargo that is ordinarily incident and necessary to address vessel emergencies authorized pursuant to paragraph (a) of this general license;

(3) Any transactions related to the sale of crude oil or petroleum products of Russian Federation origin;

(4) Any transactions prohibited by Directive 2 under E.O. 14024, *Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions;*

(5) Any transactions prohibited by Directive 4 under E.O. 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation;* or

(6) Any transactions otherwise prohibited by the RuHSR, including transactions involving the property or interests in property of any person blocked pursuant to the RuHSR, other than transactions involving the blocked persons described in paragraph (b) of this general license, unless separately authorized.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 18, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–03629 Filed 2–21–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 591

Publication of Venezuela Sanctions Regulations Web General License 5N

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Venezuela Sanctions Regulations: GL 5N, which was previously made available on OFAC's website.

DATES: GL 5N was issued on January 16, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 16, 2024, OFAC issued GL 5N to authorize certain transactions otherwise prohibited by the Venezuela Sanctions Regulations (VSR), 31 CFR part 591. The GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. GL 5N supersedes GL 5M, which was issued on October 18, 2023. The text of GL 5N is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Venezuela Sanctions Regulations

31 CFR Part 591

GENERAL LICENSE NO. 5N

Authorizing Certain Transactions Related to the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond on or After April 16, 2024

(a) Except as provided in paragraph (b) of this general license, on or after April 16, 2024, all transactions related to, the provision of financing for, and other dealings in the Petróleos de Venezuela, S.A. 2020 8.5 Percent Bond that would be prohibited by subsection l(a)(iii) of Executive Order (E.O.) 13835 of May 21, 2018, as amended by E.O. 13857 of January 25, 2019, and incorporated into the Venezuela Sanctions Regulations, 31 CFR part 591 (the VSR), are authorized.

(b) This general license does not authorize any transactions or activities otherwise prohibited by the VSR, or any other part of 31 CFR chapter V.

(c) Effective January 16, 2024, General License No. 5M, dated October 18, 2023, is replaced and superseded in its entirety by this General License No. 5N.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–03626 Filed 2–21–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Publication of Global Terrorism Sanctions Regulations Web General Licenses 22, 23, 24, 25, 26, and 27

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets

Control (OFAC) is publishing six general licenses (GLs) issued pursuant to the Global Terrorism Sanctions Regulations: GLs 22, 23, 24, 25, 26, and 27, each of which was previously made available on OFAC's website.

DATES: GL 22 was issued on January 17, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On January 17, 2024, OFAC issued GLs 22, 23, 24, 25, and 26 to authorize certain transactions otherwise prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR). Each GL was made available on OFAC's website (*https://ofac.treasury.gov*) when it was issued. GL 27 was issued on January 22, 2024, and has an expiration date of March 22, 2024. The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 22

Transactions Related to the Provision of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates Involving Ansarallah

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the provision (including sale) of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to Yemen, or to persons in third countries purchasing specifically for provision to Yemen, are authorized.

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

(1) *Agricultural commodities.* Agricultural commodities are products that:

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

(ii) Are intended for ultimate use in Yemen as:

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

(B) Seeds for food crops;

(C) Fertilizers or organic fertilizers; or

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

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

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

(c) This general license does not authorize:

(1) Financial transfers to any blocked person described in paragraph (a) of this general license, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services; or

(2) Any transactions otherwise prohibited by the GTSR, including transactions involving any person blocked pursuant to the GTSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Note to paragraph (c)(2). See 31 CFR 594.521 of the GTSR for a general license authorizing transactions related to the provision of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates for personal, non-commercial use.

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

(d) This general license shall take effect on February 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 17, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 23

Authorizing Transactions Related to Telecommunications Mail, and Certain Internet-Based Communications Involving Ansarallah

(a)(1) Except as provided in paragraph (d) of this general license, all transactions prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, with respect to the receipt or transmission of telecommunications to, from, or in Yemen are authorized.

(2) This paragraph does not authorize:

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

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

Note to paragraph (a). See 31 CFR 594.508 of the GTSR for a general license authorizing transactions related to telecommunications.

(b) Except as provided in paragraph (d) of this general license, the exportation, reexportation, or provision, directly or indirectly, from the United States or by U.S. persons, wherever located, to Yemen, of services, software, hardware, or technology incident to the exchange of communications over the internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, and user authentication services, as well as cloud-based services in support of the foregoing, and domain name registration services, involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that is prohibited by the GTSR, is authorized, provided the exportation, reexportation, or provision is not to a person whose property and interests in property are blocked pursuant to the GTSR.

(c) Except as provided in paragraph (d) of this general license, all transactions of common carriers incident to the receipt or transmission of mail and packages between the United States and Yemen, or within Yemen, involving Ansarallah, or any

entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by the GTSR are authorized, provided that the importation or exportation of such mail and packages is not to or from any person blocked pursuant to the GTSR.

Note to paragraph (c). See 31 CFR 594.509 of the GTSR for a general license authorizing transactions related to mail.

(d) This general license does not authorize:

(1) Financial transfers to any blocked person described in paragraph (a) of this general license, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services; or

(2) Any transactions otherwise prohibited by the GTSR, including transactions involving any person blocked pursuant to the GTSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(e) This general license shall take effect on February 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 17, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 24

Authorizing Noncommercial, Personal Remittances Involving Ansarallah

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the transfer of noncommercial, personal remittances to or from an individual in Yemen, are authorized, provided the individual is not a person whose property or interests in property are blocked pursuant to the GTSR.

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

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

(c) This general license does not authorize:

(1) Financial transfers to any blocked person described in paragraph (a) of this general license, other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services; or

(2) Any transactions otherwise prohibited by the GTSR, unless separately authorized.

(d) This general license shall take effect on February 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 17, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 25

Authorizing Transactions Related to Refined Petroleum Products in Yemen Involving Ansarallah

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the provision (including sale) of refined petroleum products for personal, commercial, or humanitarian use in Yemen are authorized.

(b) This general license does not authorize:

(1) Any commercial resale, transfer, exportation, or reexporation of refined petroleum products from Yemen;

(2) Financial transfers to any blocked person described in paragraph (a), other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services; or

(3) Any transactions otherwise prohibited by the GTSR, including transactions involving any person blocked pursuant to the GTSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(c) This general license shall take effect on February 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 17, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 26

Authorizing Certain Transactions Necessary to Port and Airport Operations Involving Ansarallah

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), involving Ansarallah, or any entity in which Ansarallah owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the operation of, or import or export of goods or transit of passengers through, ports and airports in Yemen are authorized.

(b) This general license does not authorize:

(1) Financial transfers to any blocked person described in paragraph (a), other than for the purpose of effecting the payment of taxes, fees, or import duties, or the purchase or receipt of permits, licenses, or public utility services;

(2) Transactions involving imports or exports of arms or related materiel; or

(3) Any transactions otherwise prohibited by the GTSR, unless separately authorized.

Note to General License No. 26. Nothing in this general license relieves any exporter from compliance with the requirements of other Federal agencies, including the Department of Commerce's Bureau of Industry and Security.

(c) This general license shall take effect on February 16, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 17, 2024.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations

31 CFR Part 594

GENERAL LICENSE NO. 27

Authorizing Civil Aviation Safety and Wind Down Transactions Involving Fly Baghdad

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by the Global

Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), that are ordinarily incident and necessary to the provision, exportation, or reexportation of goods, technology, or services to ensure the safety of civil aviation involving Fly Baghdad are authorized through 12:01 a.m. eastern daylight time, March 22, 2024, provided that the goods, technology, or services that are provided, exported, or reexported are for use on aircraft operated solely for civil aviation purposes.

(b) Except as provided in paragraph (c) of this general license, all transactions prohibited by the GTSR that are ordinarily incident and necessary to the wind down of any transaction involving Fly Baghdad are authorized through 12:01 a.m. eastern daylight time, March 22, 2024, provided that any payment to Fly Baghdad must be made into a blocked account in accordance with the GTSR.

(c) This general license does not authorize any transactions otherwise prohibited by the GTSR, including transactions involving any person blocked pursuant to the GTSR other than Fly Baghdad, unless separately authorized.

Note to General License 27. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730–774.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

Dated: January 22, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2024–03627 Filed 2–21–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0136]

RIN 1625–AA00

Safety Zone, Installation Area for Offshore Wind Power Transmission Export Cables, Atlantic Ocean, Virginia Beach, Virginia

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within 550-yards of a near shore construction site near the State Military Reservation, in Virginia Beach, Virginia. The safety zone will protect personnel, vessels, and the marine environment from potential hazards created by subsurface construction. Operations are planned to bore tunnels to carry electric transmission lines below the Atlantic Ocean. When the M/V RAM XII or the M/V RAM XV are present, entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Virgina or a designated representative.

DATES: This rule is effective from March 1, 2024 through December 31, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0136 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Ashley Holm, Chief, Waterways Management Division U.S. Coast Guard; 757–617–7986, *Ashley.E.Holm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On February 6, 2024, the Virginia Electric and Power Company, doing business as Dominion Energy, notified the Coast Guard that they plan to begin tunneling work east of the State Military Reservation in Virginia Beach, Virginia in the first week of March 2024, specifically in waters within one half mile of the shoreline. The work involves the use of dynamic positioning for tunnel placement, excavation equipment, divers in shallow water, and the coordination of approximately seven vessels.

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are impracticable. The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing notice, and receiving, considering and responding to comments between now and March 1, 2024, when the safety zone must be in effect, is impracticable.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because there are less than 30 days remaining before March 1, when the safety zone must be in place to serve its purpose.

III. Legal Authority and Need for Rule

The Captain of the Port, Sector Virginia (COTP) has determined that potential hazards associated with the construction of subsurface tunnels will create a safety concern that necessitates prohibiting vessels approaching the subsea tunneling site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the tunneling operations are conducted. The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034.

IV. Discussion of the Rule

This rule establishes a safety zone from March 1, 2024, until December 31, 2024, during which Dominion Energy will be tunneling to lay electric transmission lines below the Atlantic Ocean. The safety zone will cover all navigable waters within 550 yards of the position 36°48′57.6″ N 75°57′43.2″ W, a distance selected to encompass all vessels and machinery being used by personnel to conduct tunneling operations. Consistent with its purpose of protecting personnel, vessels, and the marine environment in these navigable waters while the tunneling operations are conducted, the zone will only be subject to enforcement when such vessels are present. During subsurface construction operations, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on a formal navigational risk assessment, as required by the project permitting process which preceded the request to the Coast Guard. This study considered the vessels using the area. The use of unrestricted waters to the east of the working site would allow vessels normally transiting this location access to the other side in less than an hour detour. The zone itself is not unique to the coastal environment and exclusion of vessels from these waters would not harm the human environment, as the shoreline is already a military reserve with restricted access to the public. The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone enforceable only during working periods that will prohibit entry within 550 yards of a tunneling site, during the months of March through December of 2024. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 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. Add § 165.T05–0136 to read as follows:

§ 165.T05–0136 Safety Zone, Installation Area for Offshore Wind Power Transmission Export Cables, Atlantic Ocean, Virginia Beach, Virginia.

(a) *Location.* The following area is a safety zone: All waters within 550 yards of the center point of the installation site at position 36°48′57.6″ N 75°57′43.2″ W to include the shoreline within the radius. These coordinates are based on WGS 84.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the safety zones. The term also includes the masters of the Lift Boats RAM XII and/or RAM XV, for the sole purpose of designating and establishing safe transit corridors, to permit passage into or through these safety zones, or to notify vessels and individuals that they have entered a safety zone and are required to depart immediately.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, no vessels or persons may enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, vessels should contact the Lift Boats RAM XII and/or RAM XV via VHF–FM Channel 16. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative for the purposes of instructions for safe transit.

(d) *Enforcement period.* This zone will be in effect and subject to enforcement during such times as the Lift Boats RAM XII and/or RAM XV is present within the zone, between March 1, 2024, and December 31, 2024.

Dated: February 14, 2024.

J.A. Stockwell,

Captain, U.S. Coast Guard, Captain of the Port Sector Virginia.

[FR Doc. 2024–03590 Filed 2–21–24; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5, 25, and 97

[IB Docket No. 18–313; FCC 24–6; FR ID 202994]

Mitigation of Orbital Debris in the New Space Age

AGENCY: Federal Communications Commission.

ACTION: Denial of reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) discusses the adoption of an Order on Reconsideration (*Orbital Debris Reconsideration Order*), which addressed three petitions for reconsideration challenging the orbital debris mitigation rules adopted by the Commission in 2020. In the *Orbital Debris Reconsideration Order,* the Commission declined to modify, withdraw, or otherwise change the orbital debris mitigation rules adopted in *2020 Orbital Debris Order,* published August 25, 2020, but also provided some clarification and guidance as relevant for some of the issues raised in the petitions for reconsideration.

DATES: The denial of reconsideration is effective February 22, 2024.

FOR FURTHER INFORMATION CONTACT: Alexandra Horn, Space Bureau, Satellite Programs and Policy Division, 202–418–1376, *alexandra.horn@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration (*Orbital Debris Reconsideration Order*), FCC 24–6, adopted on January 25, 2024, and released on January 26, 2024. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-24-6A1.pdf.* To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act. The *Orbital Debris Reconsideration Order* did not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198,see 44 U.S.C. 3506(c)(4).

Regulatory Flexibility Analysis. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings. As the *Orbital Debris Reconsideration Order* does not adopt or otherwise modify any existing rules, no regulatory flexibility analysis is necessary.

Synopsis

I. Introduction

1. In the *Orbital Debris Reconsideration Order,* the Commission addressed the issues raised in three petitions for reconsideration of the *2020 Orbital Debris Order,* 86 FR 52422 (August 25, 2020): (1) a petition filed by the Boeing Company (Boeing), EchoStar Satellite Services, LLC (EchoStar), Hughes Network Services, LLC (Hughes), Planet Labs, Inc. (Planet), Spire Global, Inc. (Spire), and Telesat Canada (Telesat) (collectively, Combined Petition), asking the Commission to reconsider information disclosure requirements relating to satellite maneuverability, large system disposal reliability, the use of deployment devices, and the use of certain types of persistent liquids; (2) a petition filed by Space Exploration Technologies Corp. (SpaceX) seeking reconsideration or clarification of the Commission's orbital debris mitigation rules as applied to non-U.S.-licensed satellite systems seeking U.S. market access; and (3) a petition filed by Kuiper Systems LLC (Kuiper) seeking adoption of a new rule addressing issues related to the orbital separation of large non-geostationary orbit (NGSO) constellations.

2. In responding to these petitions, the Commission declined to modify, withdraw, or otherwise change the information collection requirements adopted in the *2020 Orbital Debris Order.* It also declined to change its rules as applicable to non-U.S.-licensed systems seeking U.S. market access, or to adopt new rules governing the orbital separation of large NGSO constellations. After reviewing the petitions, the Commission found that the petitioners failed to show any material errors or omissions in the *2020 Orbital Debris Order* or raise any new or additional facts that would warrant reconsideration under the Commission's rules. However, the *Orbital Debris Reconsideration Order* provided some clarification or guidance as appropriate on some of the issues raised in the petitions for reconsideration.

II. Background

3. On November 19, 2018, the Commission released a notice of

proposed rulemaking (*2018 Orbital Debris NPRM*), 84 FR 4742 (February 19, 2019), in IB Docket No. 18–313, concerning the mitigation of orbital debris in the new space age. It represented the first comprehensive look at the Commission's orbital debris rules since their adoption in 2004 and was intended to improve and clarify these rules based on the experiences gained in the satellite licensing process and various improvements in mitigation guidelines, practices, and technologies. After reviewing the record and public comments filed in response to the *2018 Orbital Debris NPRM,* including individual comments filed by some of the parties involved in the petitions for reconsideration, the Commission adopted the *2020 Orbital Debris Order* on April 23, 2020. At the same time, the Commission also adopted a further notice of proposed rulemaking, 85 FR 52455 (August 25, 2020) (*2020 Orbital Debris FNPRM*), which sought further comment on adopting rules concerning the probability of accidental explosions, the total probability of collisions with large objects, maneuverability above a certain altitude in low-Earth orbit (LEO), post-mission orbital lifetime, casualty risk, indemnification, and performance bonds for successful disposal. On September 24, 2020, the petitioners filed their timely petitions for reconsideration, and by November 24, 2020, five oppositions and comments to the petitions were filed.

III. Discussion

A. Combined Petition Issues

1. Relationship to Other U.S. Government Technical and Policy Documents

4. The petitioners raised concerns about the consistency of the rules adopted with policies and guidelines developed by expert Federal agencies, noting in particular the U.S. Government Orbital Debris Mitigation Standard Practices (ODMSP) and Space Policy Directive–3 (SPD–3), and allege that the disclosure rules ''[diverge] substantially from the recommendations of other expert federal agencies, including, in some cases, disregarding the findings of the recently updated multi-agency Orbital Debris Mitigation Standard Practices.'' Both Viasat and OneWeb challenged this assertion.

5. The petitioners failed to identify any respect in which the Commission's actions in adopting the *2020 Orbital Debris Order* are fundamentally inconsistent with the policies, goals, and guidelines identified in SPD–3 and the ODMSP. To the extent they are relying on the fact that the specific technical matters addressed in the Commission's rules are not addressed at the same level of specificity in SPD–3 and the ODMSP, these arguments are not well-founded, and do not establish a ''divergence.'' As noted by Viasat and OneWeb, both of these documents invite further action including through the development of additional standards and best practices. The ODMSP expressly states that it may be appropriate to ''consider the benefits of going beyond the standard practices and tak[ing] additional steps to limit the generation of orbital debris.'' Furthermore, the Commission found the petitioners have in some instances alleged divergence from these documents only by ignoring other relevant provisions of those documents.

6. Even if the Commission were to accept the petitioners' unsupported allegation of divergence, the Commission observed in adopting these rules that the ODMSP ''applies, by its terms, only to government missions that are procured and operated by government agencies for governmental purposes . . . rather than in the context of regulatory review,'' and for that reason ''some tailoring'' of the ODMSP was necessary to fit into the Commission's existing regulatory structure.

2. Burden on Applicants

7. Throughout the Combined Petition, petitioners argued that the regulations adopted in the *2020 Orbital Debris Order* will be overly burdensome on applicants. Viasat and Maxar challenged this claim. In raising concerns with burdens on applicants, the petitioners rely on generalized concerns that regulation will be ''overly stringent,'' or that applicants will experience difficulties because of ''staff conclusions that the substance of the disclosed information was insufficient or inconsistent with what they thought should be required.'' These speculative concerns about possible errors in Commission decision-making do not provide a basis for reconsideration. In any event, and in an effort to assist applicants in preparing applications, the *Orbital Debris Reconsideration Order* offers additional discussion with respect to some aspects of the specific disclosure requirements adopted.

3. Maneuverability

8. In the *2020 Orbital Debris Order,* the Commission adopted a rule requiring applicants to disclose the extent of maneuverability of planned space stations, noting that most commenters addressing this topic, including the National Aeronautics and Space Administration (NASA), agreed with the adoption of this disclosure. The Commission provided some examples of the type of information that applicants could include in their disclosure statements, as suggested by NASA in its comments on the topic.

9. The Commission also revised a separate rule provision on avoiding collisions with large objects to require applicants to state whether the probability that their spacecraft will collide with a large object during the orbital lifetime of the spacecraft is less than 0.001 (1 in 1,000), in line with the ODMSP. As part of that rule, the Commission adopted a presumption that the collision risk with large objects could be assumed zero or near zero during the period of time when the space station is able to conduct avoidance maneuvers, absent evidence to the contrary. The Commission noted that in individual cases where there is evidence that a particular system or operator is unable to effectively maneuver or is only maneuvering at a risk threshold that raises reasonable questions about its ability to meet the 0.001 collision risk threshold even with some degree of maneuverability, this assumption would not be applied and further analysis would be necessary. The Commission did not adopt a definition of ''effective maneuverability'' but sought comment in the *2020 Orbital Debris FNPRM* on a definition, as well as on whether to adopt a requirement that spacecraft must be maneuverable.

10. Boeing, Planet, and Spire argued that the Commission should withdraw its ''requirements'' regarding effective maneuverability until this term is adequately defined. These petitioners did not distinguish between the two distinct portions of the rule, and instead argued generally that without a more detailed metric for effective maneuverability, such as the ability to alter the course of a spacecraft by a certain distance in a particular time period, the FCC rules cannot be administered fairly. However, they did not take issue with the assumption of zero or near zero risk for maneuverable spacecraft. Viasat, OneWeb, and Maxar opposed this request, noting, in effect, that pending development of a comprehensive definition, disclosure of maneuverability information serves a valid public interest objective and provides supporting evidence for addressing the Commission's collision risk rule.

11. As observed in the *2020 Orbital Debris Order,* factual information regarding a satellite or system's maneuverability is useful not only to the

Commission when it is assessing applications, but to other operators as it helps interested parties to better understand how operators plan to handle predicted collision risks. Moreover, details about spacecraft maneuverability enhance the Commission's grasp of other data presented in an applicant's orbital debris mitigation plan and are essential information for the administration of Commission rules in several key areas. For example, the satellite's expected lifespan in orbit can be significantly influenced by its maneuverability and impact an operator's ability to comply with Commission rules. Additionally, the information provided by applicants in these disclosures can also be drawn upon as the Commission works to further refine its rules through rulemaking. As noted by opposing parties, ''facilitating a thorough understanding of other operators' ability to maneuver in-orbit is fundamental to responsible orbital stewardship'' and disclosure fosters a ''transparent'' and ''predictable'' operating environment.

12. Although the petitioners' request appears to focus on any disclosure concerning maneuverability, to the extent the petition sought only removal of the ''not effectively maneuverable'' exception to the zero or near zero collision risk assumption in the Commission's large object collision risk rule, the Commission found that the petitioners provided no valid arguments in support of this approach. The Commission declined to adopt an approach that could maintain an assumption of zero or near zero risk even in the face of evidence suggesting that such an assumption is not warranted because collision avoidance capabilities are minimal. The Commission expects the precedent that evolves from a case-by-case approach in evaluating factual information regarding a satellite or system's maneuverability will guide applicants and will address petitioners' concerns with subjective and inconsistent licensing determinations. Finding that the petitioners have not provided any evidence of a material error, omission, or reasoning that would warrant reconsideration under the Commission's rules, the Commission declined to modify its rules pertaining to maneuverability.

13. *Additional Resources for Applicants.* During the pendency of this proceeding, NASA developed the ''NASA Spacecraft Conjunction Assessment and Collision Avoidance Best Practices Handbook'' (Handbook) and issued a revised version in February of 2023. The Handbook is a useful resource that applicants may find helpful in developing and documenting conjunction assessment and collision avoidance capabilities, including for maneuverable spacecraft. The Handbook makes some specific recommendations on conjunction assessment and collision avoidance, including (i) designing spacecraft with capabilities to facilitate conjunction assessment and mitigation; (ii) providing ephemeris for conjunction screening at adequate intervals and covering adequate duration; and (iii) when the probability of collision (Pc) estimated for a conjunction exceeds the mitigation threshold (recommended to be 1E–4) at the mitigation action commitment point, pursuing a mitigation action that will reduce Pc by at least 1.5 orders of magnitude from the remediation threshold, and ensure that the mitigation action does not create any additional conjunctions with a Pc value above the mitigation threshold.

4. Large System Disposal Reliability

14. In the *2020 Orbital Debris Order,* the Commission adopted a rule requiring applicants to provide a statement demonstrating that the probability of success for their chosen disposal method is 0.9 or greater for any individual space station. The rule also requires that for space station systems consisting of multiple space stations, the demonstration should include additional information regarding efforts to achieve a higher probability of successful disposal, with a goal, for large systems, of a probability of success for any individual station of 0.99 or better. Drawing on provisions in the ODMSP, the Commission also stated in the *2020 Orbital Debris Order* that additional scrutiny will be given to larger deployments, including consideration of factors such as mass, collision probability, and orbital location.

15. Boeing, Planet, Spire, and Telesat raised a concern that the rule will result in the 0.99 probability goal for satellites that are part of large systems becoming in effect an enforceable requirement. They also objected to providing ''sensitive'' commercial considerations, such as satellite mass and orbital location, as part of the Commission's assessment.

16. The Commission found that the petitioners provided no valid basis for reconsideration. With respect to concerns that the 0.99 disposal reliability goal described in the adopted rule is in effect a firm requirement for all large deployments, these concerns are neither justified nor supported by any new information. Since the adoption of this rule, the Commission has authorized several large system deployments, and in doing so has addressed reliability together with other relevant factual considerations, such as collision risk for satellites that are not reliably disposed. While it appears to be the case based on both authoritative studies and the experience gained in these decisions that the largest systems will require very high disposal reliability in order to avoid unacceptably high collision risks, the approach to disposal reliability discussed in the *2020 Orbital Debris Order* does not foreclose in individual cases the authorization of systems of satellites with individual satellite disposal reliability of less than 0.99. With respect to concerns raised about examination of ''sensitive'' information, the Commission noted that information such as orbital location and satellite mass (as a component of the area-to-mass ratio of the satellite, necessary for calculating residual orbital lifetime and related collision risk) are routinely provided as part of applications, and this information is routinely publicly available in the Commission's files. Orbital location is included in all licenses. To the extent examination of the orbital debris risks presented by a large constellation requires examination of information for which confidential treatment can be justified, the Commission's rules provide for such treatment. The Commission therefore does not consider these concerns as justifying reconsideration.

5. Deployment Devices

17. In the *2020 Orbital Debris Order,* the Commission modified a rule requiring applicants to provide a statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations to specifically require an orbital debris mitigation disclosure for any separate or ''free-flying'' deployment devices, distinct from the space launch vehicle, that may become a source of debris. The Commission also discussed in the *2020 Orbital Debris Order* the scope of any such disclosure, noting that it should address facts such as the orbital lifetime of the device and collision risks associated with the device itself, including an evaluation of collision risk specifically associated with the deployment of multiple satellites from a deployment device (*e.g.,* re-contact analysis). The Commission stated that such disclosures would be largely assessed on a case-by-case basis, reasoning that this approach provides the flexibility necessary to address new developments in space station design

and addresses the difficulty of designing specific disclosure rules for each different type of device that may be used.

18. Boeing, Planet, Spire, EchoStar, and Hughes argued that this disclosure requirement should be replaced with the ODMSP standard, which specified that ''[f]or all planned released debris larger than 5mm in any dimension, the total debris object-time product in low-Earth orbit . . . should be less than 100 object-years . . . per spacecraft.'' They also argued that the Commission should not require re-contact risk analyses because no consensus exists on what is considered an adequate re-contact risk analysis, it was not proposed for comment in the *2018 Orbital Debris NPRM,* and there is not enough guidance as to how to conduct a re-contact analysis or how it would be used in the application review process.

The Commission found that the petitioners' argument concerning the ODMSP provisions on operational debris relies on a selective reading of those provisions and does not justify reconsideration of the adopted rule. The sentence in the ODMSP immediately preceding the sentence that petitioners rely on states that ''[e]ach instance of planned release of debris larger than 5 mm in any dimension that remains in orbit for more than 25 years *should be evaluated and justified.*'' This additional wording would not be necessary if the rationale for this guideline is that any release of operational debris of less than 100 object-years should be routinely considered acceptable. Instead, as a condition precedent to applying the 100 object-year metric, this guideline contemplates a determination that the release is evaluated and justified. The approach adopted by the Commission is in no way inconsistent with this approach, which identifies a need, for example, to consider whether alternative methods for deployment might be utilized that do not result in the potential for debris generation.

19. With respect to the concerns raised about re-contact analysis, the Commission rejected the petitioner's contention that there was insufficient notice to require a re-contact analysis, stating that the *2018 Orbital Debris NPRM* sought comment on the issue of the use of deployment devices and specifically proposed to require ''information regarding the planned orbital debris mitigation measures specific to the deployment device, including the probability of collision associated with the deployment device itself.'' A re-contact analysis addresses ''the probability of collision associated with the deployment device itself.'' The Commission further noted that since adopting the *2020 Orbital Debris Order,* it has authorized multiple deployers on a case-by-case basis. Applicants provided information detailing the ways in which they plan to mitigate recontact and Commission assessment of each application took into account the specific re-contact mitigation measures and overall mission facts that were unique to each mission in order to condition the licenses accordingly. For example, one applicant provided a report using a high-fidelity approach based on a Monte Carlo analysis of deployment sequence in its application, using the current manifest as the worst-case scenario and incorporating the worst possible change in manifest subsequent to filing to demonstrate that the applicant had taken the relevant re-contact risks into account and the Commission conditioned their license to require the operator to utilize a deployment sequence that will reduce the probability of re-contact and ensure that the risk of re-contact specified in its application does not increase based on this analysis. Another applicant stated in its Orbital Debris Assessment Report (ODAR) that it would support at least three re-contact mitigation strategies for deployments from the spacecraft, including ensuring that each deployment group will be spaced apart by at least 90 minutes, or one full orbit, optimize deployment orientation and sequence to minimize re-contact, and use on-board propulsion as necessary to use for maneuvers to minimize the risk of re-contact, and the Commission conditioned the license to require the applicant to optimize customer spacecraft deployment orientation and sequency to minimize re-contact and utilize on-board propulsion as necessary for maneuvers to minimize the risk of re-contact as a result. Each analysis in these examples provides varying levels of specificity and detail concerning their respective re-contact analyses, but still offers important context for mission characteristics unique to each application.

20. As these examples demonstrate, applicants have been able to address these concerns by drawing on available information, and in some instances involving additional analysis and modeling. The Commission anticipates, based on this experience, that this case-by-case approach will continue to provide a flexible and workable framework for applicants. Accordingly, the Commission concluded that the petitioners' assertions about potential difficulties in the licensing process have not been realized and do not justify reconsideration of this particular rule.

6. Persistent Liquids

21. In the *2020 Orbital Debris Order,* the Commission updated its rules to require operators to submit a ''statement that the space station operator has assessed and limited the probability, during and after completion of mission operations . . . of release of liquids that will persist in droplet form.'' The Commission proposed this rule change in response to increasing interest in use by satellites (including small satellites) of alternative propellants and coolants, some of which due to their physical properties might persist in droplet form. The Commission noted specifically ionic liquids that would persist if released in droplet form by a deployed satellite and the substantial debris cloud that resulted from release of such droplets by Soviet-era satellite operation. At orbital speeds, such droplets can damage active spacecraft. The Commission noted its expectation that the orbital debris mitigation plan for any system using persistent liquids should address the measures taken, including design and testing, to eliminate the risk of release of liquids and to minimize risk from any unplanned release of liquids in droplet form.

22. The Combined Petition asserted that no evidence exists that the use of such liquids is growing in the United States' space industry while at the same time raising a concern that the Commission did not provide enough guidance on how information about persistent liquids will be assessed. The Commission found that the petitioners did not provide a basis for reconsideration of the rule adopted or demonstrated how the current rule is unworkable. Contrary to their assertions, there have been license requests involving spacecraft that would utilize the types of ionic liquids that could persist in space if released in droplet form. Ionic liquids offer some benefits such as ease of on-ground handling as compared to the toxic volatiles often used for spacecraft propulsion, and so it is also possible that they may be more frequently utilized in the future. With respect to criteria to be applied in addressing instances in which use of ionic liquids is disclosed, the *2020 Orbital Debris Order* identified some considerations. In addition, under a case-by-case approach, the Commission may consider whether, if released, these debris objects would remain in orbit for only a short time, perhaps due to deployment and operation at low

altitudes such as those below inhabitable space stations, or whether there are other natural processes that result in dispersion of the droplets. Other potentially relevant considerations include whether containment of the liquid can be expected to be effective, established as appropriate by design, testing data, or flight heritage, and whether the propulsion system is shielded from micrometeoroid and debris strikes that might result in leakage. These considerations provide some examples of the types of information that might support a favorable public interest finding with respect to individual applications but are not intended as an exhaustive list.

7. ''Case-by-Case'' Approach

23. Petitioners raised concerns about a ''case-by-case'' approach for reviewing the information provided in response to disclosure requirements, and requested that all information disclosure requirements be coupled with guidance provided by the Commission regarding the manner in which the information can be used and any minimum operation or performance requirements that must be demonstrated in the disclosed information to warrant the grant of a satellite system authorization. SpaceX argued a ''case-by-case'' approach sets an inconsistent baseline for assessing orbital debris risk, and imposes inconsistent rules of the road. Viasat and OneWeb, in opposition, supported the use of case-by-case analysis. Viasat noted that case-by-case analysis is an indispensable part of the Commission's licensing process and that it would make little sense for the Commission to withdraw its existing information disclosure requirements pending completion of its further work on additional orbital debris safety standards because doing so would deprive the Commission of critical information necessary to evaluate the orbital safety implications of NGSO systems. Viasat argued that the Commission is obligated to consider the information elicited by these rules in order to make a finding that the proposed operations are in the public interest, and that eliminating the information disclosure requirements adopted in the *2020 Orbital Debris Order* would be counter-productive by removing from the Commission's rules useful guidance for applicants about information that is relevant in seeking a license, thereby increasing uncertainty. OneWeb supported case-by-case review, observing that in circumstances involving complex and quickly evolving technological debris mitigation capabilities, such review is necessary in order to facilitate a safe space environment, but at the same time affords operators flexibility and avoids overly prescriptive regulations.

24. The added disclosure requirements provide factual information that is relevant in assessing an application and supporting a public interest determination. The Commission found that the petitioners do not allege that the factual information elicited by the new disclosure requirements would never reveal a substantial or disqualifying concern related to orbital debris, and disagreed with the petitioners' contention that incorporating such disclosure requirements in the Commission's rules will lead to ''subjective'' or ''discretionary'' decision-making. The characteristics of satellites or satellite systems can significantly vary across applications. These rules serve to ensure that the Commission has sufficient information to only grant those applications that would serve the public interest, and while the Commission recognizes the potential benefits of identifying specific metrics or including the same blanket requirements on all operators for various aspects of debris mitigation plans, such as providing certainty to applicants, the development of a specific, one-size-fits-all metric on a particular point or including blanket requirements that do not make sense in conjunction with specific satellite or satellite system characteristics, may in certain cases slow innovation by being overly prescriptive or otherwise fail to account for innovative aspects of a particular system design.

25. Moreover, for certain metrics, the Commission found in the *Orbital Debris Reconsideration Order* that it does not have a sufficient record to support a ''one-size-fits-all'' metric on this issue. But, the absence of a specific metric on a particular point does not foreclose the need to gather information and evaluate mitigation plans in light of the larger and well-recognized goals of U.S. Government policy in this area—ensuring the future of the commercial space industry by limiting the release of operational debris and avoiding fragmentation events, whether caused by explosions or collisions. The development of metrics and refinement of criteria for evaluating orbital debris mitigation plans is an active and ongoing process. While consideration of the development of a metric or comprehensive assessment method continues, the Commission elects to proceed incrementally and make fact-based decisions on individual applications on a case-by-case basis. As noted in connection with several of the specific disclosure requirements to which petitioners objected, the case-by-case approach has successfully permitted the Commission to proceed with review and authorization in individual cases. Contrary to SpaceX's argument that the case-by-case approach threatens space sustainability by imposing inconsistent rules of the road, experience with these cases, along with parallel developments in standards development, will inform future decision-making. In applying this case-by-case approach, the Commission is committed to ensuring consistency in application of its rules and to working with applicants to gather additional information as necessary to ensure that applicants are not penalized without a prior opportunity to address potential concerns. The Commission expects the precedent that evolves from a case-by-case approach will provide contours to guide applicants regarding the extent to which metrics or comprehensive methods may aid in facilitating a favorable Commission determination on pending applications. Finally, as part of the Space Bureau's Transparency Initiative, the Commission directs the Space Bureau to highlight any developments arising from this case-by-case approach, providing additional guidance on orbital debris mitigation information disclosures.

B. SpaceX Petition—Market Access and Orbital Debris Mitigation Showings

26. In its petition, SpaceX requested that the Commission reconsiders allowing non-U.S.-licensed space stations to satisfy the orbital debris mitigation showing requirement by demonstrating that debris mitigation plans for the space station(s) for which U.S. market access is requested are subject to direct and effective regulatory oversight by the national licensing authority. Alternatively, SpaceX requested the Commission to explicitly delineate the information an applicant must submit with its application in support of such a demonstration or disclose where that information may be easily and publicly found. In particular, SpaceX urged the Commission to require applicants to include: (i) all materials related to orbital debris mitigation submitted to the foreign regulator in connection with an application for a space station authorization; and (ii) all authorizations that include conditions related to orbital debris mitigation.

27. In support, SpaceX argued that allowing non-U.S.-licensed systems to rely on the orbital debris mitigation requirements of other countries to meet

Commission requirements creates a ''loophole'' that could undermine the Commission's space safety objectives by allowing operators to evade oversight by choosing forums with less stringent rules and little input from other affected satellite operators. In response, Kepler Communications Inc., OneWeb, and Viasat submitted oppositions and comments to the SpaceX petition, stating that there is no ''loophole'' in the Commission's rules and in fact, based on their own experience as non-U.S.-licensed market access applicants, they have been subject to the same level of regulatory scrutiny as U.S.-licensed systems. The Commission agreed that the end result is the same whether a market access applicant makes an orbital debris mitigation showing under 47 CFR 25.114(d)(14)(i) through (iv) or (d)(14)(v) prior to gaining U.S. market access, the applicant will have had its orbital debris mitigation plan subject to a rigorous review to ensure space safety.

28. While Commission rules allow market access applicants to satisfy the requirement to describe the design and operational strategies to minimize orbital debris risk by demonstrating that their debris mitigation plans are subject to direct and effective regulatory oversight by the national authority that licensed their space station operations, such a showing requires market access applicants to provide supporting documentation and respond to inquiries from Commission staff in order for the staff to compare the non-U.S. regulatory regime, including its rules and ongoing oversight, and determine whether there is an effective regulatory regime in place. This information, when filed with the Commission, becomes a part of the record, and other interested parties are able to review it too. If the Commission finds additional information is necessary to complete its review, that information also becomes part of the record and available for review. In either case, interested parties will have access to the same information the Commission relies on to determine whether a grant of market access is in the public interest, the only exception being if the applicant is able to demonstrate an overriding public interest need to keep some of the information confidential.

29. Having a one-size-fits-all disclosure requirement as proposed by SpaceX can be more burdensome than necessary for the Commission to determine whether an applicant's debris mitigation plan has been thoroughly reviewed and whether the applicant will be subject to effective regulatory oversight. Using a case-by-case approach provides more flexibility and can serve the public interest better by being less burdensome. For instance, as Commission staff become familiar with the requirements and review process of a particular non-U.S. regulator, they can tailor their information request based on knowledge of how that regulator conducts an orbital debris mitigation review, and what regulatory requirements it imposes. The staff may ask for more information in an area that they have found the regulator does not require the same level of detail as the Commission, or may likewise ask for less information in another area where the Commission has already found sufficient regulatory oversight. In either case, if another party believes that circumstances have changed with a particular non-U.S. regulatory oversight process or has reason to believe that an applicant is not subject to sufficient regulatory oversight, they can raise those concerns with the Commission and the Commission will factor that in as part of its overall review process. Ultimately, if the Commission finds after its review of either the applicant's mitigation plan or the non-U.S. regulatory regime under which it is licensed, that additional conditions are necessary to ensure space safety, the Commission can so condition the grant of market access, similar to what it does for U.S. licensees in similar situations. The Commission also notes that while it does accept ''direct and effective'' regulatory oversight showings under 47 CFR 25.114(d)(14)(v), that rule does not preclude applicants from providing the same basic orbital debris mitigation information provided by U.S. licensees, which are detailed in 47 CFR 25.114(d)(14)(i) through (iv). In fact, the provision of such information can support a showing of direct and effective regulatory oversight, particularly in instances where the information is provided to but not routinely made publicly available by the non-U.S. regulator. And, except for a few cases, applicants have generally found it preferable to just provide the Commission with a description of the design and operational strategies for orbital debris mitigation instead of presenting all of the showings necessary to demonstrate the effective regulatory oversight of another national authority. Accordingly, the Commission found SpaceX has not demonstrated a need for elimination or changes to 47 CFR 25.114(d)(14)(v).

C. Kuiper Petition—Orbital Separation of Large NGSO Systems

30. In the *2018 Orbital Debris NPRM* the Commission sought comment on whether it should adopt an upper limit for variances in orbit for NGSO systems. After reviewing an extensive record on the issue, including comments on the related topic of whether, and how, the Commission should assign orbital altitude ranges for large constellations of NGSO satellites, in 2020 the Commission said it would not adopt a maximum orbital variance for NGSO systems, nor a required separation between orbital locations, and will instead continue to address these issues on a case-by-case basis. The Commission found that there were a wide range of considerations in such cases, and while it was concerned about the risk of collisions between the space stations of NGSO systems operating at similar orbital altitudes, it found that these concerns are best addressed in the first instance through inter-operator coordination.

31. Kuiper petitioned the Commission to reconsider its decision to not establish an orbital separation requirement, including for large NGSO constellations, and associated limits. Kuiper stated that the Commission should expressly require a later-filed large NGSO constellation to maintain sufficient orbital separation from an earlier-filed large NGSO constellation. In support, Kuiper stated that, since adoption of the *2020 Orbital Debris Order,* the Commission has received a number of applications and license modifications for large NGSO constellations to operate in orbits that are already occupied, or proposed to be occupied, by other large NGSO constellations. Therefore, Kuiper argued the Commission's expectation that applicants' own desire for space safety would lead them to voluntarily choose non-overlapping orbits has proven false, and these new applications constitute facts that did not exist at the time the Commission adopted its *2020 Orbital Debris Order* and therefore warrant reconsideration.

32. OneWeb, ARCLab, and Maxar filed comments in support of Kuiper's petition. OneWeb argued that the time is ripe for the Commission to reconsider the potential for orbital separation rules to help ensure a safe space environment. ARCLab argued that operating large constellations with overlapping orbits sharply increases systemic risk, and if those orbits are not explicitly designed for compatibility it would result in sharp increases in conjunctions and collision avoidance maneuvers. Maxar added that since adoption of the *2020 Orbital Debris Order,* the increase of large constellations with overlapping orbital variances has become an issue of broad applicability and therefore ripe for Commission consideration.

33. Both Viasat and Kepler opposed Kuiper's petition, arguing that Kuiper's proposed rule would undermine the incentive for an operator to engage in the type of inter-system coordination anticipated by the *2020 Orbital Debris Order* and in essence create a first-come, first-serve priority system for orbital regions in LEO, which would advantage the largest, most established satellite operators, and potentially lead to a monopolization of certain sections of LEO. Viasat also stated that Kuiper has not established that an orbital overlap rule is necessary to promote space safety, and that there are alternative approaches the Commission could consider.

34. The Commission continues to take space safety issues seriously, and the *2020 Orbital Debris Order* recognized that issues may arise with respect to large NGSO systems, and the orbits at which they operate. Notably, the *2020 Orbital Debris Order* advises that applicants for large systems may be asked to provide specific information about their planned orbital variance as well as how their system operations would accommodate other spacecraft traveling through or operating in the same region. While Kuiper supported its petition with the ''new'' fact that applications for large NGSO systems with competing orbits have been filed since adoption of the *2020 Orbital Debris Order,* the Commission found that this circumstance alone is not sufficient justification for it to revisit its decision to allow in the first instance parties to work on an inter-operator coordination agreement. At the time the Commission adopted its *2020 Orbital Debris Order* it had already considered that parties may want to use similar orbits, but it also found that inter-operator coordination could resolve any space safety concerns, and no party has introduced evidence that any such concerns remain unresolved. The Commission has continued to monitor the situation since adoption of the *2020 Orbital Debris Order* and continues to believe that the best solution for maintaining space safety is for operators to have the flexibility to coordinate in a manner that works best for their situation, rather than have the Commission dictate how that coordination should proceed. In addition, the Commission reviews closely applications for new licenses or modifications that may raise overlapping orbital shell issues and works with the applicants and other interested parties to ensure that either coordination has occurred to minimize space safety issues, or changes are made to the proposed operating parameters to address any remaining concerns. The Commission will continue to monitor the overall orbital separation environment, and to the extent it sees a breakdown in the coordination process or other space safety issues, it will consider at that time whether new general rules are needed to either improve the coordination process or address space safety concerns. Accordingly, the Commission declined to establish an orbital separation requirement, including for large NGSO constellations.

IV. Ordering Clauses

35. Accordingly, *it is ordered,* pursuant to 47 U.S.C. 151, 154(i), 154(j), 405, and 47 CFR 1.429(b) that the petitions for reconsideration filed by Boeing, EchoStar, Hughes, Planet, Spire, Telesat, SpaceX, and Kuiper in IB Docket No. 18–313, are *denied.*

36. *It is further ordered* that the *Orbital Debris Reconsideration Order* shall be effective upon publication in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–03506 Filed 2–21–24; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Case 2020–G511; Docket No. GSA–GSAR–2023–0019; Sequence No. 1]

RIN 3090–AK21

General Services Administration Acquisition Regulation; Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is issuing this final rule amending the General Services Administration Acquisition Regulation (GSAR) to update and clarify the requirements for use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities, such as State and local governments.

DATES: Effective March 25, 2024.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Thomas O'Linn, Procurement Analyst, at *gsarpolicy@gsa.gov* or 202–445–0390. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at *GSARegSec@gsa.gov* or 202–501–4755. Please cite GSAR Case 2020–G511.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the General Services Administration Acquisition Regulation (GSAR) to update and clarify the requirements for use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities, such as State and local governments. GSA published a proposed rule at 88 FR 63892 on September 18, 2023.

GSA conducts routine reviews of its acquisition regulations. Routine review of the GSAR, as well as feedback from GSA's operational offices, prompted this change. The review indicated a need to update and clarify GSAR subpart 538.70, Purchasing by Non-Federal Entities.

GSAR subpart 538.70 prescribes the policies and procedures that implement statutory, regulatory, and other provisions that authorize eligible non-Federal entities (*e.g.,* State or local governments as defined in 40. U.S.C. 502(c)(3)) use of Federal Supply Schedule (FSS) contracts.

The GSA Schedule, also known as FSS, and Multiple Award Schedule (MAS), is a long-term governmentwide contract with commercial companies that provide access to millions of commercial products and services at fair and reasonable prices to the Federal Government and other authorized ordering activities.

This rule updates and clarifies GSAR subpart 538.70, which supports use of FSS contracts by eligible non-Federal entities. This subpart is being revised to make administrative changes due to changes in some of the underlying authorities supporting use of FSS contracts by eligible non-Federal entities. This rule also updates and clarifies existing requirements supporting use of FSS contracts by eligible non-Federal entities, adds additional key authorities that support such use, and makes additional technical corrections to enhance clarity of existing requirements.

II. Discussion and Analysis

A. Analysis of Public Comments

GSA provided the public a 60-day comment period (September 18, 2023, to November 17, 2023). There were no public comments submitted in response to the proposed rule. Minor changes were made from the proposed rule to the final rule.

B. Summary of Minor Changes

The following are the minor changes made from the proposed rule to the final rule:

1. Section 538.273 FSS solicitation provisions and contract clauses. GSAR clause 552.238–117, Price Adjustment—Failure to Provide Accurate Information, did not exist at the time of the proposed rule (*i.e.,* this clause went into effect October 12, 2023, see 88 FR 62473, September 12, 2023), thus was not captured in the proposed rule amendatory text. This GSAR clause is currently prescribed in 538.273(d)(37). The final rule includes the redesignation of this clause from paragraph (d)(37) to paragraph (d)(39). This change ensures the clauses listed in paragraph (d) of GSAR section 538.273 remain in numerical order.

2. Section 538.7001 Definitions. The definition of Preparedness was revised as follows: FROM ''from disaster.'' TO ''from a disaster.'' This change ensures clarity of the intent of the requirement.

3. Section 538.7002–6 Indian Self-Determination and Education Assistance Act (ISDEAA) and section 552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts. The citation to 25 U.S.C. 5324 was revised to read as 25 U.S.C. 5324(k). This change provides the proper citation to the authority.

4. Section 538.7002–7 Native American Housing Assistance and Self Determination Act (NAHASDA) and section 552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts. The citation to 25 U.S.C. 4111 was revised to read as 25 U.S.C. 4111(j). This change provides the proper citation to the authority.

5. Section 552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts. Paragraph (a)(10) of the clause was revised to read as: ''(10) 40 U.S.C. 502(c), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purpose of purchasing the types of supplies and services described in 40 U.S.C. 502(c). The types of supplies and services described in 40 U.S.C. 502(c) are limited to those available in the Information Technology Category and the Security and Protection Category (or any successor categories). The GSA program implementing this authority is the Cooperative Purchasing program.'' This change integrates the text that was originally identified as (a)(10)(i) into paragraph (10), thereby eliminating the need for paragraph (a)(10)(i). No changes to the text were made.

III. Expected Impact of the Rule

GSA believes that these changes benefit the FSS program as a whole. For example, these changes provide visibility into the resources and authorities available to eligible non-Federal entities who may be interested in using FSS contracts. Additionally, these changes clarify the requirements for FSS contractors interested in doing business with eligible non-Federal entities under their FSS contract. These changes do not alter the manner in which the FSS contractors conduct business, or the manner in which eligible non-Federal entities may access and use FSS contracts. The rule merely updates and clarifies requirements currently in use in the FSS program, such as updating and clarifying existing statutory, regulatory, and other authorities that enable eligible non-Federal entities use of FSS contracts. GSA assumes these changes will have a positive impact on the FSS program as a whole, including FSS contractors and eligible non-Federal entities.

The qualitative anticipated benefits include, but are not limited to, removal of outdated and redundant information; clarification of the requirements supporting use of FSS contracts by eligible non-Federal entities; clarification of the authorities providing use of FSS contracts by eligible non-Federal entities (*e.g.,* adding the authority provided by the Indian Self-Determination and Education Assistance Act that allows Tribal organizations and Indian Tribes to use FSS contracts under certain conditions); identification of some of the programs created for purpose of implementing some of these authorities (*e.g.,* GSA's Disaster Purchasing program which implements 40 U.S.C. 502(d)); clarification on who is and who is not considered eligible to use FSS contracts (*i.e.,* providing a definition for 'eligible' and 'non-Federal entity'); and inclusion of hyperlinks to resources that provide additional information about eligibility and use of FSS contracts (*e.g., https://www.gsa.gov/eligibilitydeterminations* includes a list that FSS contractors can use to verify an entity's eligibility).

Due to these benefits, GSA estimates the following annual reduction in burden due to the proposed clarifications: GSA estimates it takes 3 hours for FSS contractors to familiarize (read and understand the applicable GSAR requirements of this proposed rule) themselves with the regulations. Therefore, for FSS contractors:

Prior to the revisions: the current estimated total cost is 3 hours * $61.29 (GS–12 Step 5 base pay plus ''Rest of US Locality Pay'' plus ''Fringe'') * 13,000 approximate number of current FSS contractors = $2,390,310.00.

After the revisions: the estimated total cost is 2.5 hours * $61.29 (GS–12 Step 5 base pay plus ''Rest of US Locality Pay'' plus ''Fringe'') * 13,000 approximate number of current FSS contractors = $2,191,117.50.

Resulting in a reduction in burden of $199,192.50.

IV. Executive Order 12866, 13563 and 14094

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a ''major rule'' may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. OIRA has determined this rule is not a ''major rule'' under 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

GSA does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule is to: (1) update and

clarify existing requirements supporting use of FSS contracts by eligible non-Federal entities; (2) clarify GSAR clause requirements (*e.g.* rename clauses, remove redundant or duplicative information); (3) reflect changes based on some of the underlying authorities that provide eligible non-Federal entities use of FSS contracts; (4) add additional authorities that support such use; and (5) include hyperlinks to resources that provide information about eligibility and use of FSS contracts.

The purpose of the changed text remains the same, and therefore any burden would have been identified previously. Additionally, participation by both FSS contractors and eligible non-Federal entities remains voluntary.

There were no comments submitted and therefore no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis. However, a Final Regulatory Flexibility Analysis (FRFA) has been prepared consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to revise GSAR subpart 538.70 in its entirety in an effort to: (1) update and clarify existing requirements supporting use of FSS contracts by eligible non-Federal entities; (2) clarify GSAR clause requirements (*e.g.* rename clauses, remove redundant or duplicative information); (3) reflect changes based on some of the underlying authorities that provide eligible non-Federal entities use of FSS contracts; (4) add additional authorities that support such use; and (5) include hyperlinks to resources that provide information about eligibility and use of FSS contracts.

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors. In addition, 41 U.S.C. 152 provides GSA authority over the FSS program.

The rule applies to both large and small businesses, which are awarded FSS contracts and decide to do business with eligible non-Federal entities who decide to use FSS contracts (*i.e.,* participation by all parties is voluntary).

Information obtained from the FSS program was used as the basis for estimating the number of FSS contractors that the rule may apply. For fiscal year 2022, approximately 12,000 GSA FSS contractors reported over $780 million in sales to eligible non-Federal entities. Of the number of FSS contractors that did business with eligible non-Federal entities approximately 10,700 (89 percent) were small business FSS contractors.

It is anticipated that these changes will increase awareness of the authorities that allow eligible non-Federal entities use of FSS contracts as well as the resources available. It is anticipated that these changes will clarify the requirements for FSS contractors choosing to do business with eligible non-Federal entities under their FSS contracts. Altogether, GSA assumes these changes will have a positive impact on the FSS program as a whole, including FSS contractors and eligible non-Federal entities.

The rule does not implement new or change reporting, recordkeeping, or other compliance requirements for FSS contracts. The rule merely updates and clarifies existing FSS requirements, such as updating and clarifying existing statutory, regulatory, and other authorities that enable eligible non-Federal entities use of FSS contracts. This rule does not implement new or changed requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives to this rule which would accomplish the stated objectives. This rule does not initiate or impose any new administrative or performance requirements on small business contractors because the policies and procedures prescribed in existing FSS clauses are already being followed. The rule merely updates and clarifies existing statutory, regulatory, and other authorities related to the use of FSS contracts by non-Federal entities.

The Regulatory Secretariat will be submitting a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the Regulatory Secretariat Division.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 538 and 532

Government procurement.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration.

Therefore, GSA amends 48 CFR parts 538 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 2. Amend section 538.273 by—

■ a. Redesignating paragraphs (d)(36) and (37) as paragraphs (d)(38) and (39); and

■ b. Adding new paragraphs (d)(36) and (37) to read as follows:

538.273 FSS solicitation provisions and contract clauses.

* * * * *

(d) * * *

(36) 552.238–112, Definitions—Federal Supply Schedule Contracts.

(37) 552.238–113, Authorities Supporting Use of Federal Supply Schedule Contracts.

* * * * *

■ 3. Revise subpart 538.70 to read as follows:

Subpart 538.70—Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities

Subpart 538.70—Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities

538.7000 Scope of subpart.

This subpart prescribes policies and procedures for implementing statutory, regulatory, and other authorities that authorize use of Federal Supply Schedule (FSS) contracts by eligible non-Federal entities.

538.7001 Definitions.

As used in this subpart—

Eligible means an entity that meets the requirements prescribed by statute, regulation, or other authority for purposes of being able to use FSS contracts. Information about GSA's FSS eligibility process is available at *https://www.gsa.gov/eligibilitydeterminations.*

Non-Federal entity means any State, local, territorial, or Tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education); and any other non-Federal organization (*e.g.,* a qualified nonprofit agency as defined in 40 U.S.C. 502(b)).

Preparedness means actions that may include, but are not limited to:

planning, resourcing, organizing, equipping, training, and conducting exercises to improve, build and sustain the capabilities necessary to prevent, protect, mitigate, respond, and recover from a disaster.

Recovery means actions taken to assist communities affected by an incident to recover effectively. This includes, but is not limited to, actions to restore, redevelop, and revitalize the health, social, economic, natural, and environmental fabric of the community. Recovery may begin while response is still occurring.

Response means actions taken during a disaster, or in its aftermath, in order to save lives, protect property and the environment, and meet basic human needs. Response also includes the execution of emergency plans and actions to enable recovery from a disaster.

538.7002 Authorities.

Various laws, regulations, and other authorities allow eligible non-Federal entities to use FSS contracts. This section identifies some of the common authorities allowing eligible non-Federal entities to use FSS contracts. See *https://www.gsa.gov/eligibility determinations* for additional information about the authorities available.

538.7002–1 Cooperative purchasing program.

40 U.S.C. 502(c) allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase the types of supplies and services described in 40 U.S.C. 502(c). The supplies and services described in 40 U.S.C. 502(c) are limited to those available under the Information Technology Category, and the Security and Protection Category (or successor category(ies)). The GSA program that implements this authority is called the Cooperative Purchasing program.

538.7002–2 Disaster purchasing program.

(a) 40 U.S.C. 502(d) allows State or local governments, as defined in 40. U.S.C. 502(c)(3), to purchase supplies or services that are to be used to facilitate—

(1) Disaster preparedness or response;

(2) Recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*); or

(3) Recovery from terrorism, nuclear, biological, chemical, or radiological attack.

(b) The GSA program that implements this authority is called the Disaster Purchasing program.

538.7002–3 Public health emergencies program.

42 U.S.C. 247d allows State or local governments, as defined in 40 U.S.C. 502(c)(3), to purchase supplies and services when expending Federal grant funds in response to a public health emergency declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program that implements this authority is called the Public Health Emergencies program.

538.7002–4 Qualified nonprofit agencies for the blind or other severely disabled.

40 U.S.C. 502(b) allows qualified nonprofit agencies for the blind or other severely disabled, as defined by 41 U.S.C. 8501, that are providing a commodity or service to the Government under 41 U.S.C. chapter 85, to purchase supplies or services. Purchases under this authority must be used directly in making or providing to the Government a commodity or service that has been determined by the Committee for Purchase From People Who Are Blind or Severely Disabled under 41 U.S.C. 8503 to be suitable for procurement by the Government.

538.7002–5 Qualified relief or disaster assistance organizations.

40 U.S.C. 502(e) allows the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3), to purchase supplies or services. Purchases under this authority by the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in 36 U.S.C. 300102. Purchases under this authority by other qualified organizations shall be used in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency.

538.7002–6 Indian Self-Determination and Education Assistance Act (ISDEAA).

(a) 25 U.S.C. 5324(k) allows Tribal organizations, as defined in 25 U.S.C. 5304, that have an active ISDEAA contract, grant, or cooperative agreement to purchase supplies or services for the purposes of carrying out the ISDEAA contract, grant, or cooperative agreement.

(b) 25 U.S.C. 5370 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying the ISDEAA compact or funding agreement.

(c) 25 U.S.C. 5396 allows Indian Tribes, as defined in 25 U.S.C. 5304, that have an active ISDEAA compact or funding agreement to purchase supplies or services for the purposes of carrying out the ISDEAA compact or funding agreement.

538.7002–7 Native American Housing Assistance and Self Determination Act (NAHASDA).

25 U.S.C 4111(j) allows Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, that have an active NAHASDA contract, grant, or cooperative agreement to purchase supplies and services for the purposes of carrying out the NAHASDA contract, grant, or cooperative agreement.

538.7002–8 Urban Indian organizations.

25 U.S.C. 1660g(e) allows Urban Indian organizations, as defined in 25 U.S.C. 1603, that have an active contract or grant pursuant to 25 U.S.C. chapter 18 subchapter IV to purchase supplies and services for the purposes of carrying out the contract or grant.

538.7002–9 Tribally controlled schools.

25 U.S.C. 2507(a)(6) allows tribally controlled schools, as defined under 25 U.S.C. 2511, that have an active grant pursuant to 25 U.S.C. chapter 27 to purchase supplies or services for the purposes of carrying out the grant.

538.7002–10 1122 Program.

10 U.S.C. 281 allows States and units of local government, as defined in 10 U.S.C. 281, to purchase equipment suitable for counter-drug, homeland security, and emergency response activities through the Department of Defense. GSA, in coordination with the Secretary of Defense, produces and maintains a catalog in accordance with the procedures established by the Secretary of Defense. The catalog includes access to equipment available under FSS contracts. States and units of local government interested in using the 1122 program should contact their designated State point of contact.

538.7003 Non-Federal entity requirements.

Only non-Federal entities that are eligible may use FSS contracts. Use of FSS contracts by eligible non-Federal entities is voluntary. The following requirements apply to eligible non-Federal entities who decide to use FSS contracts:

(a) FSS contractors are not obligated to accept orders or enter into blanket purchase agreements; however, they are encouraged to do so.

(b) Purchases cannot be made for personal use.

(c) Purchases cannot be for resale, unless specifically authorized.

(d) At a minimum, purchases shall comply with—

(1) FSS ordering guidance. Information about GSA's FSS contracts, including ordering guidance is available at *https://www.gsa.gov/schedules;* and

(2) Any conditions of the underlying authority(ies) supporting the use of FSS contracts (*e.g.,* 40 U.S.C. 502(c) limits purchases to specific supplies and services available under the FSS program).

(e) An eligible non-Federal entity's eligibility cannot be transferred to a third party (*e.g.,* a subcontractor) or successor entity.

538.7004 GSA responsibilities.

(a) *Eligibility determination process.* GSA may need to make a determination of eligibility to support a non-Federal entity's use of FSS contracts. See *https://www.gsa.gov/eligibility determinations* for information about eligibility.

(b) *Oversight.* To ensure proper use of and access to FSS contracts by eligible non-Federal entities, GSA may take any action within its authority as deemed necessary to deny, limit, or restrict use of FSS contracts, in whole or in part. Reasons may include, but are not limited to—

(1) A change in an underlying authority;

(2) A change in the terms and conditions of the FSS program or FSS contracts;

(3) A failure by an eligible non-Federal entity to comply with the requirements of 538.7003; or

(4) Use by an ineligible non-Federal entity.

538.7005 Contract clause.

Insert the clause at 552.238–114, Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities, in FSS solicitations and contracts.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 552.238–105 by revising the date of the clause and the first sentence to read as follows:

552.238–105 Deliveries Beyond the Contractual Period—Placing of Orders.

* * * * *

Deliveries Beyond the Contractual Period—Placing of Orders (Mar 2024)

In accordance with the GSAR clause at 552.238–113, Authorities Supporting Use of Federal Supply Schedule Contracts, this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. * * *

■ 5. Revise 552.238–112 through 552.238–114 to read as follows:

* * * * *

552.238–112 Definitions—Federal Supply Schedule Contracts.

552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts.

552.238–114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities.

* * * * *

552.238–112 Definitions—Federal Supply Schedule Contracts.

As prescribed in 538.273(d) insert the following clause:

Definitions-Federal Supply Schedule Contracts (Mar 2024)

As used in this contract,

Eligible means an entity that meets the requirements prescribed by statute, regulation, or other authority for purposes of being able to use Federal Supply Schedule (FSS) contracts. Information about FSS eligibility is available at *https://www.gsa.gov/eligibilitydeterminations.*

Ordering activity (also called ''ordering agency'' and ''ordering office'') means an entity that is eligible to place orders or establish blanket purchase agreements (BPA) under this contract.

(End of clause)

552.238–113 Authorities Supporting Use of Federal Supply Schedule Contracts.

As prescribed in 538.273(d), insert the following clause:

Authorities Supporting Use of Federal Supply Schedule Contracts (Mar 2024)

(a) Ordering activities are able to use Federal Supply Schedule (FSS) contracts based upon a number of statutes, regulations, and other authorities. Authorities allowing ordering activities use of FSS contracts include, but are not limited to:

(1) 25 U.S.C. 1660g(e), which provides for the use by urban Indian organizations, as defined in 25 U.S.C. 1603, for the purposes of carrying out a contract or grant pursuant to 25 U.S.C. chapter 18, subchapter IV.

(2) 25 U.S.C. 2507, which provides for the use by tribally controlled schools, as defined in 25 U.S.C. 2511, for the purposes of carrying out a grant pursuant to 25 U.S.C. chapter 27 (known as the Tribally Controlled Schools Act).

(3) 25 U.S.C. 4111(j), which provides for the use by Indian Tribes, as defined in 25 U.S.C. 4103, and tribally designated housing entities, as defined in 25 U.S.C. 4103, for the purposes of carrying out a contract, grant, or cooperative agreement pursuant to 25 U.S.C. chapter 43 (known as the Native American Housing Assistance and Self Determination Act (NAHASDA)).

(4) 25 U.S.C. 5324(k), which provides for the use by Tribal organizations, as defined in 25 U.S.C 5304, for the purposes of carrying out a contract, grant, or cooperative agreement pursuant to 25 U.S.C. chapter 46 (known as the Indian Self-Determination and Education Assistance Act (ISDEAA)).

(5) 25 U.S.C. 5370 and 25 U.S.C. 5396, which provides for the use by Indian Tribes, as defined in 25 U.S.C. 5304, for the purpose of carrying out a compact or funding agreement pursuant to 25 U.S.C. chapter 46 (known as ISDEAA).

(6) 40 U.S.C. 113(d), which provides for the use by the Senate, the House of Representatives, and the Architect of the Capitol (including any building, activity, or function under the direction of the Architect of the Capitol).

(7) 40 U.S.C. 501, which provides for the use by executive agencies as defined in 5 U.S.C. 105.

(8) 40 U.S.C. 502(a), which provides for the use by Federal agencies as defined in 40 U.S.C. 102, the District of Columbia, and mixed-ownership Government corporations as defined in 31 U.S.C. 9101.

(9) 40 U.S.C. 502(b), which provides for the use by qualified nonprofit agencies for other severely disabled, as defined in 41 U.S.C. 8501(6), and qualified nonprofit agencies for the blind, as defined in 41 U.S.C. 8501(7), for the purposes of making or providing to the Government a commodity or service that has been determined by the Committee for Purchase From People Who Are Blind or Severely Disabled under 41 U.S.C. 8503 to be suitable for procurement by the Government.

(10) 40 U.S.C. 502(c), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purpose of purchasing the types of supplies and services described in 40 U.S.C. 502(c). The types of supplies and services described in 40 U.S.C. 502(c) are limited to those available in the Information Technology Category and the Security and Protection Category (or any successor categories). The GSA program implementing this authority is the Cooperative Purchasing program.

(11) 40 U.S.C. 502(d), which provides for the use by State or local governments, as defined in 40 U.S.C. 502(c)(3)(A), for the purposes of facilitating disaster preparedness or response, facilitating recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), or facilitating recovery from terrorism, nuclear, biological, chemical, or radiological attack. The GSA program implementing this authority is the Disaster Purchasing program.

(12) 40 U.S.C. 502(e), which provides for the use by the American National Red Cross and other qualified organizations, as defined in 40 U.S.C. 502(e)(3). Purchases under this authority by the American National Red Cross shall be used in furtherance of the purposes of the American National Red Cross set forth in 36 U.S.C. 300102. Purchases under this authority by other qualified organizations shall be used in furtherance of purposes determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency.

(13) 42 U.S.C. 247d, which provides for the use by State or local governments, as defined

in 40 U.S.C.502(c)(3)(A), when a public health emergency has been declared by the Secretary of Health and Human Services under section 319 of the Public Health Services Act. The GSA program implementing this authority is the Public Health Emergencies program.

(14) FAR subpart 51.1, which provides for the use by contractors, including subcontractors, when such use is authorized pursuant to FAR subpart 51.1.

(b) [Reserved]

(End of clause)

552.238–114 Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities.

As prescribed in 538.7005, insert the following clause:

Use of Federal Supply Schedule Contracts by Eligible Non-Federal Entities (Mar 2024)

(a) *Definition—Non-Federal entity,* as used in this clause, means any State, local, territorial, or Tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education); and any other non-Federal organization (*e.g.,* a qualified nonprofit agency as defined in 40 U.S.C. 502(b)).

(b) *Responsibilities.* Eligible non-Federal entities are responsible for complying with—

(1) FSS ordering guidance. Information about GSA's FSS contracts, including ordering guidance is available at *https://www.gsa.gov/schedules;* and

(2) Any conditions of the underlying authority(ies) supporting the use of FSS contracts (*e.g.,* 40 U.S.C. 502(c) limits purchases to specific supplies and services available under FSS contracts).

(c) *Acceptance.* (1) The Contractor is encouraged, but not obligated, to accept orders from eligible non-Federal entities under this contract. The Contractor may, within 5 business days of receipt of an order, reject an order from an eligible non-Federal entity for any reason. However, purchase card orders must be rejected within 24 hours of receipt of the order. Failure to reject an order within these timeframes shall constitute acceptance.

(2) The Contractor is encouraged, but not obligated, to enter into blanket purchase agreements (BPAs) with eligible non-Federal entities under the terms of this contract. The Contractor should respond to any requests to enter into a BPA within 5 business days of receipt of the request.

(d) *Conditions of acceptance.* If the Contractor accepts an order from or enters into a BPA with an eligible non-Federal entity under this contract, the following conditions apply:

(1) For orders, a separate contract is formed between the Contractor and the eligible non-Federal entity (herein ''the parties''). For BPAs, a separate agreement is formed between the parties.

(2) The resultant order or BPA shall incorporate by reference all the terms and conditions of this contract except for:

(i) FAR clause 52.233–1, Disputes, and

(ii) Paragraphs (d) Disputes, (h) Patent indemnity, and (r) Compliance with laws unique to Government contracts, of GSAR clause 552.212–4, Contract Terms and Conditions—Commercial Products and Commercial Services.

(3) The U.S. Government is not liable for the performance or nonperformance of any order or BPA entered into under this contract by the parties. Disputes which cannot be resolved by the parties may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations, and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, the parties are encouraged to resolve disputes through alternative dispute resolution.

(4) Neither party will look to, primarily or in any secondary capacity, or file any claim against the U.S. Government or any of its agencies with respect to any failure of performance by the other party.

(e) *Additional terms and conditions.* Terms and conditions required by statute, ordinance, regulation, or as otherwise required by an eligible non-Federal entity may be made a part of an order or a BPA to the extent that these terms and conditions do not conflict with the terms and conditions of this contract. The Contractor should review any such additional terms and conditions prior to accepting an order or entering into a BPA with an eligible non-Federal entity.

(f) *Payment.* (1) The Contractor is responsible for obtaining all payments due to the Contractor from the eligible non-Federal entity under the terms and conditions of the order or the BPA entered into under this contract, without recourse to the U.S. Government or any of its agencies that awarded this contract or administer this contract.

(2) If an eligible non-Federal entity is subject to a State prompt payment law, the terms and conditions of the applicable State law apply to the orders placed under this contract by such entities. If an eligible non-Federal entity is not subject to a State prompt payment law, the terms and conditions of paragraph (i) of the GSAR clause at 552.212–4, apply to such entities in the same manner as to Federal entities.

(g) *Fee and sales reporting.* The requirements of the GSAR clause at 552.238–80, Industrial Funding Fee and Sales Reporting, apply to any sales to eligible non-Federal entities under this contract.

(End of clause)

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BILLING CODE 6820–61–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224–0053; RTID 0648–XD654]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Pot Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2024 total allowable catch (TAC) of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), February 19, 2024, through 1200 hours, A.l.t., June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Adam Zaleski, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2024 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA is 1,182 metric tons (mt) as established by the final 2023 and 2024 harvest specifications for groundfish in the GOA (88 FR 13238, March 2, 2023) and inseason adjustment (88 FR 88840, December 26, 2023).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2024 Pacific cod TAC apportioned to vessels using pot gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,175 mt and is setting aside the remaining 7 mt

as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by vessels using pot gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 15, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: February 16, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–03601 Filed 2–16–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 36
Thursday, February 22, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket ID OCC–2022–0008]

RIN 1557–AE76

Availability of Information Under the Freedom of Information Act

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing to amend its Freedom of Information Act (FOIA) regulations. The proposal would amend the OCC's FOIA regulations to provide for expedited processing of FOIA requests and establish procedures for requestors to appeal denials of expedited processing and fee waiver requests. The proposal also would remove the competitive harm standard for information provided to the government on an involuntary basis and make a conforming amendment to the OCC's FOIA regulations to be consistent with FOIA.

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

ADDRESSES: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Availability of Information Under the Freedom of Information Act'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov:*

Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2022–0008'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2022–0008'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

• *Viewing Comments Electronically—Regulations.gov:*

Go to *https://regulations.gov/.* Enter ''Docket ID OCC–2022–0008'' in the Search Box and click ''Search.'' Click on the ''Dockets'' tab and then the document's title. After clicking the document's title, click the ''Browse All Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Comments Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Browse Documents'' tab. Click on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen checking the ''Supporting & Related Material'' checkbox. For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FOR FURTHER INFORMATION CONTACT: Kristin Merritt, Assistant Director, MaryAnn Nash, Counsel, or Christopher D'Alessio, Counsel, Chief Counsel's Office, (202) 649–5490; 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Background

The Freedom of Information Act (FOIA) [1] enacted in 1966, revised the public disclosure section of the Administrative Procedure Act to allow for easier public access to government records. FOIA makes government records accessible to members of the public, unless the records (or any portion thereof) are protected from disclosure by one of FOIA's nine exemptions or by one of its three special law enforcement record exclusions.[2] FOIA outlines a process for members of the public to obtain records.[3] This process also affords requesters administrative appeals and remedy in United States district courts.[4]

FOIA requires Federal agencies to promulgate regulations to implement the statute.[5] The OCC's FOIA regulations create a process by which requesters can request and obtain agency records, including how to request records, the format requests must take, and the time limits for OCC response, appeals, and fees.[6]

[1] 5 U.S.C. 552.

[2] 5 U.S.C. 552(b)(1)–(9) (exemptions); 5 U.S.C. 552(c)(1)–(3) (exclusions).

[3] 5 U.S.C. 552(a)(3) (agency obligation to search for and provide records pursuant to request); 5 U.S.C. 552(a)(4)(A) (fees); 5 U.S.C. 552(a)(6) (processing requests, including appeals).

[4] 5 U.S.C. 552(a)(6)(A)(III)(aa) (administrative appeal); 5 U.S.C. 552(a)(4)(B)–(C) (district court).

[5] *E.g.,* 5 U.S.C. 552(a)(4)(A)(i) (In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced.); 5 U.S.C. 552(a)(6)(E)(i) (Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records[.]).

[6] 12 CFR 4.15 (request process, including request format, time limits for response, and appeals); 12 CFR 4.17 (fees).

II. Proposed Changes

Expedited Processing. FOIA mandates that each Federal agency promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records.[7] However, the OCC's current FOIA regulations do not address expedited processing requests. Presently, when the OCC grants a request for expedited processing, the agency processes the request as soon as practicable. Accordingly, the proposal would amend the OCC's FOIA regulations to include procedures for expedited processing.

FOIA also provides specific requirements for agencies' expedited processing regulations. The statute requires that the regulations allow for expedited processing when the requester ''demonstrates a compelling need'' and ''in other cases determined by the agency.'' [8] The statute defines ''compelling need'' as either: (1) ''that a failure to obtain requested records on an expedited basis . . . could reasonably be expected to pose an imminent threat to the life or physical safety of an individual'' or (2) ''urgency to inform the public concerning actual or alleged Federal Government activity'' when ''a request [is] made by a person primarily engaged in disseminating information[.]'' [9] FOIA requires that the requester's ''demonstration of compelling need'' be made by a statement certifying it is true and correct to the best of the requester's knowledge and belief.[10] The statute also requires an agency to provide the requester with notice of the decision on a request for expedited processing ''within 10 days after the date of the request.'' [11] Finally, the statute requires that the regulations ensure ''expeditious consideration of administrative appeals'' of decisions on requests for expedited processing.[12]

The OCC's proposal would address each of the statute's requirements for expedited processing regulations in new proposed paragraph 12 CFR 4.15(c)(5). Under proposed paragraph (c)(5)(i), individuals would be able to request expedited processing with their initial request for records or at any time thereafter. If the individual requests expedited processing on paper, both the envelope and the request itself would have to be labeled, ''Expedited Processing Requested.''

Under proposed paragraph (c)(5)(ii), the OCC would grant requests for expedited processing when they involve: (A) circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; (B) an urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information; [13] or (C) the loss of substantial due process rights. Under proposed paragraph (c)(5)(ii)(B), the ''urgency to inform'' standard would require that records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public. This proposed provision would implement FOIA's requirement that each agency promulgate regulations providing for expedited processing when the requester demonstrates ''compelling need,'' or ''in other cases determined by the agency.'' [14] The proposed standard for compelling need fulfills the requirements in FOIA [15] and includes language similar to the U.S. Department of the Treasury's FOIA regulations.[16]

Under proposed paragraph (c)(5)(iii), a requester who seeks expedited processing would be required to submit a statement, certified to be true and correct, demonstrating the compelling need for expedited processing, which is consistent with FOIA.[17] The certified statement demonstrating compelling need must address at least one of the criterion in paragraph (c)(5)(ii). Further, the proposed rule would allow the OCC to waive this certification requirement as a matter of administrative discretion. This proposed language is similar to the U.S. Department of the Treasury's FOIA regulations.[18]

Under proposed paragraph (c)(5)(iv), the OCC would have 10 calendar days after receipt of the request for expedited processing to notify the requester of the OCC's decision to grant or deny the request. The 10-day timetable conforms to the requirement in FOIA.[19] Further, the decision to grant or deny an expedited processing request would be based solely on the information contained in the initial letter requesting expedited processing. Under the proposal, the OCC would process the records ''as soon as practicable'' in conformance with FOIA.[20] The proposed rule also includes a provision for appeals of a denial of an expedited processing request. This provision is included in the proposal because FOIA requires that agencies' FOIA regulations ensure ''expeditious consideration of administrative appeals'' of decisions on requests for expedited processing.[21] Under proposed paragraph (c)(5)(v), a requester could appeal the denial of a request for expedited processing by following the appeal procedures in 12 CFR 4.15(d). The procedures in § 4.15(d) require the requester to appeal within 90 calendar days because FOIA provides for a timetable of ''not less than 90 days'' for a requester to appeal an adverse determination.[22] Under proposed paragraph (c)(5)(v), if the requester submits an appeal on paper, the envelope and appeal would need to be clearly marked ''Appeal for Expedited Processing.'' In addition, the proposed rule would amend § 4.15(d), which outlines the OCC's administrative appeal procedures, to state that requesters may appeal an ''adverse determination,'' a term which appears, but is not defined, in FOIA.[23] The proposal would amend § 4.15(d) to clarify that the denial of an expedited processing request constitutes an adverse determination and, therefore, requesters can appeal the denial of an expedited processing request. The proposal further clarifies that the Comptroller or the Comptroller's delegate would decide appeals from denials of expedited processing requests.

Finally, under proposed 12 CFR 4.15(c)(5)(vi), consistent with FOIA, the OCC would be required to expeditiously (1) consider the appeal and (2) notify the requestor of the determination. This proposed standard tracks the language of FOIA, which requires expeditious consideration of administrative appeals.[24]

Question 1. FOIA requires that the OCC's FOIA regulations provide for expedited processing ''in other cases determined by the agency.'' [25] In what situations should the OCC grant a request for expedited processing?

[7] 5 U.S.C. 552(a)(6)(E)(i).

[8] 5 U.S.C. 552(a)(6)(E)(i)(I)–(II).

[9] 5 U.S.C. 552(a)(6)(E)(v)(I)–(II).

[10] 5 U.S.C. 552(a)(6)(E)(vi).

[11] 5 U.S.C. 552(a)(6)(E)(ii)(I).

[12] 5 U.S.C. 552(a)(6)(E)(ii)(II).

[13] Under the proposed § 4.15(c)(5)(iii)(B), a requester ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information.

[14] *See* 5 U.S.C. 552(a)(6)(E)(i)(I)–(II).

[15] *See* 5 U.S.C. 552(a)(6)(E)(v)(I)–(II).

[16] *See* 31 CFR 1.4(e)(1)(i)–(ii).

[17] *See* 5 U.S.C. 552(a)(6)(E)(vi).

[18] *See* 31 CFR 1.4(e)(3).

[19] *See* 5 U.S.C. 552(a)(6)(E)(ii)(I).

[20] *See* 5 U.S.C. 552(a)(6)(E)(iii).

[21] *See* 5 U.S.C. 552(a)(6)(E)(ii)(II).

[22] *See* 5 U.S.C. 552(a)(6)(A)(i)(III)(aa).

[23] *See* 5 U.S.C. 552(a)(6)(A)(i)(III).

[24] *See* 5 U.S.C. 552(a)(6)(E)(ii)(II).

[25] 5 U.S.C. 552(a)(6)(E)(i)(II).

Question 2. Should the OCC provide a more specific timeline for deciding and responding to an appeal regarding expedited processing, i.e., a specific number of days, rather than ''expeditiously''?

Appeal of Fee Waiver Denials. FOIA requires that each agency promulgate regulations establishing fees for processing FOIA requests.[26] But, under certain circumstances, the requester must be granted a fee waiver.[27] FOIA does not expressly state whether a requester can appeal fee waiver denials, although FOIA allows requesters to appeal ''adverse determinations.'' [28] However, the statute does not explicitly define an adverse determination. Further, FOIA requires that each agency shall promulgate regulations establishing procedures and guidelines for determining when the agency should waive or reduce fees.[29] In addition, FOIA specifies that a court shall determine the matter de novo in any action by a requester regarding the waiver of fees for FOIA purposes.[30]

The statutory language discussed above does not expressly grant requesters the right to appeal the denial of a fee waiver. However, FOIA's statement that courts consider actions regarding fee waivers de novo suggests that fee waiver denials are appealable. Additionally, the Federal Deposit Insurance Corporation, U.S. Department of the Treasury (Treasury), and U.S. Department of Justice (DOJ) have promulgated regulations that grant an express right to appeal a fee waiver denial.[31] In addition, the DOJ Office of Information Policy's model FOIA regulations suggest that agencies should include the right to appeal a denial of a fee waiver.[32] Currently, the OCC's FOIA regulations do not address appeals from denial of a fee waiver request. Accordingly, consistent with the statute's requirement that courts consider actions regarding fee waivers de novo, other agencies' regulations, and the DOJ's model FOIA regulations, the OCC proposes to amend its regulations to explicitly grant requesters the ability to appeal a denial of a fee waiver.

This proposed rule would amend 12 CFR 4.17(b), which governs the OCC's standards for fee waivers by adding a provision in § 4.17(b)(4) to explicitly grant requesters the ability to appeal the denial of a fee waiver request. Furthermore, the proposed rule would amend 12 CFR 4.15(d), which outlines the OCC's administrative appeal procedures, to clarify that the denial of a fee waiver constitutes an adverse determination and, therefore, requesters can appeal the denial of a fee waiver request. The proposal further clarifies that the Comptroller or the Comptroller's delegate would decide appeals from denials of fee waiver requests.

Fee Waivers. FOIA requires that each agency promulgate regulations, pursuant to notice and comment, stating the agency's fee schedule for processing FOIA requests.[33] FOIA also requires that documents shall be furnished without any charge or at a charge below the agency's fee schedule when the applicable standard is met.[34] However, current 12 CFR 4.17(b)(4) states that the OCC *may* waive or reduce a fee when it determines the standard is met.[35] For consistency, the OCC is proposing an amendment to align its regulations with the statutory standard. Under the proposed rule, consistent with FOIA, the OCC ''must'' grant the requester's request for a fee waiver if the requester meets the standard for fee waiver.

Exemption 4. FOIA Exemption 4, 5 U.S.C. 552(b)(4), protects ''trade secrets and commercial or financial information obtained from a person and privileged or confidential[.]'' Historically, the OCC has operated in a manner consistent with caselaw in determining whether commercial or financial information is ''confidential'' under Exemption 4. In *Food Marketing Institute* v. *Argus Leader Media,* 139 S. Ct. 2356 (2019) (*FMI*), the Supreme Court overruled the longstanding substantial competitive harm standard for information provided to the government on an involuntary basis that was first announced in *National Parks & Conservation Ass'n* v. *Morton,* 498 F.2d 765 (D.C. Cir. 1974). In *FMI,* the Supreme Court held that commercial or financial information submitted to the government will be considered ''confidential'' for purposes of FOIA Exemption 4 at least where the information is ''both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.'' [36] Accordingly, the OCC proposes to remove all references to the competitive harm standard in 12 CFR 4.16. Because the definition of confidential commercial information in the current OCC regulation was based on the competitive harm standard, the proposal would update the definition to more closely follow FOIA and would remove references to the competitive harm standard throughout § 4.16. Additionally, the proposal would remove 12 CFR 4.16(b)(1)(i)(A), which is the requirement for the OCC to provide a submitter of information with a prompt notice of receipt of the request when the request is for confidential information submitted to the OCC, Office of Thrift Supervision, or Federal Home Loan Bank Board prior to 1988 and where the records are less than 10 years old. It is impossible for those records to be less than 10-years old today, thus, § 4.16(b)(1)(i)(A) is irrelevant. Finally, the proposal would make corresponding typographical changes for grammatical purposes.

Question 3. Should the OCC define the term ''confidential commercial information'' in the regulation?

Effective Date

The proposed rule would have an effective date of at least 60 calendar days after publication of the final rule in the **Federal Register** or the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form in the **Federal Register**, whichever period is longer. The OCC requests comment on the proposed effective date.

Comment Invitation

The OCC invites comment on all aspects of this proposal.

Regulatory Analysis

Paperwork Reduction Act of 1995

This notice of proposed rulemaking has been reviewed for compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). In accordance with PRA, the OCC may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the information collection displays a currently valid Office of Management and Budget (OMB) control number. The

[26] 5 U.S.C. 552(a)(4)(A)(i).

[27] 5 U.S.C. 552(a)(4)(A)(iii) (Documents shall be furnished without any charge).

[28] *See* 5 U.S.C. 552(a)(6)(A)(i)(III)(aa).

[29] 5 U.S.C. 552(a)(4)(A)(i).

[30] 5 U.S.C. 552(a)(4)(A)(vii).

[31] *See* 12 CFR 309.5(f)(x) (FDIC); 31 CFR 1.4(h)–(i), 1.6(a) (Treasury); 28 CFR 16.6(d)–(e), 16.8(a) (DOJ).

[32] *See* Department of Justice, Office of Information Policy, *Template for Agency FOIA Regulations,* § VI. Responses to Requests, *https://www.justice.gov/oip/template-agency-foia-regulations#Responses%20to%20Requests* (last updated Dec. 2, 2022).

[33] 5 U.S.C. 552(a)(4)(A)(i).

[34] Under 5 U.S.C. 552(a)(4)(A)(iii), a fee waiver must be granted when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

[35] 12 CFR 4.17(b)(4)(i)–(ii).

[36] 139 S. Ct. 2356, 2366 (2019).

proposed rule contains no information collection requirements under the PRA.

Regulatory Flexibility Act

In general, the Regulatory Flexibility Act (RFA) [37] requires an agency, in connection with a proposed rule, to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the U.S. Small Business Administration for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its rule.

The OCC currently supervises approximately 1,059 institutions (commercial banks, trust companies, Federal Savings Associations (FSAs), and branches or agencies of foreign banks, collectively banks) [38] of which 661 are small entities.[39] The OCC expects the costs associated with the proposed rule to be *de minimis* because the OCC is the main entity that would be impacted by reviewing and processing FOIA requests on an expedited timeframe. Furthermore, because the OCC expects the majority of those *de minimis* costs to be incurred by the OCC as it updates its policies and procedures and its FOIA tracking system and not by small entities, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The OCC analyzed the proposed rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes 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 (adjusted for inflation). Because the OCC's overall estimate of the total potential costs associated with this proposed rule is *de minimis,* the OCC concludes that the rule would not result in private sector costs that exceed the UMRA threshold for a significant rule. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802(a)), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with the principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

List of Subjects in 12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

Authority and Issuance

For the reasons set forth in the preamble, and under the authority of 12 U.S.C. 93a, the OCC proposes to amend 12 CFR chapter I as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.,* 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 2. Amend § 4.15 by:
■ a. Adding paragraph (c)(5); and
■ b. Revising paragraphs (d)(1) and (2).

The addition and revisions read as follows:

§ 4.15 How to request records.

* * * * *

(c) * * *

(5) *Requests for expedited processing.* (i) An individual may submit a request for expedited processing either with the request for records or at any time thereafter. The request must be submitted in writing. In cases where a request is submitted on paper, both the envelope and the request itself must be clearly marked, ''Expedited Processing Requested.''

(ii) The OCC will grant requests for expedited processing when it is determined that they involve:

(A) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(B) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person who is primarily engaged in disseminating information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the general public; or

(C) The loss of substantial due process rights.

(iii) A requester who seeks expedited processing must submit a statement, certified to be true and correct, demonstrating the compelling need for expedited processing that meets at least one of the criterion in paragraph (c)(5)(ii) of this section. As a matter of administrative discretion, the OCC may waive this certification requirement.

(iv) Upon receipt by the OCC, the OCC will consider a request for expedited processing and determine whether to grant or deny the request for expedited processing. The OCC will notify the requester of the determination within 10 calendar days after the date of receipt of the request for expedited processing. The OCC will grant or deny

[37] 5 U.S.C. 601 *et seq.*

[38] Based on data accessed using FINDRS on August 30, 2023.

[39] Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if it should classify an institution as a small entity. The OCC used December 31, 2022, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Standards.*

a request for expedited processing solely on the information contained in the initial letter requesting expedited treatment. When the OCC grants a request for expedited processing, the OCC will process the records as soon as practicable.

(v) If the OCC denies a request for expedited processing, the requester may appeal the denial in accordance with paragraph (d) of this section. If the requester submits an appeal on paper, both the envelope and the appeal itself must be clearly marked, ''Appeal for Expedited Processing.''

(vi) The OCC will expeditiously consider the appeal and notify the requestor of the determination.

* * * * *

(d) * * *

(1) *Procedure.* A requester may appeal an adverse determination, including denials of requests for records, requests for expedited processing under paragraph (c)(5) of this section, and requests for fee waivers or reductions under § 4.17(b)(4). All appeals must be submitted in writing within 90 calendar days after the date of the initial determination. The appeal must include the circumstances and arguments supporting disclosure of the requested records. Appeals of initial determinations to deny expedited processing must also follow the procedure set forth in paragraph (c)(5)(v) of this section.

(2) *Appellate determination.* The Comptroller or the Comptroller's delegate determines whether to grant an appeal of a denial of:

(i) A request for OCC records;

(ii) A request for expedited processing; or

(iii) A waiver or reduction of fees.

* * * * *

■ 3. Amend § 4.16 by:

■ a. Revising and republishing paragraph (a)(1);

■ b. Revising paragraph (b)(1)(i) and (ii); and

■ c. Removing in paragraph (b)(2)(v), the phrase '', unless the OCC has substantial reason to believe that disclosure of the information would result in competitive harm''.

The revisions and republication read as follows:

§ 4.16 Predisclosure notice for confidential commercial information.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Confidential commercial information means commercial or financial information obtained by the OCC from a submitter that may be protected from disclosure under Exemption 4 of FOIA, 5 U.S.C. 552(b)(4).

* * * * *

(b) * * *

(1) * * *

(i) With respect to confidential commercial information submitted to the OCC or to the Federal Home Loan Bank Board, the predecessor of the OTS, prior to January 1, 1988, if the information is subject to a prior express commitment of confidentiality from the OCC or the Federal Home Loan Bank Board, the predecessor of the OTS; and

(ii) With respect to confidential commercial information submitted to the OCC or to the OTS (or the Federal Home Loan Bank Board, its predecessor agency) on or after January 1, 1988, if:

(A) The submitter in good faith designated the information as confidential commercial information; or

(B) The OCC or the OTS (or the Federal Home Loan Bank Board, its predecessor agency) designated the class of information to which the requested information belongs as confidential commercial information.

* * * * *

■ 4. Amend § 4.17 by revising paragraph (b)(4) to read as follows:

§ 4.17 FOIA request fees.

* * * * *

(b) * * *

(4) *Waiving or reducing a fee.* (i) The OCC must waive or reduce a fee under this section whenever, in its opinion, disclosure of records is in the public interest because the disclosure:

(A) Is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Is not primarily in the commercial interest of the requester.

(ii) A requester may appeal the OCC's determination not to grant a request for a waiver or reduction of fees under this paragraph pursuant to the procedure set forth in § 4.15(d) of this section.

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Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2024–02990 Filed 2–21–24; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132569–17]

RIN 1545–BO40

Definition of Energy Property and Rules Applicable to the Energy Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–132569–17) published in the **Federal Register** on November 22, 2023, containing proposed regulations that would amend the regulations relating to the energy credit for the taxable year in which eligible energy property is placed in service.

DATES: The comment period for REG–132569–17 (88 FR 82188, November 22, 2023) is reopened, and additional written or electronic comments must be received by March 25, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–132569–17). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG–132569–17), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Office of Associate Chief Counsel (Passthroughs & Special Industries) at (202) 317–6853 (not a toll-free number); concerning submissions of comments, Vivian Hayes, (202) 317–6901 (not toll-free number) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–132569–17) that is the subject of this correction proposes regulations under section 48 of the Internal Revenue Code (Code) (Proposed Regulations) addressing the energy credit determined under section 48 for purposes of

sections 38 and 46 of the Code. The Proposed Regulations address the treatment of certain gas upgrading equipment in a manner that warrants a correction.

Need for Correction

As published, the Proposed Regulations would exclude from the definition of ''qualified biogas property'' any ''gas upgrading equipment necessary to concentrate the gas into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen.'' *See* proposed § 1.48–9(e)(11)(i). Proposed § 1.48–9(f)(1) would provide, however, that property owned by the taxpayer that is an integral part of an energy property (as defined in proposed § 1.48–9(f)(3)) is treated as energy property. A correction is needed to clarify that gas upgrading equipment that is necessary to concentrate the gas from qualified biogas property into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen, would be energy property if it is an integral part of an energy property as defined in proposed § 1.48–9(f)(3).

Correction of Publication

Accordingly, the publication of the Proposed Regulations, which was the subject of FR Doc. 2023–25539, is corrected by revising the following sentence on page 82214, in the second column and before the first full paragraph: ''However, gas upgrading equipment necessary to concentrate the gas into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen is not included in qualified biogas property.'' This sentence should be revised to read as follows: ''However, gas upgrading equipment necessary to concentrate the gas into the appropriate mixture for injection into a pipeline through removal of other gases such as carbon dioxide, nitrogen, or oxygen is not a functionally interdependent component (as defined in paragraph (f)(2)(ii) of this section) of qualified biogas property.''

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2024–03632 Filed 2–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2024–OSERS–0001]

Proposed Priorities and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priorities and requirements.

SUMMARY: The Department of Education (Department) proposes priorities and requirements for a National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data (Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number (ALN) 84.373Z. The Department may use these priorities and requirements for competitions in fiscal year (FY) 2024 and later years. We take this action to identify the national need to provide technical assistance (TA) to improve the capacity of States to meet the early childhood data collection and reporting requirements under Part B and Part C of the Individuals with Disabilities Education Act (IDEA).

DATES: We must receive your comments on or before May 7, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Meredith Miceli, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0135. Email: *Meredith.Miceli@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:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities and requirements. To ensure that your comments have maximum effect in developing the final priorities and requirements, we urge you to identify clearly the specific section of the proposed priorities and requirements that each comment addresses.

Directed Question: Given that Congress has not yet enacted an appropriation for FY 2024, the Department is considering whether it may use a phased-in funding approach to this investment, with smaller awards in the initial years of the project and higher awards in later years. The Department requests specific public comment on the extent to which such an approach would require substantive changes to the proposed priority and whether there are particular areas of focus (*e.g.,* data sharing templates, data analyses tools) that may benefit from a phased-in approach.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities and requirements by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a

disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet IDEA data collection and reporting requirements. Funding for the program is authorized under section 611(c)(1) of IDEA, which gives the Secretary authority to reserve not more than one-half of one percent of the amounts appropriated under Part B for each fiscal year to provide TA activities, where needed, to improve the capacity of States to meet the data collection and reporting requirements under Parts B and C of IDEA. The maximum amount the Secretary may reserve under this set-aside for any fiscal year is $25,000,000, cumulatively adjusted by the rate of inflation. Section 616(i) of IDEA requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 642 of IDEA are collected, analyzed, and accurately reported to the Secretary. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements, which include the data collection and reporting requirements in sections 616 and 618 of IDEA. In addition, the Consolidated Appropriations Act, 2023, Public Law 117–328, gives the Secretary authority to use funds reserved under section 611(c) of IDEA to ''administer and carry out other services and activities to improve data collection, coordination, quality, and use under Parts B and C of the IDEA.'' Consolidated Appropriations Act, 2023, Public Law 117–328, Division H, Title III, 136 Stat. 4459, 4891 (2022).

Program Authority: 20 U.S.C. 1411(c), 1416(i), 1418(c), 1418(d), 1442; Consolidated Appropriations Act, 2023, Public Law 117–328, Division H, Title III, 136 Stat. 4459, 4891 (2022).

Applicable Program Regulations: 34 CFR 300.702.

Proposed Priorities

This document contains two proposed priorities.

Proposed Priority 1: National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data.

Background:

The purpose of this proposed priority is to establish a TA center to provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C early intervention data (including IDEA section 618 Part C data and section 616 Part C data) and IDEA Part B preschool special education data [1] (limited to Part B preschool data elements required under IDEA sections 616 and 618 [2]); and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part C and Part B preschool special education data systems) to address critical policy questions that would facilitate program improvement and improve compliance accountability and outcomes or results for children served under Part C early intervention and Part B preschool special education programs.

Recently, there have been increased expectations for State Part C early intervention and Part B preschool special education programs to collect, report, analyze, and use high-quality data. State-level staff in Part C early intervention and Part B preschool special education programs are expected to report higher quality data, be able to provide more in-depth explanations of the data, use the data to improve programs, compliance, and general supervision of Part C early intervention and Part B preschool special education programs, and present the data in an understandable fashion to all data users, including novice data users. Under the ED*Facts* Modernization Project, which began with the submission of the 2022–23 IDEA section 618 data, the Office of Special Education Programs (OSEP) is expecting States to conduct data quality work prior to the due date for States to submit their data; this work was previously completed by OSEP after the due date. Additionally, beginning with the Federal fiscal year 2022 State Performance Plan/Annual Performance Report (SPP/APR) (submitted in 2024), State Part C early intervention programs must report additional data and information to support the assumption that the data reported for indicator C4 (Family Involvement) [3] are representative of those infants and toddlers with disabilities and their families receiving services in their State. Also, State-level staff in Part C early intervention and Part B preschool special education programs are expected to analyze and use data to support and provide evidence of compliance with requirements of IDEA and improvement of results for children with disabilities through OSEP's Differentiated Monitoring and Support as part of the results-driven accountability system. Finally, there is an expectation that States present their data in a format that engages stakeholders to participate in important discussions about program improvement and accountability compliance.

As IDEA data expectations have evolved and increased, there is a need to support both experienced and new data staff who work in Part C early intervention and Part B preschool special education programs. In 2023, approximately 17 percent of the State data managers for Part C early intervention programs had been in the job less than a year and approximately 23 percent had only been in the job between one and three years. The IDEA Infants and Toddlers Coordinators Association (ITCA) reported that 51 percent of Part C coordinators have been in the position for two years or less in their 2022 Tipping Points Survey (ITCA, 2022).[4] In 2023, approximately 59 percent of Part B preschool special education coordinators had three or less years of experience (Early Childhood Technical Assistance Center, 2023).[5] Due to the continued turnover among Part C early intervention and Part B preschool special education staff, there is a need to support new and novice staff to collect, report, analyze, and appropriately use the IDEA data.

Due to increased expectations on the collection, reporting, analysis, and use of IDEA data and staff turnover, there is a need to find efficient, effective, and user-friendly approaches to conducting

[1] Throughout this document, ''IDEA Part B preschool special education data'' refers to IDEA Part C data (including IDEA section 618 Part C data and IDEA section 616 Part C data) and IDEA Part B preschool special education data on children with disabilities, ages 3 through 5, required under section 616 of IDEA for those indicators that are not solely based on IDEA section 618 data (*e.g.,* SPP/APR Indicators B7 (Preschool Children with Improved Outcomes) and B12 (Transition from Part C to Part B).

[2] TA on the other Part B data required under sections 616 and 618 of IDEA would be provided through the proposed priority in the notice of proposed priority and requirements for the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (ALN 84.373Y).

[3] Indicator C4 requires States to report on the percent of families participating in Part C who report that early intervention services have helped the family: (a) know their rights; (b) effectively communicate their children's needs; and (c) help their children develop and learn.

[4] For more information on ITCA's 2022 Tipping Points Survey, please go to 2022 Tipping Points Survey (ideainfanttoddler.org). *www.ideainfanttoddler.org/pdf/2022-Tipping-Points-Survey.pdf.*

[5] Early Childhood Technical Assistance Center. (2023). Part B, section 619 National Survey 2023. *https://ectacenter.org/sec619/sec619survey.asp.*

the early childhood IDEA data work. Improved data management processes, as well as the growing development of linked and integrated child-level data in Part C data systems, Part B preschool special education data systems, other early learning program data systems, and statewide longitudinal data systems for school-aged children, are key approaches for States in meeting these increased expectations. States need to establish and implement effective early childhood data management and, where appropriate, data system integration policies and procedures to support program improvement, compliance accountability, and Federal and public reporting. Improved policies and procedures would allow States, where appropriate, to link or integrate child-level data in Part C data systems, Part B preschool special education data systems, other early learning program data systems, and statewide longitudinal data systems for school-aged children. An early childhood integrated data system (ECIDS) could help States to identify what works best to improve outcomes for young children in their States. For instance, an ECIDS provides the opportunity for States to assess which characteristics of services are related to better outcomes for children and families or the relationship between early childhood setting and early childhood outcomes. An ECIDS that includes data from across various early care and education programs could also improve child find activities in the State by identifying strong referral sources and those where more outreach may be needed. An ECIDS could also help States determine the other early care and education programs that young children with disabilities and their families are participating in, allowing States to maximize efficiency in the operation of the early intervention or early childhood special education program while maintaining or improving outcomes.

Building robust ECIDSs that include Part C early intervention data and Part B preschool special education data would improve responses to critical policy questions, facilitate program improvement, and improve compliance accountability for Part C early intervention and Part B preschool special education programs. This level of integration would help ensure that States report high-quality IDEA data to the Department and the public.

Though some improvements have been made over the last 10 years in linking and integrating Part C early intervention and Part B preschool special education data to data from other early learning programs, K–12 data systems, and the workforce, as well as longitudinally over time, the percent of State programs that report they can make these linkages remained low in 2021. Less than 40 percent of Part C early intervention and Part B preschool special education programs that responded said they can link their child-level data to their workforce data. Less than 30 percent of Part C early intervention programs that responded said their State links Part C child-level data to Early Head Start, Head Start, State Pre-K, childcare programs, home visiting programs, or other early care or education programs. Most Part C early intervention programs that responded said they have never linked their Part C data to their Part B preschool special education data.[6]

This proposed priority would directly address the increased expectations and capacity challenges Part C early intervention and Part B preschool special education programs face with respect to effectively and efficiently collecting, reporting, analyzing, and using high-quality IDEA data.

Proposed Priority 1:

The purpose of this proposed priority is to fund a cooperative agreement to establish and operate a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate Early Childhood IDEA Data (Center).

The Center will provide TA to (1) improve States' capacity to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 618 Part C data and IDEA section 616 Part C data) and IDEA Part B preschool special education data on children with disabilities; and (2) enhance, streamline, and integrate statewide, child-level early childhood data systems (including Part C and Part B preschool special education data systems) to address critical policy questions that will facilitate program improvement, improve compliance accountability, and improve outcomes or results for children served under Part C and Part B preschool special education programs. These Part C early intervention and Part B preschool special education data systems must allow the States to (1) effectively and efficiently respond to all IDEA-related data submission requirements (*e.g.,* Part C section 616 and 618 data and Part B preschool special education data); (2) respond to critical policy questions that will facilitate program improvement and compliance accountability; and (3) comply with applicable privacy requirements, including the privacy and confidentiality requirements under Parts B and C of IDEA and applicable provisions of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and its regulations at 34 CFR part 99.[7] The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data);

(b) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B preschool special education data;

(c) Increased number of States with data system integration plans that consider the linking of Part C and Part B preschool special education data (that comply with all applicable privacy laws) and using such integrated or linked Part C early intervention and Part B preschool special education data to improve program compliance and accountability;

(d) Increased number of States that use their Part C early intervention and Part B preschool special education data system to identify and answer critical State-determined policy questions to drive program improvement, improve results for children with disabilities, and improve compliance accountability;

(e) Increased capacity of States to use available integrated or linked Part C early intervention and Part B preschool special education data and/or early childhood integrated data systems to analyze high-quality data on the participation and outcomes of infants, toddlers, and children with disabilities served under IDEA who may also participate in other programs (*e.g.,* childcare, Early Head Start, Head Start, child care, publicly funded preschool, and home visiting programs);

(f) Increased number of States with data system integration plans that consider linking of Part C and Part B preschool special education data systems to other statewide longitudinal and early learning data systems and ensure that such linkages comply with all applicable privacy laws;

[6] Perez, N., & Mercier, B. (2022). *2021 DaSy data systems (State of the States) survey findings.* SRI International. *https://dasycenter.org/wp-content/uploads/2022/12/DaSy_2021DaSyDataSystemsSurveyFindings_Acc.pdf.*

[7] The Center must review the need for additional resources (with input from the Department) and disseminate existing resources developed by the Department, such as: (1) Understanding the Confidentiality Requirements Applicable to IDEA Early Childhood Programs (October 2016); (2) IDEA/FERPA Crosswalk (Surprenant & Miller, August 24, 2022); (3) Webinars such as Navigating IDEA and FERPA To Protect Privacy in Today's Early Childhood World *(September 22, 2023);* and (4) Data sharing agreement template.

(g) Increased capacity of States to implement and document Part C and Part B preschool special education data management policies and procedures and data system integration activities and to develop a sustainability plan to continue this data management and data system integration work in the future;

(h) Increased capacity of States to address personnel training needs to meet the Part C and Part B preschool special education data collection and reporting requirements under sections 616 and 618 of IDEA through development of effective tools (*e.g.,* training modules) and resources (*e.g.,* new Part C Data Managers resources), as well as providing opportunities for in-person and virtual cross-State training for personnel in State and local programs and agencies regarding Part C early intervention and Part B preschool special education data collection and reporting requirements; and

(i) Increased capacity of States to collect, report, analyze, and use Part C and Part B preschool special education data to support equitable identification, access, services, outcomes, and impact of early intervention and preschool special education and related services on infants, toddlers, and young children receiving services under IDEA.

In addition, the Center must provide a range of targeted and general TA products and services for improving States' capacity to link and integrate their Part C early intervention and Part B preschool special education data with data/data systems associated with other Federal programs that support infants, toddlers, and young children and their families in order to report high-quality Part C data and Part B preschool special education data required under sections 616 and 618 of IDEA, drive program improvement, improve results for children with disabilities, and improve compliance accountability. Such TA must include, at a minimum, in Years 2 through 5:

(a) In partnership with the Department, developing an open-source electronic tool to assist States in linking and integrating their Part C early intervention and Part B preschool special education data with other data/data systems associated with other Federal programs that support infants, toddlers, and young children and their families in order to provide high-quality reporting of the Part C data and Part B preschool special education data required under sections 616 and 618 of IDEA, drive program improvement, improve results for children with disabilities, and improve compliance accountability. The tool must utilize Common Education Data Standards (CEDS) and meet States' needs associated with linking or integrating their Part C early intervention and Part B preschool special education data with other data/data systems associated with other Federal programs that support infants, toddlers, and young children and their families;

(b) Developing CEDS ''Connections'' to ensure the electronic tool is built for States to conduct analyses related to reporting the IDEA Part C data and IDEA Part B preschool special education data required under sections 616 and 618 of IDEA, driving program improvement, improving results for children with disabilities, and improving compliance accountability;

(c) Developing and implementing a plan to maintain the appropriate functionality of the open-source electronic tool described in paragraph (a) of this section as changes are made to data reporting requirements and CEDS;

(d) Conducting TA on data governance to facilitate the use of the open-source electronic tool and providing training to State staff to implement the open-source electronic tool; and

(e) Supporting a user group of States that are using an open-source electronic tool for reporting the IDEA Part C data and IDEA Part B preschool special education data required under sections 616 and 618 of IDEA.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements under *Proposed Priority 1 and Proposed Priority 2 Common Elements.*

Proposed Priority 2: Technical Assistance To Improve State Capacity To Collect, Report, Analyze, and Use Accurate Child Find Data For Infants and Toddlers.

Background: The purpose of this proposed priority is to establish a TA center to provide TA to increase the capacity of States to collect, report, analyze, and use data available to States to improve their Part C child find data and efforts that they report through their Part C SPP/APR.

On October 5, 2023, the U.S. Government Accountability Office (GAO) issued a report ''Special Education: Additional Data Could Help Early Intervention Programs Reach More Eligible Infants and Toddlers'' noting variation across racial groups at each step of the identification and enrollment process for early intervention services under Part C of IDEA (GAO–24–106019)(2023 GAO IDEA Part C Child Find Report).[8] Based on an analysis of data from 16 States, GAO found that the percentage of infants and toddlers who engaged in the first two steps (from referred to evaluated) differed widely by race. However, the percentage of infants and toddlers who engaged in the third to the fourth step (from eligible to enrolled) looked similar across races. For example, the percentage of infants and toddlers who were referred and subsequently received an evaluation ranged from 59 percent for American Indian and Alaska Native children to 86 percent for Asian children (a 27 percentage-point difference). In contrast, the percentage of those determined eligible and subsequently enrolled ranged from 91 percent for American Indian or Alaska Native children to 95 percent for Asian and White children (a four percentage-point difference).

Specifically, the 2023 GAO IDEA Part C Child Find Report had one matter for Congress and one recommendation for the Department, to which the Department agreed. GAO recommended that the Department encourage all States to use demographic data they already collect to maximize children's access to Part C early intervention services. In its September 13, 2023 response, the Department noted its plans to implement this recommendation. The Department has established that, beginning with the Federal fiscal year (FFY) 2023 SPP/APR that States submit in February 2024, all States should report under SPP/APR child find indicators C–5 and C–6 on their root cause analysis of their child find efforts by using all data available to the State and not just the child find data reported under SPP/APR Indicators C–5 and C–6.[9] Additionally, beginning with the FFY 2023 SPP/APR, a State must report this root cause analysis if the State shows slippage in the FFY 2023 data it reports under SPP/APR indicators C–5 and C–6.[10]

[8] The GAO Report and the Department's response concurring with the recommendation can be found at *www.gao.gov/assets/d24106019.pdf.*

[9] Per the Part C State Performance Plan and Annual Performance Report (Part C SPP/APR) General Instructions, ''If a State is required to report on the reasons for slippage, then the State must include the results of its analysis under the ''Additional Information'' section of Indicators 5 and 6.'' Part C State Performance Plan and Annual Performance Report (Part C SPP/APR)—General Instructions—For Federal Fiscal Year 2023 Submission.

[10] For the FFY 2023 SPP/APR Indicators C–5 and C–6, the Department noted that ''to improve the analysis of whether States are identifying children who need services as early as possible, States should conduct root cause analyses of child find identification rates, including reviewing data (if available) on the number of children referred, evaluated, and identified. This root cause analysis

Continued

Though many State Part C programs already use demographic data on infants and toddlers to identify disparities and improve access to Part C services, not all States have implemented similar analyses of other data that can affect child find identification rates. Analysis of child find data that could be relevant would include not only analysis of race and ethnicity data reported under IDEA section 618, but would also include analysis of other child-find related data available to the State (such as geographic location, family income, and primary language). Conducting analyses of these other child find-related data would enable all State Part C programs to better identify and serve infants and toddlers who are eligible for, and need services under, Part C of IDEA. To support equitable access to early intervention services under Part C of IDEA, this proposed priority would provide TA to States as they begin reporting on their root cause analyses using all available child find-related data to improve their data analyses, child find efforts, and children's access to early intervention services under Part C of IDEA.

Proposed Priority 2:

The purpose of this priority is to fund TA to increase the capacity of States to collect, report, analyze, and use available data to improve the Part C child find data they report through their Part C SPP/APR.

The Center must achieve, at a minimum, the following expected outcomes:

(a) Increased capacity of States to collect, report, analyze, and use available data to improve the Part C child find data (including IDEA section 616 Part C data for indicators C5 and C6 and section 618 Part C data);

(b) Increased number of States that have the capacity to identify, for children served under IDEA Part C, other data they may collect (such as number of infants and toddlers: referred; screened; evaluated; eligible; and enrolled in early intervention services under Part C) by various characteristics of the child, including, at a minimum: race, ethnicity, home language, gender, socio-economic status, and geographic location;

(c) Increased number of States that have the capacity to conduct a root cause analysis of available child find data to better identify disparities among demographic groups and potential barriers to enrollment in early intervention services under Part C of IDEA; and

(d) Increased number of States that have the capacity to use their IDEA and non-IDEA Part C child find data to improve the child find processes at the State and local program levels.

In addition to these program requirements, to be considered for funding under this proposed priority, applicants must meet the application and administrative requirements under *Proposed Priority 1 and Proposed Priority 2 Common Elements.*

Proposed Priority 1 and Proposed Priority 2 Common Elements:

In addition to the program requirements contained in both priorities, to be considered for funding applicants must meet the following application and administrative requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Address State challenges associated with early childhood data management and data system integration, including implementing early childhood data system integration and improvements; enhancing and streamlining Part C early intervention and Part B preschool special education data systems to respond to critical policy questions; using ECIDS for program improvement and compliance accountability for Part C early intervention and Part B preschool special education programs; reporting high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data to the Department and the public; and analyzing Part C child find data to improve equitable access to Part C early intervention services. To meet this requirement the applicant must—

(i) Present applicable national, State, or local data demonstrating the challenges of States to implement effective early childhood data management policies and procedures and data system integration activities, including integrating early childhood data systems across IDEA programs, other early learning programs, and other educational programs for school-aged students; linking Part C and Part B preschool special education program data; using their Part C and Part B preschool special education data systems to respond to critical State-determined policy questions for program improvement and compliance accountability; and collecting, reporting, analyzing, and using Part C child find data to improve equitable access to Part C early intervention services;

(ii) Demonstrate knowledge of current educational and technical issues and policy initiatives relating to early childhood data management and data system integration, data use, data privacy, Part C IDEA sections 616 and 618 data, Part C child find data, Part B preschool special education data, and Part C and Part B preschool special education data systems; and

(iii) Present information about the current level of implementation of integrating or linking Part C and Part B preschool special education data systems; integrating or linking Part C and/or Part B preschool special education data systems with other early learning data systems; using Part C and Part B preschool special education data systems to respond to critical State-determined policy questions; and collecting, reporting, analyzing, and using high-quality IDEA Part C data (including IDEA section 616 Part C data and section 618 Part C data) and IDEA Part B preschool special education data; and

(2) Improve early childhood data management policies and procedures and data system integration activities used to collect, report, and analyze high-quality Part C and Part B preschool special education data (including Part C child find data); to integrate or link Part C and Part B preschool special education data systems as well as integrate or link these data with data on children participating in other early learning programs and data on school-aged children; and to develop and use robust early childhood data systems to answer critical State-determined policy questions; and indicate the likely magnitude or importance of the improvements.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

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may include examining not only demographic data (such as race and ethnicity data reported under IDEA section 618 and Indicators C–5 and C–6), but also other child-find related data available to the State (such as geographic location, family income, primary language, etc.). The State should report the results of its analysis under the ''Additional Information'' section of the Indicators C–5 and C–6. Furthermore, if a State is required to report on the reasons for slippage, then the State must include the results of its analysis under the ''Additional Information'' section of the Indicators C–5 and C–6.'' See, *https://omb.report/icr/202305-1820-001/doc/131687100.*

(ii) Ensure that products and services meet the needs of the intended recipients of the grant;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes, which depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based [11] practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research on early childhood data management and data system integration, and related EBPs; and

(ii) How the proposed project will incorporate current research and EBPs in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify and develop the knowledge base on early childhood data management and data system integration;

(ii) Its proposed approach to universal, general TA,[12] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach; and

(iii) Its proposed approach to targeted, specialized TA,[13] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current infrastructure, available resources, and ability to build capacity at the State and local levels; and

(C) The process by which the proposed project will collaborate with OSEP-funded centers and other federally funded TA centers to develop and implement a coordinated TA plan when the work of the center or centers overlaps with the proposed project; and

(iv) Its proposed approach to intensive, sustained TA,[14] which must identify—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(B) Its proposed approach to addressing States' challenges associated with limited resources to engage in early childhood data system integration and enhancement activities that streamline the established Part C and Part B preschool special education data systems to respond to critical policy questions and to report high-quality IDEA data to the Department and the public, which must, at a minimum, include providing on-site consultants to the State lead agency (LA) or State educational agency (SEA) to—

(1) Model and document data management and data system integration policies, procedures, processes, and activities within the State;

(2) Develop and adapt tools and provide technical solutions to meet State-specific data needs; and

(3) Develop a sustainability plan for the State to continue the data management and data system integration work in the future;

(C) Its proposed approach to measure the readiness of the State LA and SEA personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current infrastructure, available resources, and ability to build capacity at the State and local program and district levels;

(D) Its proposed approach to prioritizing TA recipients with a primary focus on meeting the needs of States with known ongoing data quality issues, as measured by OSEP's review of the quality of the IDEA sections 616 and 618 data;

(E) Its proposed plan for assisting State LAs and SEAs to build or enhance training systems that include professional development based on adult learning principles and coaching;

(F) Its proposed plan for working with appropriate levels of the education system (*e.g.,* State LAs, SEAs, regional TA providers, districts, local programs, families) to ensure that there is communication between each level and that there are systems in place to support the collection, reporting, analysis, and use of high-quality IDEA Part C data (including IDEA section 616 Part C data, section 618 Part C data, and Part C child find data) and IDEA Part B preschool special education data as well as early childhood data management and data system integration; and

(G) Its proposed plan for collaborating and coordinating with the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data, Early Childhood Technical Assistance Center, other Department-funded TA investments, other federally funded TA investments, and Institute of Education Sciences/National Center for Education Statistics research and development investments, where appropriate, in order to align complementary work and jointly develop and implement products and services to meet the purposes of this

[11] For purposes of these requirements,''evidence-based'' means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

[12] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[13] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[14] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

priority and to develop and implement a coordinated TA plan when they are involved in a State; and

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[15] The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of these application and administrative requirements;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the APR and at the end of Year 2; and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources,'' 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 proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits and funds will be spent in a way that increases their efficiency and cost-effectiveness, including by reducing waste or achieving better outcomes.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period, provided that, if the conference is conducted virtually, the project must reallocate unused travel funds no later than the end of the third quarter of each budget period.

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP;

(3) Provide an assurance that the project will—

(i) Reallocate unused travel funds no later than the end of the third quarter if the kick-off or planning meetings are conducted virtually; and

(ii) Within 30 days of receipt of the award, participate in a post-award teleconference between the OSEP project officer and the grantee's project director or other authorized representative;

(4) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(5) Budget at least 50 percent of the grant award for providing targeted and intensive TA to States;

(6) Provide an assurance that it will maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility; and

(7) Include, in appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to this new award period and at the end of this award period, as appropriate.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications

[15] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priorities and Requirements:

We will announce the final priorities and requirements in a document in the **Federal Register**. We will determine the final priorities and requirements after considering public comments on the proposed priorities and requirements and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use these proposed priorities and one or more of these requirements, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed priorities and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priorities and requirements clearly stated?
- Do the proposed priorities and requirements contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priorities and requirements (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priorities and requirements be easier to understand if we divided them into more (but shorter) sections?
- Could the description of the proposed priorities and requirements in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priorities and requirements easier to understand? If so, how?
- What else could we do to make the proposed priorities and requirements easier to understand?

To send any comments about how the Department could make these proposed priorities and requirements easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR

part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification: The Secretary certifies that these proposed priorities and requirements would not have a significant economic impact on a substantial number of small entities. The small entities that this proposed regulatory action would affect are LEAs, including charter schools that operate as LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations. We believe that the costs imposed on applicants by the proposed priorities and requirements would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priorities and requirements would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for Technical Assistance on State Data Collection program funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving a Technical Assistance on State Data Collection program grant. An eligible entity probably would apply only if it determines that the likely benefits exceed the costs of preparing an application.

We believe that these proposed priorities and requirements would not impose any additional burden on a small entity applying for a grant than the entity would face in the absence of the proposed action. That is, the length of the applications those entities would submit in the absence of the proposed regulatory action and the time needed to prepare an application would likely be the same.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

These proposed priorities and requirements contain information collection requirements that are approved by OMB under OMB control number 1820–0028. The proposed priorities and requirements do not affect the currently approved data collection.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, 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. 2024–03631 Filed 2–21–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0027; FRL–11418–01–R3]

Air Plan Approval; Virginia; Revision Listing and Implementing the 2010 Primary Sulfur Dioxide National Ambient Air Quality Standard for the Giles County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Commonwealth or Virginia). This revision consists of an amendment to the list of Virginia nonattainment areas to include a newly designated sulfur dioxide (SO_2) nonattainment area. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 25, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2024–0027 at *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, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Serena Nichols, 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) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 9, 2023, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP amending an existing regulation in the SIP by adding a sulfur dioxide section for the newly designated SO_2 nonattainment area in a portion of Giles County. This revision is needed for the Commonwealth to implement the 2010 primary SO_2 National Ambient Air Quality Standard (NAAQS).

I. Background

On June 2, 2010, the EPA Administrator signed a final rule that revised the primary SO_2 NAAQS (75 FR 35520, June 22, 2010) after review of the existing primary SO_2 standards promulgated on April 30, 1971 (36 FR 8187). The EPA established the revised primary SO_2 NAAQS at 75 parts per billion (ppb) which is attained when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations of SO_2 does not exceed 75 ppb.

On March 26, 2021 (86 FR 16055), the EPA promulgated initial air quality designations for the 2010 primary sulfur dioxide NAAQS. The EPA has determined that a portion of Giles County is not meeting the SO_2 NAAQS and has designated it as a nonattainment area in 40 CFR 81.347. 40 CFR 81.347 refers to this newly designated SO_2 nonattainment area as ''Giles County (part)'' and the rest of the county which is designated attainment/unclassifiable as ''Giles County (remainder).'' For the ''Giles County (part),'' 40 CFR 81.347 also sets forth the geographic coordinates specifying the nonattainment area boundary.

II. Summary of SIP Revision and EPA Analysis

VADEQ's August 9, 2023 SIP submittal proposes to revise Virginia's SIP to include amendments to an existing regulation in the SIP which add a sulfur dioxide section for the newly designated SO_2 nonattainment area in a portion of Giles County. The amendments revise a provision in the Virginia Administrative Code (VAC), specifically 9VAC5–20–204 ''Nonattainment areas'' Subsection A, with a state effective date of February 15, 2023, which geographically defines the nonattainment areas by locality for the criteria pollutants indicated. The amendments are necessary for implementing the 2010 primary SO_2 NAAQS. The added subdivision at 9VAC5–20–204 A 5, refers to the area as ''Giles County Sulfur Dioxide Nonattainment Area (part),'' and defines it as that part of Giles County bounded by the lines connecting the coordinate points as designated in 40 CFR 81.347.[1] There are also two minor changes—(1) a non-substantive wording change to the introductory language of 9VAC5–20–204 A which replaced the word ''below'' with ''in this subsection'' so that the phrase ''Nonattainment areas are geographically defined below'' now reads as ''Nonattainment areas are geographically defined in this subsection'' and (2) shifting ''All other pollutants'' from 9VAC5–20–204 A 5 to 9VAC5–20–204 A 6.

III. Proposed Action

The EPA is proposing to approve the Virginia SIP revision adding the ''Giles County Sulfur Dioxide Nonattainment Area (part)'' to Virginia's list of nonattainment areas, which VADEQ submitted to the EPA on August 9, 2023. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity Law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, the EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because the EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, the EPA may at

[1] Under 9VAC5–20–21 B and E 1.a.(17) the applicable date for 40 CFR 81.347 in 9VAC5–20–204 is July 1, 2022. Virginia's August 9, 2023 SIP revision submittal does not mention 9VAC5–20–21 nor does Virginia's SIP include the version of 9VAC5–20–21 at 40 CFR 52.2420(e)(2) with the July 1, 2022 CFR applicability date.

any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this document, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the VADEQ regulation amending 9VAC5–20–204 to add a new sulfur dioxide nonattainment area and two other minor changes as discussed in section II of this document, ''Summary of SIP Revision and EPA Analysis.'' The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 3 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act;

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule amending the list of Virginia nonattainment areas to include a newly designated sulfur dioxide (SO_2) nonattainment area does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The 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.'' The 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.''

The VADEQ 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. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–03616 Filed 2–21–24; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2020–0055; FRL–11687–01–R5]

Air Plan Approval; Ohio; Withdrawal of Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to correct the November 19, 2020, removal of the Air Nuisance Rule (ANR) from the Ohio State Implementation Plan (SIP). This action is in response to a February 10, 2023, decision by the United States Court of Appeals for the Sixth Circuit to remand without vacatur EPA's removal of the ANR from the Ohio SIP. Because the Court did not vacate EPA's removal of the ANR, the ANR is currently not in Ohio's SIP. After reevaluating EPA's November 19, 2020, rulemaking, as directed by the Court, EPA is proposing to determine that its November 2020 final action was in error, and to correct that action by reinstating the ANR as part of the Ohio SIP.

DATES: Comments must be received on or before March 25, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0055 at *https://www.regulations.gov,* or via email to *arra.sarah@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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Christos Panos, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

I. Background

A. Procedural History

Until EPA's November 2020 removal action, a version of the ANR had been part of the Ohio SIP since 1974. EPA approved Ohio rule AP–2–07, ''Air pollution nuisances prohibited,'' into the Ohio SIP on April 15, 1974 (39 FR 13542). Subsequently, Ohio made minor changes to the rule and submitted the amended rule, renumbered as Ohio Administrative Code (OAC) 3745–15–07, as a SIP revision. EPA approved the amended rule into the SIP on August 13, 1984 (49 FR 32182). OAC 3745–15–07 prohibits the ''emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.''

In a proposed rule published on March 23, 2020 (85 FR 16309), EPA proposed to conclude that it had erred in originally approving the ANR into Ohio's SIP. In its justification, EPA noted that it had no information indicating that Ohio had relied on, or ever intended to rely on, the ANR for attainment or maintenance of any National Ambient Air Quality Standards (NAAQS). Further, in response to EPA's inquiry, Ohio informed EPA that it had not relied on the ANR for the purposes of planning, nonattainment designations, redesignation requests, maintenance plans, or determination of nonattainment areas or their boundaries under the Clean Air Act (CAA). Therefore, in the final rule published on November 19, 2020 (85 FR 73636), EPA concluded it had erred by including the ANR in Ohio's SIP and removed the ANR using the error-correction mechanism under the authority of section 110(k)(6) of the CAA, 42 U.S.C. 7410(k)(6).

On January 19, 2021, environmental groups and private citizens petitioned the Sixth Circuit for review of EPA's November 19, 2020, removal of the ANR (*Sierra Club* v. *EPA,* No. 21–3057). In briefing this matter before the Court, EPA argued that Petitioners did not have standing to bring this challenge. *See* Brief for Respondents at 1, *Sierra Club* v. *EPA,* No. 21–3057 (6th Cir. Apr. 25, 2022). However, in the event that the Court found Petitioners did have standing, EPA requested a voluntary remand of the final rule, which was granted by the Court on February 10, 2023. EPA represented to the Court that such a remand would allow the Agency to consider: (1) whether the section 110(k)(6) error-correction mechanism was the most appropriate vehicle for removing the ANR from Ohio's SIP; and (2) whether EPA should have considered performing an ''anti-backsliding'' analysis under section 193 of the CAA, 42 U.S.C. 7515, concerning the removal of the nuisance rule from Ohio's SIP. *Id.* at 23–24. In a declaration filed in the Sixth Circuit, EPA represented that, in the course of this reevaluation, it could supplement the administrative record with additional information and analysis, take and consider additional public comment, and provide additional explanation of its assessment of the challenged aspects of the final rule. *See* ''Declaration in Support of Request for Voluntary Remand'' at para. 9, Brief for Respondents, *Sierra Club* v. *EPA,* No. 21–3057 (6th Cir. Apr. 25, 2022). EPA stated that, upon remand, it could also evaluate whether any aspects of the ANR could be included in the SIP if they met applicable requirements for the implementation, maintenance, and enforcement of the NAAQS. *Id.* EPA committed to completing its reevaluation within 12 months. *Id.* at para. 10.

B. Public Comments on EPA's Proposal To Remove the ANR

During the public comment period for the March 23, 2020, proposed rule removing the ANR, EPA received comments presenting several opposing arguments.[1] Commenters questioned whether EPA's section 110(k)(6) error-correction action was an appropriate mechanism to remove the ANR from the Ohio SIP. *See* footnote 1, supra. The commenters asserted that EPA's approval of the ANR as part of the SIP was not an error and that EPA's use of error correction authority to remove the ANR from Ohio's SIP was unlawful. *Id.* Commenters further asserted that EPA was required to adhere to the SIP revision process to remove the ANR from Ohio's SIP, which would include providing a demonstration pursuant to section 193 of the CAA that no backsliding would result from this change. *Id.*

Commenters also asserted that EPA had failed to consider the impact of eliminating the only available pathway for Ohio residents to enforce the ANR on air quality and enforcement in Ohio. Therefore, the commenters maintained, the removal of the ANR from the SIP prevented local governments and non-governmental organizations, as well as affected Ohio communities, from directly enforcing the ANR where necessary to protect Ohioans' health, welfare, and property. The commenters further contended that individual Ohioans (as well as local governments) had relied, and were relying at the time of the error correction rulemaking, on the nuisance provision for Federal enforcement citizen suits under the CAA, and that the continued availability of such citizen suits was important for achieving environmental justice in the context of highly localized emissions in low-income areas and communities of color. *See* footnote 1, supra.

C. The Sixth Circuit Opinion

In its decision remanding EPA's removal of the ANR back to the Agency for further review, the Sixth Circuit cited several cases in which parties authorized to enforce Ohio's SIP provisions could and did bring enforcement actions for violations of the

[1] The public comments are found in the rulemaking docket for EPA's proposed and final action removing the ANR from the Ohio SIP. Docket ID: EPA–R05–OAR–2020–0055, available at *https://www.regulations.gov/docket/EPA-R05-OAR-2020-0055.*

ANR (prior to EPA removing the rule from Ohio's SIP). *E.g., Fisher* v. *Perma-Fix of Dayton, Inc.* Np. 3:04–C–V–418, 2006 WL 212076 (S.D. Ohio Jan. 27, 2006); *Sampson* v. *SunCoke Energy,* No. 1:17–cv–00658 (S.D. Ohio). Slip op. at 5. The Court also noted Petitioners' past reliance on the ANR apart from actually bringing CAA litigation (*i.e.,* filing notices of intent to sue under the CAA). Slip op. at 5. For support, the Court cited public comments opposing the proposed rulemaking that argued the ANR was an ''important regulatory tool in achieving and maintaining the NAAQS,'' and that its removal from the SIP ''ignored the role of citizen suits in CAA enforcement.'' Slip op. at 7.

In addition, during the litigation in the Sixth Circuit, the state of Ohio submitted a letter to the Court [2] acknowledging that it had relied on the ANR as recently as July 2021, when it brought a lawsuit against an iron and steel manufacturing facility for violating the ANR and lead NAAQS based on excess lead emissions. *See State of Ohio* v. *Republic Steel,* Case No. 2021VC00949 (Stark County, Ohio July 2, 2021). While the Court acknowledged EPA's statement in its proposal that it had found ''no information'' indicating the State had relied or intended to rely on the ANR for attainment or maintenance of the NAAQS, the Court noted that there was nothing in EPA's proposal or EPA's January 2020 email exchange with the Ohio EPA official that discussed whether the ANR had a role in NAAQS *enforcement.* Slip op. at 6.

D. Legal Authority for Proposed Action

Section 110(k)(6) of the CAA authorizes EPA to revise a state's SIP when it ''determines that [its] action approving, disapproving, or promulgating any plan or plan revision (or part thereof) . . . was in error.'' Once EPA has made the determination that it erred, it ''may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State.'' *Ala. Envtl. Council* v. *EPA,* 711 F.3d 1277, 1286 (11th Cir. 2013). Section 110(k)(6) of the CAA has been interpreted by courts as a ''broad provision [that] was enacted to provide the EPA with an avenue to correct its own erroneous actions and grant the EPA the discretion to decide when to act pursuant to the provision.'' *Miss. Comm'n on Envtl. Quality* v. *EPA,* 790 F.3d 138, 150 (D.C. Cir. 2015). EPA can take action under section 110(k)(6) to correct an error only if the error existed at the time the SIP was originally approved. *See Texas* v. *EPA,* 726 F.3d 180, 204 (D.C. Cir. 2013) (Kavanaugh, J., dissenting).

Additionally, EPA has inherent authority to reconsider, repeal, or revise past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009) (an agency may revise its policy, but must demonstrate that the new policy is permissible under the statute and is supported by good reasons, taking into account the record of the previous rule). An agency's authority to reconsider past decisions derives from its statutory authority to make those decisions in the first instance. *See Trujillo* v. *General Electric Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980) (''Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider.'') *(citing Albertson* v. *FCC,* 182 F.2d 397, 399 (D.C. Cir. 1950)). *See* 621 F.2d at 1088 (''The authority to reconsider may result in some instances, as it did here, in a totally new and different determination.''). The CAA complements EPA's inherent authority to reconsider prior rulemakings by providing the Agency with broad authority to prescribe regulations as necessary. 42 U.S.C. 7601(a); *see also* Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, 81 FR 59276, 59277–59278 (August 29, 2016).

Section 110(a)(1) of the CAA imposes an obligation upon states to submit SIPs that provide for the ''implementation, maintenance, and enforcement'' of a new or revised NAAQS within three years following the promulgation of that NAAQS. 42 U.S.C. 7410(a)(1). The importance of enforcement in the statutory scheme is evident in section 110(a)(2), as the list of required SIP elements under 110(a)(2)(A) includes enforceable emission limitations and other control measures, means, or techniques as may be necessary or appropriate to meet the applicable requirements of the CAA. Section 110(a)(2) ''sets only a minimum standard that the States may exceed in their discretion.'' *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 260 (1976). The CAA provides that the Administrator must approve the proposed plan if it has been adopted after public notice and hearing and if it meets the specified criteria in section 110(a)(2). *See also Train* v. *Nat. Res. Def. Council, Inc.,* 421 U.S. 60, 79 (1975). In addition, section 116 of the CAA provides that States may adopt emission standards that are stricter than the NAAQS. *See Union Electric* at 263–64.

Additionally, section 113 of the CAA establishes EPA's Federal authority to enforce SIP provisions, and section 304 of the CAA provides for citizen enforcement authority of the same. 42 U.S.C. 7413, 7604. Thus, the CAA contemplates multiple mechanisms for enforcement of SIP provisions, and taken together with the requirement under section 110(a)(1) that SIPs provide for the ''implementation, maintenance, and enforcement'' of the NAAQS, 42 U.S.C. 7410(a)(1), a state provision that provides for enforcement of the NAAQS is appropriate for inclusion in a SIP.

II. Reevaluation in Response to Remand

EPA's November 2020 removal of the ANR from Ohio's SIP was based on a determination that the ANR's original inclusion in the Ohio SIP was erroneous because the ANR had no nexus to the implementation, maintenance, or enforcement of the NAAQS. *See* 85 FR 73636–73638. EPA has reviewed its November 2020 removal of the ANR from the Ohio SIP and reconsidered whether its determination that the ANR was approved in error was legally sufficient. Based on its reconsideration, EPA is proposing to conclude that its original determination was deficient for two reasons: (1) because EPA failed to adequately consider the ANR's use in enforcement of the NAAQS, and (2) because EPA failed to conduct an anti-backsliding analysis pursuant to section 193 of the CAA. As such, EPA is proposing to use both its error correction authority under CAA section 110(k)(6), and inherent reconsideration authority, to reverse its removal of the ANR and reinstate the provision back into the Ohio SIP.

A. Enforcement of the ANR

In response to the remand, EPA has carefully considered the cases cited by the Sixth Circuit indicating that the ANR had been used as a tool to enforce the NAAQS, many of which were also submitted to EPA during the public comment period for the proposed action to remove the ANR. Upon further review, EPA is proposing to determine that its November 2020 action failed to adequately consider the role the ANR plays in the enforcement of the NAAQS in Ohio.

During the public comment period for the proposed action removing the ANR,

[2] *See* ''Notice of additional information in *Sierra Club, et al.* v. *United States Environmental Protection Agency,* No. 21–3057,'' *Sierra Club, et al.* v. *EPA et al.,* No. 21–3057 (6th Cir. Oct. 18, 2022).

EPA failed to adequately consider comments about citizen suits relying on the ANR as a tool to enforce the NAAQS. *See* footnote 1, *supra. See also Fisher* v. *Perma-Fix of Dayton, Inc.,* No. 3:04–CV–418, 2006 WL 212076 (S.D. Ohio Jan. 27, 2006) and *City of Ashtabula* v. *Norfolk S. Corp.,* 633 F. Supp. 2d 519, 528–29 (N.D. Ohio 2009) (holding that the ANR is an enforceable emissions limitation within the meaning of the CAA); *Sampson, et al.* v. *SunCoke Energy et al.,* 1:17–cv–00658–MRB (S.D. Ohio) (citizen suit alleging violations of the ANR at a coke production facility and which was pending at the time of EPA's removal of the ANR). EPA also received public comments opposing the proposed rulemaking that argued that the ANR was an ''important regulatory tool in achieving and maintaining the NAAQS,'' and that its removal from the SIP ''ignored the role of citizen suits in CAA enforcement.'' Slip op. at 7. *See also* 85 FR 73636, 73637–73639 (November 19, 2020).

Further, the state of Ohio acknowledged relying on the ANR as recently as July 2021, when it brought a lawsuit against an iron and steel manufacturing facility for violating the ANR based on lead emissions exceeding the NAAQS. See *State of Ohio* v. *Republic Steel,* Case No. 2021VC00949 (Stark County, Ohio July 2, 2021). *See also* footnote 2, *supra.* While this information came to light after EPA had taken final action to remove the ANR from Ohio's SIP, and thus EPA could not have considered it at the time of its original action to remove the ANR, it supports EPA's current analysis that the Ohio ANR is indeed used to enforce the NAAQS.

The types of air pollution identified in the ANR—smoke, ashes, dust, dirt, grime, acids, fumes, gases, and vapors—could have a nexus to a number of NAAQS, including particulate matter, sulfur dioxide, and lead.[3] The CAA requires that SIPs provide for the implementation, maintenance, and enforcement of the NAAQS. *See* 42 U.S.C. 7410(a)(1). In the original action approving the ANR into the SIP, the ANR had been adopted by the State after public notice and hearing, and EPA had determined that it met the specific criteria in section 110(a)(2). Under *Union Electric, supra,* EPA was required to approve the ANR into the SIP—even if such approval resulted in emission standards that were stricter than those required to attain or maintain the NAAQS.

The examples cited by the Sierra Club, other commenters, and the Sixth Circuit highlight the importance of the ANR as a regulatory tool for achieving, maintaining, and enforcing the NAAQS consistent with section 110(a)(1) of the CAA. EPA's removal of the ANR from the Ohio SIP failed to consider the evidence in the record of the ANR's role in citizen suit enforcement of the NAAQS under the CAA. EPA is proposing to conclude that EPA's prior determination that inclusion of the ANR in the Ohio SIP was ''erroneous'' was flawed, as the evidence in the record before the Agency at the time that decision was made indicated that the ANR has a clear nexus to the enforcement of the NAAQS under section 110(a)(1) of the CAA. As such, EPA is proposing to use its error correction authority under CAA section 110(k)(6) to reverse its November 2020 rule and reinstate the ANR into the Ohio SIP.

B. Section 193 ''Anti-Backsliding'' Analysis

On remand, EPA has also evaluated whether it should have performed an ''anti-backsliding'' analysis under section 193 of the CAA, 42 U.S.C. 7515, as part of the Agency's November 2020 action removing the ANR from the Ohio SIP. Upon further review, EPA is proposing to determine that its original action was deficient because it should have performed an anti-backsliding analysis in taking this final action.

Section 193 provides that, for SIP control requirements in effect before November 15, 1990, any ''modification'' thereof must ''insure[ ] equivalent or greater emissions reductions'' of the air pollutant for which the area is in nonattainment. 42 U.S.C. 7515. As a general matter, this ''anti-backsliding'' analysis is required when modifying SIP control requirements, whether through section 110(k)(6) or otherwise, if the modification impacts pre-1990 control requirements in a nonattainment area.

Because the ANR was a pre-1990 SIP control requirement that was in effect in Ohio's nonattainment areas, EPA is proposing to determine that it was required to conduct an anti-backsliding analysis pursuant to section 193 when it removed the ANR in November 2020. Because EPA failed to conduct the required analysis under section 193, the Agency's November 2020 removal of the ANR was deficient.

Through this action, EPA is proposing to determine its November 2020 removal of the ANR was in error and reinstate the ANR into the Ohio SIP. Section 193 does not apply to this proposed action because the anti-backsliding analysis is required only when there is modification of a ''control requirement in effect . . . before November 15, 1990, in any area which is a nonattainment area for any air pollutant.'' *See* section 193 of the CAA, 42 U.S.C. 7515. EPA is not proposing to modify a control requirement currently in effect in Ohio's SIP. Rather, EPA is proposing to determine its prior removal of the ANR was in error, and to correct that error by reinstating the ANR into Ohio's SIP.

C. EPA's Use of Section 110(k)(6)

On remand, EPA has also evaluated whether the section 110(k)(6) error-correction mechanism was an appropriate vehicle for removing the ANR from Ohio's SIP. As discussed throughout this proposal, EPA has reevaluated its removal of the ANR and is proposing to determine that its November 2020 final action was in error, and to correct that action by reinstating the ANR as part of the Ohio SIP. Notwithstanding the deficiencies in EPA's November 2020 action, as a general legal matter, section 110(k)(6) can be an appropriate mechanism to revise a prior action on a SIP revision that was in error. As the Sixth Circuit noted in its order remanding this matter back to EPA, ''[i]f EPA determines that its prior approval of a SIP was in error, the EPA can revise the plan using the Clean Air Act's error-correction provision, 42 U.S.C. 7410(k)(6).'' Slip op. at 1. ''The claimed error can be used to revise a SIP only if the error existed at the time of the SIP's prior approval.'' Slip op. at 4, citing A*la. Env't Council* v. *EPA,* 711 F.3d 1277, 1287–88 (11th Cir. 2013); *Texas* v. *EPA,* 726 F.3d 180, 204 (D.C. Cir. 2013). While section 110(k)(6) can be an appropriate vehicle to revise a prior action on a SIP provision, EPA's November 2020 use of section 110(k)(6) was deficient on a number of bases.

EPA's November 2020 removal of the ANR from the Ohio SIP was based on a determination that the ANR's inclusion in the Ohio SIP was erroneous because it had no nexus to the implementation, maintenance, or enforcement of the NAAQS, and that Ohio did not rely on the ANR to meet these statutorily prescribed requirements. *See* 85 FR 73636–73638. As discussed above, EPA failed to consider the ANR's role as a NAAQS enforcement tool under the CAA. Consequently, we are now proposing to determine that the ANR has a clear nexus to the enforcement of the NAAQS under section 110(a)(1) of the CAA, and

[3] Notably, in *State of Ohio* v. *Republic Steel,* Case No. 2021VC00949 (Stark County, Ohio July 2, 2021), the State of Ohio sought to enforce the ANR based on lead emissions exceeding the NAAQS. *See also* footnote 2, *supra.*

that EPA's prior determination that inclusion of the ANR in the Ohio SIP was ''erroneous'' was flawed. As discussed above, EPA failed to consider public comments demonstrating the ANR's use as a NAAQS enforcement tool. Further, EPA failed to conduct an ''anti-backsliding'' analysis pursuant to section 193 of the CAA. As such, EPA is proposing that its November 2020 removal of the ANR using section 110(k)(6) was improper.

Because the ANR's inclusion in the Ohio SIP was not erroneous, there was no ''error'' to correct. In other words, EPA erred in using section 110(k)(6) to remove the ANR because the ANR was appropriate for inclusion in the Ohio SIP at the time the SIP was originally approved. See *Texas* v. *EPA,* 726 F,3d 180, 204 (D.C. Cir. 2013) (Kavanaugh, J. dissenting). EPA is now proposing to correct its erroneous November 2020 action removing the ANR from the Ohio SIP, and to therefore reinstate the ANR into the Ohio SIP.

III. What action is EPA taking?

EPA is proposing to determine that its prior action removing OAC 3745–15–07 from the Ohio SIP was deficient. Consequently, EPA is proposing to reverse its removal and reinstate OAC 3745–15–07 into the Ohio SIP, recodifying this reinstatement by revising the appropriate paragraph under 40 CFR part 52, subpart KK, 52.1870 (Identification of Plan).

IV. Incorporation by Reference

In this action, EPA is proposing to include final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio rule OAC 3745–15–07, as effective on May 17, 1982, discussed in section II of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993), and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on 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.''

EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

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

Dated: February 14, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–03555 Filed 2–21–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 89, No. 36

Thursday, February 22, 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.

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Current Population Survey, Fertility Supplement

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on December 8, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau, Department of Commerce.

Title: Current Population Survey, Fertility Supplement.

OMB Control Number: 0607–0610.

Form Number(s): None.

Type of Request: Regular submission, Request for a reinstatement without change of a previously approved collection.

Number of Respondents: 30,000.

Average Hours per Response: 1 minute.

Burden Hours: 500.

Needs and Uses: The Fertility Supplement is conducted in conjunction with the Current Population Survey (CPS). The Census Bureau sponsors the supplement questions, which were previously collected in June 2022, and have been asked periodically since 1971. This survey provides information used mainly by government and private analysts to project future population growth and to aid policymakers and private analysts in their decisions affected by changes in family size and composition. Past studies have discovered noticeable changes in the patterns of fertility rates and the timing of the first birth. Potential needs for government assistance, such as aid to families with dependent children, child care, and maternal health care for single parent households, can be estimated using CPS characteristics matched with fertility data.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 141 and 182; and title 29 U.S.C. 1–9.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0607–0610.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–03556 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2158]

Approval of Expansion of Subzone 124A; Valero Refining-New Orleans L.L.C., St. Charles Parish, Louisiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Port of South Louisiana, grantee of Foreign-Trade Zone 124, has made application to the Board for an expansion of Subzone 124A on behalf of Valero Refining-New Orleans L.L.C. to include a site located in St. Rose, Louisiana (FTZ Docket B–53–2023, docketed October 5, 2023);

Whereas, notice inviting public comment has been given in the **Federal Register** (88 FR 70640, October 12, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the expansion of Subzone 124A on behalf of Valero Refining-New Orleans L.L.C., located in St. Rose, Louisiana, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: February 15, 2024.

Dawn Shackleford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2024–03565 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2159]

Approval of Subzone Status; PR Five Vega Alta, LLC; Vega Alta, Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18,

1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Department of Economic Development and Commerce, grantee of Foreign-Trade Zone 61, has made application to the Board for the establishment of a subzone at the facility of PR Five Vega Alta, LLC, located in Vega Alta, Puerto Rico (FTZ Docket B–56–2023, docketed November 1, 2023);

Whereas, notice inviting public comment has been given in the **Federal Register** (88 FR 76168, November 6, 2023) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiners' memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facility of PR Five Vega Alta, LLC, located in Vega Alta, Puerto Rico (Subzone 61AD), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including section 400.13.

Dated: February 15, 2024.

Dawn Shackleford,

Executive Director of Trade Agreements Policy & Negotiations, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2024–03567 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2023]

Foreign-Trade Zone (FTZ) 26; Authorization of Production Activity; Helena Industries, LLC; (Insecticides); Cordele, Georgia

On October 19, 2023, Helena Industries, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 26X, in Cordele, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 73309, October 25, 2023). On February 16, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: February 16, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–03566 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on March 7, 2024, from 11:30 a.m. to 3 p.m., eastern standard time (EST).

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Designated Federal Officer, Office of Supply Chain Services, International Trade Administration at email: *richard.boll@trade.gov,* phone 571–331–0098.

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. app.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *https://www.trade.gov/acscc.*

Matters to be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain Services will post the final detailed agenda on its website, *https://www.trade.gov/acscc.* The video with closed captioning of the meeting will also be posted on the Committee website.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Please contact Richard Boll, Designated Federal Officer, at *richard.boll@trade.gov,* for participation information.

Dated: February 15, 2024.

Heather Sykes,

Director, Office of Supply Chain Services.

[FR Doc. 2024–03536 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–833]

Utility Scale Wind Towers From Indonesia: Rescission of Antidumping Duty Administrative Review: 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty (AD) order on utility scale wind towers (wind towers) for the period of review (POR) August 1, 2022, through July 31, 2023.

DATES: Applicable February 22, 2024.

FOR FURTHER INFORMATION CONTACT: Taylor Hatley, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4886.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2020, Commerce published in the **Federal Register** the AD order on wind towers from

Indonesia.[1] On August 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order.[2] On August 31, 2023, the Wind Tower Trade Coalition (the petitioner) submitted a timely request that Commerce conduct an administrative review.[3]

On October 18, 2023, Commerce published in the **Federal Register** a notice of initiation of administrative review with respect to imports of wind towers from Indonesia in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.221(c)(1)(i).[4] This review covers eight exporters and/or producers.[5] On October 18, 2023, we placed on the record U.S. Customs and Border Protection (CBP) data for entries of wind towers from Indonesia during the POR, showing no reviewable POR entries and invited interested parties to comment.[6]

On November 6, 2023, PT. Kenertec Power Systems (Kenertec), an exporter subject to this review, submitted a no-shipment certification, indicating that it had no exports or sales of subject merchandise to the United States during the POR.[7]

On February 8, 2024, Commerce notified all interested parties of its intent to rescind the instant review because there were no reviewable, suspended entries of subject merchandise by any of the companies subject to this review during the POR and invited interested parties to comment.[8] We did not receive any comments.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an AD order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[9] Normally, upon completion of an administrative review, the suspended entries are liquidated at the AD assessment rate calculated for the review period.[10] Therefore, for an administrative review to be conducted, there must be at least one reviewable, suspended entry that Commerce can instruct CBP to liquidate at the AD assessment rate calculated for the review period.[11] As noted above, there were no entries of subject merchandise for the companies subject to this review during the POR. Accordingly, in the absence of suspended entries of subject merchandise during the POR, we are hereby rescinding this administrative review, in its entirety, in accordance with 19 CFR 351.213(d)(3).

Assessment

Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of this rescission notice in the **Federal Register**.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: February 16, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–03617 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Antidumping Duty Orders,* 85 FR 52546 (August 26, 2020) (*Order*), corrected in *Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Notice of Correction to the Antidumping Duty Orders,* 85 FR 56213 (September 11, 2020).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 50840 (August 2, 2023).

[3] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated August 31, 2023.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 71829 (October 18, 2023).

[5] *Id.,* 88 FR at 71831.

[6] *See* Memorandum, ''Release of Customs and Border Protection Data,'' dated October 18, 2023.

[7] *See* Kenertec's Letter, ''Notification of No Shipments,'' dated November 6, 2023.

[8] *See* Memorandum, ''Notice of Intent to Rescind Review,'' dated February 8, 2024.

[9] *See, e.g., Dioctyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022,* 88 FR 24758 (April 24, 2023); *see also Certain Carbon and Alloy Steel Cut- to Length Plate from the Federal Republic of Germany: Recission of Antidumping Administrative Review; 2020–2021,* 88 FR 4157 (January 24, 2023).

[10] *See* 19 CFR 351.212(b)(1).

[11] *See* 19 CFR 351.213(d)(3).

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; Central Gulf of Alaska Rockfish Program: Permits and Reports

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite 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. Public comments were previously requested via the **Federal Register** on September 19, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Central Gulf of Alaska Rockfish Program: Permits and Reports.

OMB Control Number: 0648–0545.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 6.

Average Hours per Response: Application for Rockfish Cooperative Fishing Quota: 2 hours; Application for Inter-Cooperative Transfer of Rockfish Cooperative Quota: 10 minutes; Rockfish Program Vessel Check-In/Check-Out: 10 minutes; Termination of Fishing Report: 10 minutes.

Total Annual Burden Hours: 39 hours.

Needs and Uses: This information collection contains requirements for the Central Gulf of Alaska Rockfish Program (Rockfish Program) and is necessary for NMFS to administer and monitor compliance with the management provisions of the Rockfish Program. This information collection is required

in Rockfish Program regulations at 50 CFR part 679.

The Rockfish Program is a limited access privilege program developed to enhance resource conservation and improve economic efficiency in the Central Gulf of Alaska rockfish fisheries. The rockfish fisheries are conducted in Federal waters near Kodiak, Alaska, by trawl vessels and longline vessels. The Rockfish Program assigns quota share (QS) to License Limitation Program (LLP) licenses for rockfish primary and secondary species based on legal landings associated with that LLP.

Each year, an LLP license holder assigns the LLP license with rockfish QS to a rockfish cooperative. Each rockfish cooperative receives an annual cooperative fishing quota (CQ), which is an amount of primary and secondary rockfish species the cooperative is able to harvest in that fishing year.

This collection contains the information collection requirements submitted by the rockfish cooperatives for an annual rockfish CQ permit, inter-cooperative quota transfers, vessel check-in/check-out reports, and termination of fishing reports.

The Application for Rockfish Cooperative Fishing Quota is submitted annually by a rockfish cooperative to receive the cooperative's annual CQ permit. The application collects rockfish cooperative identification information, LLP holder and ownership documentation for the members of the cooperative applying for QS, identification information for vessels of the cooperative members, shoreside processor associate identification information, certifications of the cooperative representative and processor associate(s), and required attachments.

The Application for Inter-Cooperative Transfer of CQ is used by a rockfish cooperative to transfer CQ to another rockfish cooperative. The information collected includes information on the QS to be transferred. This information is used by NMFS to monitor transfers to ensure they do not exceed ownership or use caps for the fishery.

The Rockfish Program vessel check-in report must be submitted before a vessel authorized to fish under the cooperative's permit starts fishing for the cooperative, and a check-out report when a vessel stops fishing for the cooperative during the fishing season. The check-in and check-out reports are necessary so that NMFS's catch accounting system can identify catch by a vessel that should accrue to a rockfish cooperative quota allocation from catch that occurs in other, non-Rockfish Program fisheries.

A rockfish cooperative may choose to terminate its CQ permit through a termination of fishing report submitted to NMFS. This notifies NMFS that all vessels fishing for the cooperative have completed fishing in the Rockfish Program for the year.

Affected Public: Business or other for-profit organizations.

Frequency: Annually; as needed.

Respondent's Obligation: Voluntary; Required to Obtain or Retain Benefits; Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

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 and entering either the title of the collection or the OMB Control Number 0648–0545.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–03621 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee Public Meeting

AGENCY: U.S. Integrated Ocean Observing System (IOOS®), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a virtual meeting of the U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee). The meeting is open to the public and an opportunity for oral and written comments will be provided.

DATES: The meeting will be held on March 18, 2024 from 1 p.m. to 3:30 p.m. (EST). Written public comments should be received by the Designated Federal Official by March 11, 2024.

ADDRESSES: The meeting will be held virtually. To register for the meeting and/or submit public comments, use this link *https://forms.gle/MwbP2NXJhaz7cbuV8* or email *Laura.Gewain@noaa.gov.* See **SUPPLEMENTARY INFORMATION** for instructions and other information about public participation.

FOR FURTHER INFORMATION CONTACT: Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1315 East-West Highway, Silver Spring, MD 20910; Phone 240–533–9455; Fax 301–713–3281; email *krisa.arzayus@noaa.gov* or visit the U.S. IOOS Advisory Committee website at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11), and reauthorized under the Coordinated Ocean Observations and Research Act of 2020 (Pub. L. 116–271). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 and section 12304 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary may refer to the Committee for review and advice.

The Committee will provide advice on:

(a) administration, operation, management, and maintenance of the Integrated Coastal and Ocean Observation System (the System);

(b) expansion and periodic modernization and upgrade of technology components of the System;

(c) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in disseminating information to end-user communities and to the general public; and

(d) additional priorities, including—

(1) a national surface current mapping network designed to improve fine scale sea surface mapping using high frequency radar technology and other emerging technologies to address national priorities, including Coast Guard search and rescue operation

planning and harmful algal bloom forecasting and detection that—

(i) is comprised of existing high frequency radar and other sea surface current mapping infrastructure operated by national programs and regional coastal observing systems;

(ii) incorporates new high frequency radar assets or other fine scale sea surface mapping technology assets, and other assets needed to fill gaps in coverage on United States coastlines; and

(iii) follows a deployment plan that prioritizes closing gaps in high frequency radar infrastructure in the United States, starting with areas demonstrating significant sea surface current data needs, especially in areas where additional data will improve Coast Guard search and rescue models;

(2) fleet acquisition for unmanned maritime systems for deployment and data integration to fulfill the purposes of this subtitle;

(3) an integrative survey program for application of unmanned maritime systems to the real-time or near real-time collection and transmission of sea floor, water column, and sea surface data on biology, chemistry, geology, physics, and hydrography;

(4) remote sensing and data assimilation to develop new analytical methodologies to assimilate data from the System into hydrodynamic models;

(5) integrated, multi-State monitoring to assess sources, movement, and fate of sediments in coastal regions;

(6) a multi-region marine sound monitoring system to be—

(i) planned in consultation with the IOOC, NOAA, the Department of the Navy, and academic research institutions; and

(ii) developed, installed, and operated in coordination with NOAA, the Department of the Navy, and academic research institutions; and

(e) any other purpose identified by the Administrator or the Council.

Matters To Be Considered

The meeting will focus on: (1) IOOC Strategic Plan, (2) final recommendations from the Phase 2 workplan, and (3) updates on the spring public meeting. The latest version of the agenda will be posted at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/*. The times and the agenda topics described here are subject to change.

Public Comment Instructions

The meeting will be open to public participation (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by March 11, 2024, to provide sufficient time for Committee review. Written comments received after March 11, 2024, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please fill out the brief form at *https://forms.gle/MwbP2NXJhaz7cbuV8* or email your comments and the organization/company affiliation you represent to Laura Gewain, *Laura.Gewain@noaa.gov.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official by phone (240–533–9455) or email (*Krisa.Arzayus@noaa.gov*) or to Laura Gewain (*Laura.Gewain@noaa.gov*) by March 11, 2024.

Carl C. Gouldman,

Director, U.S. Integrated Ocean Observing System Office, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–03597 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–NE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD713]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 82 South Atlantic Gray Triggerfish Review Workshop.

SUMMARY: The SEDAR 82 assessment of the South Atlantic stock of gray triggerfish will consist of a data webinars/workshop, a series of assessment webinars, and a review workshop. A SEDAR 82 Review Workshop has been scheduled for March 12–14, 2024. See **SUPPLEMENTARY INFORMATION** for specific dates and agenda.

DATES: The SEDAR 82 South Atlantic Gray Triggerfish Review Workshop is scheduled for March 12–14, 2024, from 8 a.m. until 6 p.m. eastern, each day. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held at the DoubleTree by Hilton Atlantic Beach Oceanfront, 2717 West Fort Macon Road, Atlantic Beach, NC 28512. The meeting is open to the public and available for broadcast by registering at the following link: *https://attendee.gotowebinar.com/register/6450821962810158942.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Meisha Key, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Meisha.Key@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office,

Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and State and Federal agencies.

The items of discussion at the SEDAR 82 South Atlantic Gray Triggerfish Review Workshop are as follows: Participants will evaluate the data and assessment reports, as specified in the Terms of Reference, to determine if they are scientifically sound.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 16, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–03602 Filed 2–21–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Board on Coastal Engineering Research

AGENCY: Department of the Army, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Board on Coastal Engineering Research (BCER). This meeting is open to the public.

DATES: The BCER will meet from 8 a.m. to 12 p.m. on March 19, 2024, eastern standard time (EST). The Executive Session of the Board will convene from 8 a.m. to 5 p.m. on March 20, 2024. All sessions are open to the public and are held in EST.

ADDRESSES: The address of all sessions Renaissance Portsmouth-Norfolk Waterfront Hotel, 425 Water Street, Portsmouth, VA 23704

FOR FURTHER INFORMATION CONTACT: Dr. Julie Dean Rosati, the Board's Designated Federal Officer (DFO), (202) 761–1850 (Voice), *Julie.D.Rosati@usace.army.mil* (email). Mailing address is Board on Coastal Engineering Research, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, Coastal and Hydraulics Laboratory, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199. Website: *https://www.erdc.usace.army.mil/Locations/CHL/CERB/*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: The meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (title 5 United States Code (U.S.C), appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Purpose of the Meeting: The Board's mission is to provide broad policy guidance and review and develop research plans and projects in consonance with the needs of the coastal engineering field and the objectives of the U.S. Army Chief of Engineers. The objective of this meeting is to identify coastal research needs and address Environmental Justice and Non-Structural Solutions.

Agenda: Starting Tuesday morning March 19, 2024, at 8 a.m. the Board will be called to order and panel session one entitled, Norfolk District Coastal Processes & Challenges will begin. Presentations include: NAO Coastal Setting, Processes, Projects, and R&D Needs; Natural Based Solutions: Challenges in Norfolk Study Leveraging Miami Dade Back Bay NBS Pilot; NAO Virginia Beach Study; NAO City of Norfolk CSRM Project and R&D Needs; Overview of City of Hampton Coastal Resiliency Activities; and Sea Level Rise and Climate Resiliency at JBLE-Langley. The meeting will then adjourn for the day.

The Board will reconvene on March 20, 2024, with a panel discussion entitled ''Coastal Research Needs and Plans'' presentations include: Non-Cohesive Sediment Transport R&D Needs and Plans; Advancing muddy (cohesive) sediment management through observation and prediction; AI applications to sediment transport; National USACE Sediment Transport Needs in Coastal Planning, Engineering, and O&M; and Sediment transport research at USACE: How to motivate and focus a program. After Lunch the board will discuss ongoing initiatives, future actions, plans for the 100th BCER give final comments.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to space availability, the meeting is open to the public both in-person and virtually. Because seating capacity is limited, advance registration is required. For registration requirements please see below. Persons desiring to participate in the meeting online or by phone are required to submit their name, organization, email, and telephone contact information to Ms. Tanita Warren at *Tanita.S.Warren@usace.army.mil* no later than Friday, March 8, 2024. Specific instructions for virtual meeting participation, will be provided by reply email.

Oral participation by the public is scheduled for 3:15 p.m. on Wednesday, March 20, 2024. For additional information about public access procedures, please contact Dr. Julie Dean Rosati, the Board's DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Registration: It is encouraged for individuals who wish to attend the meeting of the Board to register with the DFO by email, the preferred method of contact, no later than March 8, 2024, using the electronic mail contact information found in the **FOR FURTHER INFORMATION CONTACT** section. The communication should include the registrant's full name, title, affiliation or employer, email address, and daytime phone number. If applicable, include written comments or statements with the registration email.

Written Comments and Statements: In accordance with section 10(a)(3) of the FACA and title 41 CFR 102–3.015(j) and 102–3.140, the public or interested organizations may submit written comments or statements to the Board, in response to the stated agenda of the open meeting or in regard to the Board's mission in general. Written comments or statements should be submitted to Dr. Julie Dean Rosati, DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER**

INFORMATION CONTACT section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The DFO will review all submitted written comments or statements and provide them to members of the Board for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the DFO at least five business days prior to the meeting to be considered by the Board. The DFO will review all timely submitted written comments or statements with the Board Chairperson and ensure the comments are provided to all members of the Board before the meeting. Written comments or statements received after this date may not be provided to the Board until its next meeting.

Verbal Comments: Pursuant to 41 CFR 102–3.140d, the Board is not obligated to allow a member of the public to speak or otherwise address the Board during the meeting. Members of the public will be permitted to make verbal comments during the Board meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least five business days in advance to the Board's DFO, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The DFO will log each request, in the order received, and in consultation with the Board Chair, determine whether the subject matter of each comment is relevant to the Board's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment, and whose comments have been deemed relevant under the process described above, will be allotted no more than five minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

David B. Olson,

Federal Register Liaison Officer, Corps of Engineers.

[FR Doc. 2024–03585 Filed 2–21–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Center on Rigorous Comprehensive Education for Students With Disabilities

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 a National Center on Rigorous Comprehensive Education for Students with Disabilities, Assistance Listing Number 84.326C. This notice relates to the approved information collection under OMB control number 1820–0028.

DATES:

Applications Available: February 22, 2024.

Deadline for Transmittal of Applications: April 22, 2024.

Deadline for Intergovernmental Review: June 21, 2024.

Pre-Application Webinar Information: No later than February 27, 2024, OSERS will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. Links to 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: David Emenheiser, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 987–0124. Email: *David.Emenheiser@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 purpose of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program is to promote academic achievement and to improve results for children with disabilities by providing TA, supporting model demonstration projects, disseminating useful information, and implementing activities that are supported by scientifically based research.

Priority: This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 663 and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1463 and 1481(d)).

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:

The National Center on Rigorous Comprehensive Education for Students with Disabilities.

Background:

Students receiving special education and related services are general education students first and foremost. In the 2004 reauthorization of IDEA, Congress found that ''[a]n effective educational system serving students with disabilities should maintain high academic achievement standards and clear performance goals for children with disabilities, consistent with the standards and expectations for all students in the educational system and provide for appropriate and effective strategies and methods to ensure that all children with disabilities have the opportunity to achieve those standards and goals.'' 20 U.S.C. 1450(4)(A). ''Raise the Bar: Lead the World is the U.S. Department of Education's call to action to transform P–12 education and unite around what truly works—based on decades of experience and research—to advance educational equity and excellence'' (*www.ed.gov/raisethebar/*), including for students with disabilities. Through the Raise the Bar initiative, the Department seeks to focus attention to ''deliver a comprehensive and rigorous education for every student.'' Currently, students with disabilities too frequently lack access to a rigorous comprehensive education and remain under-challenged to achieve and progress from grade to grade (Cole et al., 2023).

A cornerstone of special education under IDEA is a free appropriate public education (FAPE) in the least restrictive environment (LRE). It is through high-quality person-centered [1] individualized

[1] Some States and organizations have defined ''person-centered,'' as used in this notice, to

Continued

education programs (IEPs) that local educational agencies (LEAs) and schools plan and deliver evidence-based instruction, supports, and services to students with disabilities to provide FAPE in the LRE. However, States, LEAs, and schools continue to face significant challenges with providing FAPE, including person-centered, rigorous, and specially designed instruction and service delivery. Recent research indicates that the majority of IEPs are incomplete and lack substantive sufficiency of the statement of present levels of performance, which is the crucial initial component of a person-centered IEP (*e.g.,* Hott et al., 2021; Lequia et al., 2023). Although LEA, school-level, and classroom-level programming directly influence student outcomes, school teams are often too overwhelmed to implement the many projects, priorities, curricula, frameworks, and initiatives they are tasked to do (Wong et al., 2017). Schools end up piecing together multiple competing and fragmented priorities, instructional materials, and programs (Kaufman et al., 2020).

Schools have supported students' academic recovery in post-COVID schooling through accelerated learning, compensatory education, mental health supports, trauma-informed practices, and other activities (Page et al., 2021), but study findings suggest that the pandemic worsened existing inequity (Kuhfeld et al., 2022). As a result, LEAs and schools often struggle to address the needs of students with disabilities. School personnel need strategies, resources, and supports to assist them in streamlining, braiding, blending, and integrating instructional materials, standards, initiatives, frameworks, priorities, and practices into comprehensive and rigorous programming, which can result in increased and improved access, opportunities, and outcomes for students with disabilities as a whole and among subpopulations (*e.g.,* disability category, age, grade, gender, race, ethnicity).

The current instructional environment is further challenged when novice and underqualified personnel provide instruction and services to students with disabilities, serve on IEP teams, and manage caseloads of students with disabilities (Garcia et al., 2019). The National Center for Education Statistics (NCES) data show that 45 percent of public schools are operating without a full teaching staff (*https://ies.ed.gov/schoolsurvey/*), with special education positions disproportionately vacant, and 52 percent report great difficulty in filling vacancies by teachers with the appropriate certification or license. Additionally, all school professionals, including special education and general education personnel, should have a strong understanding of their roles on school teams to develop rigorous IEPs and to implement instruction and service delivery consistent with students' IEPs (Lequia et al., 2023). Teams must work together to develop and implement rigorous and comprehensive educational programming that allows students with disabilities to meet person-centered, rigorous objectives across the school's curricular, co-curricular, and extracurricular offerings.

Taken together, these challenges indicate the local context remains both unique from LEA to LEA and crucial to the programming offered, the objectives identified, and the services and supports needed to overcome the challenges and meet the objectives. To assist in addressing them, this project will develop and disseminate models and resources and provide TA to school teams to support the development and implementation of a rigorous and comprehensive education, which will result in improved educational results and functional outcomes for students with disabilities.

Priority:

The purpose of this priority is to fund a cooperative agreement to establish and operate a National Center on Rigorous Comprehensive Education for Students with Disabilities (project). The project will assist public, private, charter, Tribal, and correctional school teams, including administration, general and special education, related services, families, the community, and, to the extent possible, students, to increase the number and quality of evidence-based [2] IEPs with person-centered, rigorous objectives, the implementation of which will support the progress of students with disabilities from grade to grade and preparation for postsecondary education, employment, and community living.

The project must achieve, at a minimum, the following expected outcomes:

(a) Support of school teams to achieve consistent implementation of person-centered specially designed instruction, related services, and accommodations consistent with the students' IEPs and through use of evidence-based and best instructional practices to allow students with disabilities to achieve person-centered, rigorous objectives;

(b) Development and use of models for streamlining, braiding, blending, and integrating instructional materials, standards, initiatives, frameworks, priorities, and practices into a cohesive school-wide program easing professional burden while simultaneously raising school team expectations of students with disabilities to achieve person-centered, rigorous objectives;

(c) Development and increased use of evidence-based strategies, resources, and supports that allow schools to provide rigorous educational programming to prepare students with disabilities for postsecondary education, employment, and community living; and

(d) Support of school teams to achieve improved equity of access, opportunities, achievement, attainment, and outcomes, including academic achievement and social, emotional, and behavioral development by students with disabilities as a whole group and among disaggregated groups.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance,'' how the proposed project will—

(1) Identify and address the challenges to forming and sustaining effective school teams that include administration, general and special education personnel, related services providers, families, the community, and students;

(2) Identify and address the challenges facing public, private, charter, Tribal, and correctional school teams in their substantive and procedural implementation of educational programming for children with disabilities; and

(3) Apply evidence-based strategies and best practices that will effectively address the nature and magnitude of the challenges, described in response to

reference when students and their families are actively sought to participate in their schooling, including IEP development and implementation, the course of study, and related and transition services, however this term is still developing in the field. The discussions and decisions leading to a person-centered program are founded upon the unique school, extracurricular, and post-secondary strengths, interests, and goals of the student and their family.

[2] For the purposes of this priority, ''evidence-based'' means, at a minimum, evidence that demonstrates a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

paragraphs (a)(1) and (2), within a variety of schools, LEAs, and community contexts.

(b) Demonstrate, in the narrative section of the application under ''Quality of project services,'' how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for TA and information; and

(ii) Ensure that services and products meet the needs of the intended recipients of the project services;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve the expected outcomes and that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

Note: The following websites provide more information on logic models and conceptual frameworks: *https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf* and *www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework.*

(4) Be based on current research and make use of evidence-based practices (EBPs). To meet this requirement, the applicant must describe—

(i) The current research and practices on developing, implementing, evaluating, and improving rigorous comprehensive education for students with disabilities to progress grade to grade and be ready for postsecondary education, employment, and community living;

(ii) The current research and practices about adult learning principles and implementation science that will inform the proposed product development, training, and TA;

(iii) How the proposed project will incorporate current research and practices in the development and delivery of its products and services; and

(iv) How the proposed project will transfer the pertinent resources and products developed by the PROGRESS Center (*www.promotingprogress.org*) and maintain the continuity of services to their TA recipients as part of the transition to a new award, as appropriate;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration, responsive to the users' changing capacity, to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to identify or develop the knowledge base regarding—

(A) Defining and operationalizing high expectations for students with disabilities, and supporting the students, their families, and the professionals working with them to strive to meet the high expectations;

(B) Clarifying the appropriate use of EBPs by disaggregating the research evidence of effectiveness among diverse settings and populations, such as areas with low and high population densities, diverse levels of wealth and poverty, and underserved populations, such as populations of color, homeless, food insecure, migrant, and justice-involved populations;

(C) Clarifying roles and strengthening meaningful participation of administrators, general educators, special educators, related service providers, and others to set high expectations and person-centered, rigorous objectives;

(D) Building capacity of school teams to leverage expertise of all school and LEA personnel, families, students, and community members in providing instruction, supports, and services so that students with disabilities progress from grade to grade and are prepared for postsecondary education, employment, and community living;

(E) Building and sustaining community partnerships among schools, community-based programs, child and youth associations, and places of worship, among others, to establish, strengthen, and sustain rigorous comprehensive education within various community contexts; and

(F) Allocating resources effectively and efficiently, including personnel who are qualified to serve students with disabilities but are currently not in special education positions (*e.g.,* dual certified teachers);

(ii) Its proposed approach to universal, general TA,[3] which must describe—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services;

(B) The products and services that the project proposes to make available;

(C) How it proposes to develop and maintain a high-quality website, with an easy-to-navigate design, that meets or exceeds government- or industry-recognized standards for accessibility; and

(D) The expected reach and impact of universal, general TA;

(iii) The proposed approach to targeted, specialized TA,[4] which must describe—

(A) The intended recipients, including the type and number of recipients, that will receive the products and services;

(B) The products and services that the project proposes to make available; and

(C) The expected impact of targeted, specialized TA;

(iv) Its proposed approach to intensive, sustained TA,[5] which must describe—

(A) The intended recipients, including the type and number of recipients from a variety of settings and geographic distributions, that will receive the intensive, sustained TA products and services designed to impact the number and quality of IEPs with person-centered, rigorous

[3] ''Universal, general TA'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

[4] ''Targeted, specialized TA'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[5] ''Intensive, sustained TA'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''TA services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

objectives that support the progress of students with disabilities from grade to grade and preparation for postsecondary education, employment, and community living;

(B) The proposed approach to determine the readiness, capacity, and commitment of the—

(1) Project to engage specific LEA and school teams—that include administration, general and special education personnel, related services providers, families, and the community—in a manner that is responsive to the local context (as described in the Background section of this notice), giving special attention to engage those LEAs and schools with the greatest need for support;

(2) Public, private, charter, Tribal, and correctional LEA and school teams to specify the scope and duration of intensive work to effect change of policies, programs, and operations and allocate the resources; and

(3) Project, LEA, and school teams to allocate the resources to implement the TA plan and measure and evaluate the improvement, spread, and sustainment of the new policies, programs, and operations at the district and school levels, and among disaggregated populations; and

(C) The expected impact of intensive, sustained TA; and

(v) How the proposed project will intentionally engage families of children with disabilities and individuals with disabilities—including underserved families [6] and individuals—in the development, implementation, and evaluation of its products and services across all levels of TA;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) The organizations with which the proposed project will collaborate, three of which must be the FY 2023 funded National Center for Innovative Development of Educational Approaches for Leaders, National Center on Intensive Interventions, and National Center for Systemic Improvement, and the intended outcomes of the collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes, including the dissemination of pertinent products developed by other Department-funded projects; and

(7) How the project will systematically disseminate information, products, and services to varied intended audiences. To address this requirement the applicant must describe—

(i) The variety of dissemination strategies the project will use throughout the five years of the project to promote awareness and use of its products and services;

(ii) How the project will tailor dissemination strategies across all planned levels of TA to ensure that products and services reach intended recipients and those recipients can access and use those products and services;

(iii) How the project's dissemination plan is connected to the proposed outcomes of the project; and

(iv) How the project will ensure, by evaluating and, when necessary, correcting, all digital products and external communications meet or exceed government or industry-recognized standards for accessibility.

(c) In the narrative section of the application under ''Quality of the project evaluation,'' include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.[7] The evaluation plan must—

(1) Articulate formative, diagnostic, and summative evaluation questions, including important process and outcome evaluation questions, the answers to which provide evidence of the success and impact of the project reaching the outcomes listed in this notice. These questions must be related to the project's proposed logic model required in paragraph (b)(2)(ii) of this notice;

(2) Describe how resources, costs, progress, and fidelity of implementation, as well as project outcomes, will be measured to answer the evaluation questions. In measuring progress of implementation across all levels of TA, the plan must include criteria for determining the extent to which the project's products and services reached intended recipients, data on how recipients use the products and services, and the impact of the products and services. Data collected must include feedback from recipients. The plan must also specify the measures and associated instruments or sources for data appropriate to the evaluation questions and include information regarding reliability and validity of measures where appropriate;

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used—

(i) To inform and improve service delivery and efficiency over the course of the project;

(ii) To refine the proposed logic model and evaluation plan, including subsequent data collection; and

(iii) To report formative and summative project performance; and

(4) Provide a timeline for conducting the evaluation and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR) and at the end of Year 2 for the review process described under the heading, *Fourth and Fifth Years of the Project;* and

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with a third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of resources and quality of project personnel,'' 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 proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities;

(4) The proposed project will have processes, resources, and funds in place to provide equitable access for project staff, contractors, and partners who

[6] For the purposes of this priority, ''underserved families'' refers to foster, kinship, migrant, technologically unconnected, and military- or veteran-connected families; and families of color, living in poverty, without documentation of immigration status, experiencing homelessness or housing insecurity, or impacted by the justice system, including the juvenile justice system. Underserved families also refers to families that include: members of a federally or State recognized Indian Tribe; English learners; adults who experience a disability; members who are lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+); adults in need of improving their basic skills or with limited literacy; and disconnected adults.

[7] A ''third-party'' evaluator is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, nor have any financial interest in the outcome of the evaluation.

require digital accessibility accommodations; [8] and

(5) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under ''Quality of the management plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policy makers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A three-day project directors' conference in Washington, DC, during each year of the project period;

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Describe how the project will engage doctoral students or post-doctoral fellows, including those who are multilingual and racially, ethnically, and culturally diverse, in the project to increase the number of future leaders in the field who are knowledgeable about special education leadership, knowledge development, TA, and Department-funded projects;

(5) Provide an assurance that it will post its annual project progress toward meeting project goals on the project website; and

(6) Include, in Appendix A, an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to LEAs and schools during the transition to a new award at the end of this award period, as appropriate.

Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including—

(a) The recommendations of a 3+2 review team consisting of experts with knowledge and experience in school administration, special education leadership, TA, and project evaluation. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

Under 34 CFR 75.253, the Secretary may reduce continuation awards or discontinue awards in any year of the project period for excessive carryover balances or a failure to make substantial progress. The Department intends to closely monitor unobligated balances and substantial progress under this program and may reduce or discontinue funding accordingly.

References

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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. 1463 and 1481.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination

[8] For information about digital accessibility and accessibility standards from Section 508 of the Rehabilitation Act, visit *https://osepideasthatwork.org/resources-grantees/508-resources.*

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.

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 institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: The Administration has requested $55,345,000 for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program for FY 2024, of which we intend to use an estimated $3,250,000 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.

Maximum Award: We will not make an award exceeding $3,250,000 for a single budget period of 12 months.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; State lead agencies under Part C of the IDEA; LEAs, including public charter schools that are considered LEAs under State law; IHEs; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

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 indirect costs, or to obtain a negotiated indirect cost rate, please see *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 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, consistent with 34 CFR 75.708(b)(2).

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 70 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 specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(ii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 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 there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) 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.

(v) The extent to which the TA services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(c) *Quality of the project evaluation (20 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.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of the personnel who will carry out 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 the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(v) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(vi) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(vii) The extent to which the budget is adequate to support the proposed project.

(viii) 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 management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) 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.

(ii) 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.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

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 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 purpose of Department reporting under 34 CFR 75.110, we have 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 Technical Assistance and Dissemination to Improve Services and Results for Children With Disabilities program. These measures are:

- Program Performance Measure #1: The percentage of Technical Assistance and Dissemination products and services deemed to be of high quality by an independent review panel of experts qualified to review the substantive content of the products and services.
- *Program Performance Measure #2:* The percentage of Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be of high relevance to educational and early intervention policy or practice.
- *Program Performance Measure #3:* The percentage of all Special Education Technical Assistance and Dissemination products and services deemed by an independent review panel of qualified experts to be useful in improving educational or early intervention policy or practice.
- *Program Performance Measure #4:* The cost efficiency of the Technical Assistance and Dissemination Program includes the percentage of milestones achieved in the current annual performance report period and the percentage of funds spent during the current fiscal year.
- *Long-term Program Performance Measure:* The percentage of States receiving Special Education Technical Assistance and Dissemination services regarding scientifically or evidence-based practices for infants, toddlers, children, and youth with disabilities that successfully promote the implementation of those practices in school districts and service agencies.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

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 Center meet needs identified by stakeholders and may require the Center to report on such alignment in their 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. 2024–03595 Filed 2–21–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Proposed Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Notice and request for comments.

SUMMARY: EIA invites public comment on the proposed three-year extension, with change, to Form EIA–63C *Densified Biomass Fuel Report* as required under the Paperwork Reduction Act of 1995. The report is part of EIA's comprehensive energy data program. Form EIA–63C collects monthly data on the manufacture, shipment, exports, energy characteristics, and sales of densified biomass fuels and other densified biomass fuel products from facilities that manufacture densified biomass fuel products (pellet fuels), for energy applications.

DATES: EIA must receive all comments on this proposed information collection no later than April 22, 2024. If you anticipate any difficulties in submitting your comments by the deadline, contact the person listed in the **ADDRESSES** section of this notice as soon as possible.

ADDRESSES: Send comments to Patricia Hutchins by email at *patricia.hutchins@eia.gov.*

FOR FURTHER INFORMATION CONTACT: Connor Murphy, EI–23, U.S. Energy Information Administration, telephone 1–800–342–4872 or (202) 287–5982, email *Connor.Murphy@eia.gov.* The form and instructions are available at *https://www.eia.gov/survey/#eia-63.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1905–0209;

(2) *Information Collection Request Title:* Densified Biomass Fuel Report;

(3) *Type of Request:* Three-year extension with change;

(4) *Purpose:* Form EIA–63C is part of EIA's comprehensive energy data program. The survey collects information on the manufacture, shipment, exports, energy characteristics, and sales of pellet fuels and other densified biomass fuel products from facilities that manufacture densified biomass fuel products, primarily pellet fuels, for energy applications. The data collected on Form EIA–63C are a primary source of information for the nation's growing production of biomass products for heating and electric power generation, and for use in both domestic and foreign markets.

(4a) *Proposed Changes to Information Collection:* There is a reduction in the number of survey respondents required to file EIA–63C reports. This reduces the annual estimated responses and associated burden hours. There is no change to the content collected on the EIA–63C.

(5) *Annual Estimated Number of Respondents:* 76;

(6) *Annual Estimated Number of Total Responses:* 912;

(7) *Annual Estimated Number of Burden Hours:* 1,277;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* The cost of the burden hours is estimated to be $116,411 (1,277 burden hours times $91.16 per hour). EIA estimates that there are no additional costs to respondents associated with the survey other than the costs associated with the burden hours.

Comments are invited on whether or not: (a) The proposed collection of information is necessary for the proper performance of agency functions, including whether the information will have a practical utility; (b) EIA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used, is accurate; (c) EIA can improve the quality, utility, and clarity of the information it will collect; and (d) EIA can minimize the burden of the collection of information on respondents, such as automated collection techniques or other forms of information technology.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on February 15, 2024.

Samson A. Adeshiyan,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–03530 Filed 2–21–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2088–068]

South Feather Water and Power Agency; Notice of Technical Conference and Environmental Site Review

Commission staff will hold an environmental site review (site review) on March 21, 2024, and a technical conference on March 22, 2024, on South Feather Water and Power Agency's (licensee, SFWPA) proposed relicensing of the South Feather Power Project No. 2088 (project). The project is located on the South Fork Feather River, Lost Creek, and Slate Creek, in Butte, Yuba, and Plumas Counties, California.

All local, State, and Federal agencies, Tribes, non-governmental organizations, and other interested parties and individuals are invited to participate in the site review and/or technical conference.

Environmental Site Review

On Thursday, March 21, 2024, Commission staff and SFWPA will conduct an environmental site review (*i.e.,* tour) of the project starting at 9 a.m. (Pacific standard time, PST) and ending by 4:30 p.m. (PST).

The site review will primarily focus on project diversions and other facilities relevant to the technical conference (see below). All participants are responsible for their own transportation to and from the project and during the site review. Four-wheel drive or all-wheel drive vehicles with adequate ground clearance are necessary to traverse project roads.

Interested participants must meet at SFWPA's Power Division Headquarters located at: 5494 Forbestown Road, Forbestown, California 95941, where the site review will begin. Participants should arrive sufficiently early for coordination purposes, so that the site review may begin on time. Additionally, participants should wear sturdy, closed-toe shoes or boots, and dress seasonally appropriate for any potential weather. Please note that the project is located in a remote area with limited amenities or public restrooms; therefore, participants should prepare accordingly and bring water, snacks, etc.

Technical Conference

On Friday, March 22, 2024, from 10 a.m. to 2 p.m. (PST), Commission staff will hold a technical conference. The technical conference will be located at SFWPA's Water Division Headquarters located at: 2310 Oro-Quincy Hwy, Oroville, California 95966.

The purpose of the technical conference is to discuss potential project effects on federally listed species including the threatened North Feather distinct population of the foothill yellow-legged frog (FYLF). Discussions to inform staff's environmental analysis will include the following items: (1) results of FYLF surveys in project-affected reaches; (2) the timing and magnitude of flow fluctuations resulting from current project operations; (3) potential measures to minimize effects of flow fluctuations during the FYLF reproductive season; (4) the feasibility of implementing potential interim ramping rates with existing infrastructure; and (5) the limitations of any potential ramping rates to protect FYLF populations.

The technical conference will be recorded by an independent stenographer. Transcripts of the technical conference will be placed on the public record for the project and will be available to view on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link.

If you are interested in attending or have questions regarding the environmental site review or technical conference, please RSVP Kristen McKillop with SFWPA at *kmckillop@southfeather.com* or (530) 532–1348 on or before March 14, 2024.

For questions on procedural matters related to relicensing the South Feather Power Project, you may contact Quinn Emmering, the Commission's relicensing coordinator for the project, at (202) 502–6382 or *Quinn.Emmering@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 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03611 Filed 2–21–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD24–1–000]

North American Electric Reliability Corporation; Order Approving Extreme Cold Weather Reliability Standards EOP–011–4 and TOP–002–5

1. On October 30, 2023, the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), submitted a petition seeking approval of proposed Reliability Standards EOP–011–4 (Emergency Operations) and TOP–002–5 (Operations Planning). As discussed in this order, we approve proposed Reliability Standards EOP–011–4 and TOP–002–5 and their associated violation risk factors and violation severity levels.

2. It is essential to the reliable operation of the Bulk-Power System to protect critical natural gas infrastructure loads that serve gas-fired generation.[1] As the November 2021 Report found, natural gas fuel issues were the second largest cause of generation outages during Winter Storm Uri.[2] Proposed Reliability Standards EOP–011–4 and TOP–002–5 address the concerns raised by the November 2021 Report.[3] Accordingly, we approve proposed Reliability Standards EOP–011–4 and TOP–002–5 as just, reasonable, not unduly discriminatory or preferential, and in the public interest.

I. Background

A. Section 215 and Mandatory Reliability Standards

3. Section 215 of the FPA provides that the Commission may certify an ERO, the purpose of which is to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[4] Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[5] Pursuant to section 215 of the FPA, the

[1] *See* FERC, NERC, and Regional Entity Staff, *The February 2021 Cold Weather Outages in Texas and the South Central United States,* 19 (Nov. 16, 2021) (November 2021 Report), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and; see also id.* at 19 n.30 (''Natural gas infrastructure' refers to natural gas production, gathering, processing, intrastate and interstate pipelines, storage and other infrastructure used to move natural gas from wellhead to burner tip.'').

[2] *Id.* at 18.

[3] *See id.* at 6, 24, 41–43.

[4] 16 U.S.C. 824o(c).

[5] *Id.* 824o(e).

Commission established a process to select and certify an ERO,[6] and subsequently certified NERC.[7]

B. The February 2021 Cold Weather Reliability Event

4. On February 16, 2021, the Commission, NERC, and Regional Entity staff initiated a joint inquiry into the circumstances surrounding a February 2021 cold weather reliability event that affected Texas and the South Central United States that culminated in a report identifying, among other things, recommendations for Reliability Standard improvements.[8] The November 2021 Report found that the February 2021 cold weather reliability event was the largest controlled firm load shed event in U.S. history; over 4.5 million people lost power and at least 210 people lost their lives.[9] The November 2021 Report provided an assessment of the event as well as recommendations including, *inter alia,* Reliability Standard enhancements to improve extreme cold weather operations, preparedness, and coordination.[10]

5. After the February 2021 cold weather reliability event and before the November 2021 Report was issued, NERC filed a petition for approval of cold weather Reliability Standards addressing recommendations from a 2018 cold weather event report.[11] In August 2021, the Commission approved NERC's modifications to Reliability Standards EOP–011–2 (Emergency Preparedness and Operations), IRO–010–4 (Reliability Coordinator Data Specification and Collection), and TOP–003–5 (Operational Reliability Data).[12] Reliability Standards IRO–010–4 and TOP–003–5 require that reliability coordinators, transmission operators, and balancing authorities develop, maintain, and share generator cold weather data.[13] Reliability Standard EOP–011–2 requires generator owners to have generating unit cold weather preparedness plans and generator owners and generator operators to provide training for implementing the cold weather preparedness plans.[14]

6. On October 28, 2022, NERC filed a petition seeking approval, on an expedited basis, of Reliability Standards EOP–011–3 (Emergency Operations) and EOP–012–1 (Extreme Cold Weather Preparedness and Operations), the Reliability Standards' associated violation risk factors and violation severity levels, three newly-defined terms (Extreme Cold Weather Temperature, Generator Cold Weather Critical Component, and Generator Cold Weather Reliability Event), NERC's proposed implementation plan, and the retirement of Reliability Standard EOP–011–2.[15] On February 16, 2023, the Commission approved Reliability Standards EOP–011–3 and EOP–012–1, and also directed NERC to develop and submit modifications to Reliability Standard EOP–012–1 and to submit a plan on how NERC will collect and assess data surrounding the implementation of Reliability Standard EOP–012–1.[16]

C. NERC's Petition and Proposed Reliability Standards EOP–011–4 and TOP–002–5

7. On October 30, 2023, NERC filed a petition seeking approval on an expedited basis of proposed Reliability Standards EOP–011–4 and TOP–002–5,[17] the Reliability Standards' associated violation risk factors and violation severity levels, NERC's proposed implementation plan, and the retirement of currently approved EOP–011–3 and TOP–002–4.[18] NERC explains that proposed Reliability Standards EOP–011–4 and TOP–002–5 build on the 2021 and 2023-approved cold weather Reliability Standards, further reducing the risks posed by extreme cold weather to the reliability of the Bulk-Power System.[19] NERC maintains that proposed Reliability Standards EOP–011–4 and TOP–002–5 are consistent with key recommendations from the November 2021 Report.[20]

8. NERC explains that it adopted a two-phase standard development project to develop, draft, and revise the extreme cold weather Reliability Standards in accordance with the November 2021 Report due to the extensive scope and demonstrated urgency of new and improved cold weather Reliability Standards. NERC states that its October 30, 2023, petition represents the portions of its phase two standard development project pertaining to Key Recommendations 1g, 1h, and 1i.[21]

9. NERC states that proposed Reliability Standard EOP–011–4 advances reliability by requiring transmission operators to consider the impacts of load shedding during emergency conditions on the natural gas infrastructure that fuels a significant portion of bulk electric system generation.[22] NERC explains that the purpose of proposed Reliability Standard EOP–011–4 is unchanged from EOP–011–3, and is to ensure that each transmission operator and balancing authority implements plans to mitigate operating emergencies and that such plans are coordinated within the reliability coordinator area. According to NERC, proposed Reliability Standard EOP–011–4 addresses Key Recommendation 1h and 1i from the November 2021 Report.[23]

10. NERC proposes to modify the approved, but not yet effective, Reliability Standard EOP–011–3 in multiple ways.[24] First, NERC proposes to add distribution providers, Underfrequency Load Shed (UFLS)-only distribution providers, and transmission owners to the list of applicable entities that must comply with the Reliability Standard EOP–011–4.[25] Second, under proposed Reliability Standard EOP–011–4, each transmission operator will be required to include operating plan

[6] *Rules Concerning Certification of the Elec. Reliability Org.; and Procs for the Establishment, Approval, & Enforcement of Elec. Reliability Standards,* Order No. 672, 114 FERC ¶ 61,104, *order on reh'g,* Order No. 672–A, 114 FERC ¶ 61,328 (2006).

[7] *N. Am. Elec. Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[8] *See* November 2021 Report at 9.

[9] *Id.*

[10] *Id.* at 184–212 (Key recommendations 1a through 1j).

[11] FERC and NERC Staff, *The South Central United States Cold Weather Bulk Electric System Event of January 17, 2018,* 89 (July 2019), *https://www.ferc.gov/sites/default/files/2020-05/07-18-19-ferc-nerc-report_0.pdf.*

[12] *See generally N. Am. Elec. Reliability Corp.,* 176 FERC ¶ 61,119 (2021) (noting that the Reliability Standards become enforceable on April 1, 2023).

[13] *Id.*

[14] *Id.*

[15] NERC, Petition, Docket No. RD23–1–000, at 1–2 (filed Oct. 28, 2022).

[16] *See N. Am. Elec. Reliability Corp.,* 182 FERC ¶ 61,094, at PP 3–11 (February 2023 Order), *order on reh'g,* 183 FERC ¶ 61,222 (2023).

[17] The proposed Reliability Standards are not attached to this order. The proposed Reliability Standards are available on the Commission's eLibrary document retrieval system in Docket No. RD24–1–000 and on the NERC website, *https://www.nerc.com.*

[18] NERC Petition at 1–2, 48, 54 (stating that, in the alternative, should Reliability Standard EOP–011–2 be in effect at the time of proposed Reliability Standard EOP–011–4's approval, then NERC seeks retirement of EOP–011–2).

[19] *Id.* at 1–2.

[20] *Id.* at 6; *see also* November 2021 Report at 190–91, 208–09 (Key Recommendations 1g, 1h, and 1i).

[21] NERC Petition at 21–22, 51.

[22] *Id.* at 26–27.

[23] *See id.* at 27 (citing the November 2021 Report at 208–09).

[24] Reliability Standard EOP–011–3, Requirements R3, R4, and R5 are unchanged from the approved version. *See N. Am. Elec. Reliability Corp.,* 176 FERC ¶ 61,119 (approving Reliability Standard EOP–011–2).

[25] The applicability section of Reliability Standard EOP–011–3 identifies only balancing authorities, reliability coordinators, and transmission operators as the applicable entities.

provisions that identify and prioritize designated critical natural gas infrastructure loads that are ''essential to the reliability of the bulk electric system.'' [26] Third, balancing authorities must develop, maintain, and implement one or more reliability coordinator-reviewed operating plans with provisions for excluding critical natural gas infrastructure loads that are essential to the reliability of the bulk electric system as interruptible load, curtailable load, and demand response during extreme cold weather periods within each balancing authority area.[27]

11. Proposed Reliability Standard EOP–011–4 Requirement R1 would also require that transmission operators implement operator-controlled manual load shed, Undervoltage Load Shed (UVLS), or UFLS in operating plans.[28] Proposed Requirement R7 requires transmission operators to annually identify and notify distribution providers, UFLS-only distribution providers, and transmission owners that that they are required to assist with the mitigation of operating emergencies in its transmission operator area.[29] Finally, proposed Requirement R8 states that each distribution provider, UFLS-only distribution provider, and transmission owner notified by a transmission operator per proposed Requirement R7 to assist with the mitigation of operating emergencies must develop, maintain, and implement a load shedding plan.[30]

12. NERC also requests approval of proposed Reliability Standard TOP–002–5 to provide greater specificity regarding the balancing authority's responsibilities in extreme cold weather. According to NERC, this proposed Reliability Standard would address parts of Key Recommendation 1g of the November 2021 Report.[31]

13. According to NERC, proposed Reliability Standard TOP–002–5 is unchanged from the prior version except for the addition of one new requirement, Requirement R8.[32] Proposed Requirement R8 would require each balancing authority to have an operating process [33] for extreme cold weather that includes: (1) a methodology for identifying ''extreme cold weather conditions'' in the area; (2) a methodology for determining an appropriate extreme cold weather reserve margin for the area, considering the types of operating limitations that have been known to limit resource availability in cold weather; and (3) a methodology for determining a five-day hourly forecast that accounts for all relevant operational considerations, including resource availability, demand, reserve requirements, and forecasted weather.[34]

14. NERC requests that the Commission approve the proposed violation risk factors and violation severity levels for proposed Reliability Standards EOP–011–4 and TOP–002–5. Further, NERC proposes an effective date for proposed Reliability Standard EOP–011–4 beginning on the first day of the first calendar quarter that is six months following regulatory approval.[35] Once identified and notified to assist by their transmission operators pursuant to proposed Requirement R7, the newly applicable entities (distribution providers, UFLS-only distribution providers, and transmission owners) will have 30 months to develop a load shedding plan pursuant to proposed Requirement R8. Transmission operators and balancing authorities would also have 30 months from the effective date of proposed Reliability Standard EOP–011–4 to comply with the revised provisions specific to UFLS, UVLS, and critical gas infrastructure loads.[36] NERC also requests that the Commission approve the retirement of Reliability Standard EOP–011–3 immediately prior to the effective date of Reliability Standard EOP–011–4; or, of Reliability Standard EOP–011–2 if it is the version of EOP–011 in effect at the time that proposed Reliability Standard EOP–011–4 becomes effective. NERC explains that this proposed implementation plan is necessary given the large amount of interaction that will be required between the applicable entities and natural gas entities to identify critical natural gas infrastructure loads and account for them as required in manual shedding and underfrequency and undervoltage load shedding schemes.[37]

15. NERC proposes an effective date for proposed Reliability Standard TOP–002–5 beginning on the first day of the first calendar quarter that is 18 months following regulatory approval. NERC requests that the Commission approve the retirement of Reliability Standard TOP–002–4 immediately prior to the effective date of Reliability Standard TOP–002–5. NERC states that the proposed implementation plan reflects consideration of the time needed to develop an extreme cold weather operating process, with the required methodologies reflecting the minimum cold weather reliability considerations identified in proposed Requirement R8.[38]

16. Finally, NERC requests that the Commission approve the proposed Reliability Standards in an expedited manner. NERC explains that, among other things, expedited approval would provide regulatory certainty to entities seeking to implement the proposed Reliability Standards ahead of the mandatory and enforceable dates.[39]

II. Notice of Filing and Responsive Pleadings

17. Notice of NERC's October 30, 2023, petition was published in the **Federal Register**, 88 FR 76,201 (Nov. 6, 2023), with comments, protests, and motions to intervene due on or before November 30, 2023.

18. There were no comments or protests. Ameren Service Company, as an agent for Union Electric Company, filed a motion to intervene.

III. Determination

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

20. Pursuant to section 215(d)(2) of the FPA, we approve proposed Reliability Standards EOP–011–4 and

[26] NERC Petition at 30–31; *see also id.* Ex. C–1 at 5.

[27] *Id.* at 39.

[28] *Id.*

[29] *Id.* at 35.

[30] *Id.* at 35–36.

[31] *See id.* at 41–42 (citing the November 2021 Report at 190–91, which states that key recommendation 1g proposes enhancements to Reliability Standard TOP–003 to provide greater specificity about the relative roles of the generator owner, generator operator, and balancing authority in determining the generating unit capacity that can be relied upon during ''local forecasted cold weather'').

[32] Proposed Reliability Standard TOP–002–5, Requirements R1, R2, R3, R4, R5, R6, and R7 are unchanged from the mandatory and enforceable version, Reliability Standard TOP–002–4.

[33] NERC defines the term ''operating process'' as a ''document that identifies general steps for achieving a generic operating goal. An operating process includes steps with options that may be selected depending upon Real-time conditions. . . .'' NERC, *Glossary of Terms Used in NERC Reliability Standards,* 21 (Dec. 2023), *https://www.nerc.com/pa/Stand/GlossaryofTerms/Glossary_of_Terms.pdf.*

[34] NERC Petition at 43–48.

[35] *See id.* at Ex. B at 2–4; *see also id.* at 49 n.96 (observing that transmission operators will be required to comply with proposed Reliability Standard EOP–011–4 Requirement R7 and perform their first annual identification and notification to newly applicable entities by the effective date of the Reliability Standard).

[36] Proposed Reliability Standard EOP–011–4 Requirements R1, Part 1.2.5 (transmission operator), Requirement R2 Part 2.2.8 and Part 2.2.9 (balancing authority).

[37] NERC Petition at 48–49.

[38] *Id.* at 50.

[39] *Id.* at 53.

TOP–002–5 as just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve the proposed Reliability Standards' associated violation risk factors and violation severity levels, proposed Reliability Standard TOP–002–5 implementation plan, and the retirement of currently effective Reliability Standard TOP–002–4. We agree with NERC that the proposed modifications to the Reliability Standards are consistent with and respond to Key Recommendations 1g, 1h, and 1i from the November 2021 Report.[40] Given the importance of these revised Reliability Standards to maintaining the reliable operation of the Bulk-Power System, we strongly encourage entities that are capable of complying earlier than the mandatory and enforceable date to do so.

21. We defer our decision on whether to approve or modify NERC's proposed implementation plan for proposed Reliability Standard EOP–011–4 (and the proposed retirement of Reliability Standard EOP–011–2) until NERC submits the revised applicability section for Reliability Standard EOP–012–1.[41] As mentioned in the Commission's February 2023 Order,[42] allowing Reliability Standard EOP–011–2 requirements to remain mandatory and enforceable until such time as the revised applicability is effective for Reliability Standard EOP–012–1 will ensure all bulk electric system generating units are required to maintain cold weather preparedness plans and associated trainings.

22. We find that proposed Reliability Standard EOP–011–4 materially improves the reliable operation of the Bulk-Power System, is an improvement over the 2021 and 2023-approved cold weather Reliability Standards, and enhances reliability by requiring balancing authorities, transmission operators, and load shedding entities to account for critical natural gas infrastructure loads in the demand response and emergency load shedding programs they oversee. Doing so will help ensure that deploying these programs in extreme cold weather conditions will not exacerbate natural gas fuel supply issues, which could constrain generating unit capacity and thereby threaten the reliable operation of the Bulk-Power System. Accordingly, we approve Reliability Standard EOP–011–4 as proposed.

23. Under Reliability Standard EOP–011–4, Requirement R1, each transmission operator must include provisions in its operating plan(s) for the identification of designated critical natural gas infrastructure loads that are essential to the reliability of the bulk electric system.[43] This Reliability Standard also requires that each distribution provider, UFLS-only distribution provider, and transmission owner include provisions in its load shedding plan(s) for the identification of designated critical natural gas infrastructure loads that are ''essential to the reliability of the bulk electric system.'' [44] While Reliability Standard EOP–011–4 employs a flexible approach for the above entities to identify critical natural gas infrastructure loads, this Reliability Standard may require coordination and communication between electric and natural gas entities pertaining to extreme cold weather beyond what has historically occurred.[45] As such, we strongly encourage the electric and natural gas entities that play a role in these Reliability Standards to voluntarily begin enhancing their coordination and communication this winter season, prior to the Reliability Standard's mandatory and enforceable effective date.

24. We find that proposed Reliability Standard TOP–002–5 materially improves the reliable operation of the Bulk-Power System, represents an improvement to the existing Reliability Standards, and enhances reliability by requiring that balancing authorities have comprehensive operating processes for extreme cold weather periods in their areas. Proposed Reliability Standard TOP–002–5 also requires each balancing authority to notify the entities identified in these operating plans of their respective roles and to provide the operating plans to its reliability coordinator for visibility. Proposed Reliability Standard TOP–002–5 recognizes that there have been several past extreme cold weather events where load and resource balancing issues have occurred due to unexpected generator trips and higher loads than forecasted. Proposed Requirement R8 formalizes the balancing authority's process to review and respond to oncoming conditions that may affect generation availability and capability, to forecast load, and to determine whether additional capability or reserves should be ready to serve loads during extreme cold weather. These changes will be beneficial by providing greater specificity about the relative roles of generators and the balancing authority in preparing for reliable cold weather operations. Accordingly, we approve Reliability Standard TOP–002–5 as proposed.

IV. Information Collection Statement

25. The information collection requirements contained in this Order are subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995.[46] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[47] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Comments on the collection of information are due within 60 days of the date this order is published in the **Federal Register**. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

26. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

27. The EOP Reliability Standards are currently located in the FERC–725S (OMB Control No. 1902–0270) collection. The collection is currently approved by OMB and contains Reliability Standards EOP–010–1, EOP–011–2, EOP–004–4, EOP–005–3, EOP–006–3, EOP–008–2, and EOP–012–1. There is one Reliability Standard that is being updated within the FERC–725S due to the revisions in Docket No. RD24–1–000: Reliability Standard EOP–011–4. The currently approved Reliability Standard is EOP–011–3, which is being replaced by Reliability Standard EOP–011–4 (Table 1).

28. The TOP Reliability Standards are currently located in FERC–725A (OMB Control No. 1902–0270) collection. This

[40] *See* November 2021 Report at 190–91, 208–09.

[41] NERC states that it will submit a revised EOP–012 Reliability Standard, specifically, Reliability Standard EOP–012–2, by the Commission's February 2024 deadline. *See* NERC Petition at 21, 51.

[42] *See* February 2023 Order, 182 FERC ¶ 61,094 at PP 5, 59.

[43] Reliability Standard EOP–011–4, Requirement R1, Part 1.2.5.5.

[44] *Id.,* Requirement R8, Part 8.1.5.

[45] *See* NERC Petition at 32–33 (stating that one method for identifying such loads may include distributing criteria to natural gas infrastructure entities to identify the critical facilities that would likely affect bulk electric system reliability adversely if de-energized).

[46] 44 U.S.C. 3507(d).

[47] 5 CFR 1320 (2023).

collection is currently approved by OMB and contains Reliability Standards TOP–001–4, TOP–002–4, TOP–003–4, FAC–008–5, FAC–003–2, and ''Mandatory Reliability Standards'' recordkeeping and reporting. There are six information collections within the FERC–725A that will remain unchanged from the revisions in Docket No. RD24–1–000. These six collections include the Reliability Standards: TOP–001–4, TOP–003–4, FAC–008–5, FAC–003–2, and ''Mandatory Reliability Standards'' recordkeeping and reporting. There is one Reliability Standard being updated within the FERC–725A due to revisions in Docket No. RD24–1–000: Reliability Standard TOP–002–4, which is being replaced by Reliability Standard TOP–002–5 (Table 2).

29. The number of respondents below is based on an estimate of the NERC compliance registry for balancing authorities, transmission operators, reliability coordinators, transmission owners, distribution providers and UFLS-Only distribution providers. Reliability Standard EOP–011–4 applies to balancing authorities, transmission operators, reliability coordinators, transmission owners, distribution providers and UFLS-Only distribution providers. Reliability Standard TOP–002–5 applies to transmission operators and balancing authorities, for this estimate new Requirement R8 applies to the balancing authorities. The Commission based its paperwork burden estimates on the NERC compliance registry as of December 15, 2023. According to the registry there are 98 balancing authorities, 165 transmission operators, and 12 reliability coordinators. The estimates in the tables below are based on the change in burden from the Reliability Standards approved in this order. The Commission based the burden estimates in the tables below on staff experience, knowledge, and expertise.

30. *Public Reporting Burden:* The estimated costs and burden for the revisions in Docket No. RD24–1–000 are shown in the tables below.

TABLE 1—PROPOSED CHANGES TO FERC 725S DUE TO MODIFICATIONS IN DOCKET NO. RD24–1–000

Reliability standard & requirement	Type [48] and number of entity	Number of annual responses per entity	Total number of responses	Average number of burden hours per response [49]	Total burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC–725S—Proposed estimates due to RD24–1 for EOP–011–4					
One Time Estimate—Years 1 and 2 in EOP–011–4					
EOP–011–4	165 (TOP)	1	165	40 hrs., $3,031.60	6,600 hrs., $500,214.00.
EOP–011–4	98 (BA)	1	98	20 hrs., $1,515.80	1,960 hrs., $148,548.40.
EOP–011–4	12 (RC)	1	12	20 hrs., $1,515.80	240 hrs., $18,189.60.
EOP–011–4	72 (UFLS-Only DP)	1	72	40 hrs., $3,031.60	2,880 hrs., $218,275.20.
EOP–011–4	300 (DP)	1	300	40 hrs., $3,031.60	12,000 hrs., $909,480.00.
EOP–011–4	324 (TO)	1	324	40 hrs., $3,031.60	12,960 hrs., $982,238.40.
Sub-total of EOP–011–4 (One time)			971		36,640 hrs., $2,776,945.60.
Annualized One-Time Costs (average cost per year is calculated by the sub-total divided by 3).			323.67 (rounded)		12,213 hrs. (rounded), $925,623.27.
Ongoing Estimate—Year 3 ongoing EOP–011–4					
EOP–011–4	165 (TOP)	1	165	20 hrs., $1,515.80	3,300 hrs., $250,107.00.
EOP–011–4	98 (BA)	1	98	4 hrs., $303.16	392 hrs., $29,709.68.
EOP–011–4	12 (RC)	1	12	4 hrs., $303.16	48 hrs., $3,637.92.
EOP–011–4	72 (UFLS-Only DP)	1	72	10 hrs., $757.90	720 hrs., $54,568.80.
EOP–011–4	300 (DP)	1	300	10 hrs., $757.90	3,000 hrs., $227,370.00.
EOP–011–4	324 (TO)	1	324	10 hrs., $757.90	3,240 hrs., $245,559.60.
Sub-Total of EOP–011–4 (ongoing)			971		10,700, $810,953.00
Sub-Total of ongoing burden averaged over three years.			323.67 (rounded)		3,566.67 hrs. (rounded), $270,317.92.
Proposed Total Annual Burden Estimate of EOP–011–4 (one-time plus ongoing).			647.34		15,779.67 hrs., $1,195,941.19 (rounded).

[48] TOP = Transmission Operator, BA = Balancing Authority, RC = Reliability Coordinator, UFLS-Only DP = Underfrequency Load Shed-Only Distribution Provider, DP = Distribution Provider, and TO = Transmission Owner.

[49] The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2023, for 75% of the average of an Electrical Engineer (17–2071) – $77.29, mechanical engineers (17–2141) – $87.38. $77.29 + $87.38/2 = 82.335 × .75 = 54.303 ($61.75 rounded) ($61.75/hour) and 25% of an Information and Record Clerk (43–4199) $56.14 × .25% = 14.035 ($14.04 rounded) ($14.04/hour), for a total ($61.75 + $14.04 = $75.79/hour).

TABLE 2—PROPOSED CHANGES TO FERC 725A DUE TO MODIFICATIONS IN DOCKET NO. RD24–1–000

Requirement change	Type[50] and number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[51] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)
FERC–725A—Proposed estimates due to RD24–1					
One Time Estimate—Years 1 and 2 in TOP–002–5					
TOP–002–5	98 (BA)	1	98	40 hrs., $3,031.60	3,920 hrs., $297,096.80.
Ongoing Estimate—Year 3 ongoing TOP–002–5					
TOP–002–5	98 (BA)	1	98	20 hrs., $1,515.80	1,960 hrs., $148,548.40.
Sub-Total of One-Time estimate for years 1 and 2.			98	40 hrs., $3,031.60	3,920 hrs., $297,096.80.
Sub-Total for Ongoing estimate of year 3 and beyond.			98	20 hrs., $1,515.80	1,960 hrs., $148,548.40.
Annualized one-time Total burden for years 1 and 2 (one-time sub-total divided by 3).			32.67 (rounded)	13.33 hrs. (rounded), $1,010.28.	1,306.67 hrs., $99,032.52 (rounded).
Annualized ongoing total burden for years 3 and beyond (ongoing sub-total divided by 3).			32.67 (rounded)	6.67 hrs., $505.52 (rounded)	653.33 hrs., $49,515.88 (rounded).
Annualized Total Burden Estimate of TOP–002–5.			65.34	20 hrs., $1,515.80	1,960 hrs., $148,548.40.

Titles: FERC–725S (Mandatory Reliability Standards: Emergency Preparedness and Operations (EOP) Reliability Standards)); FERC–725A (Mandatory Reliability Standards for the Bulk-Power System).

Action: Revision to Existing Collections of Information in FERC–725S and FERC–725A.

OMB Control Nos: 1902–0270 (FERC 725S); 1902–0244 (FERC–725A).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: Annually.

Necessity of the Information: Reliability Standards EOP–011–4 (Emergency Operations) and TOP–002–5 (Operations Planning) are part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk-Power System. Specifically, the revised Reliability Standard EOP–011–4 addresses the effects of operating emergencies by ensuring that each transmission operator and balancing authority has developed plan(s) to mitigate operating emergencies and that those plans are implemented and coordinated within the reliability coordinator area. Further, revised Reliability Standard TOP–002–5 ensures that transmission operators and balancing authorities have plans for operating within specified limits.

Internal review: The Commission has reviewed the revised Reliability Standards and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

a. *Description of the Revision to FERC–725S:* The FERC–725S (OMB Control No. 1902–0270) is an existing information collection that contains the requirements for the EOP–011–3 Reliability Standard. As described in the Docket No. RD24–1–000 above, the Reliability Standard (EOP–011–3) is proposed to be retired and replaced by EOP–011–4.

b. *Description of the Revision to FERC–725A:* The FERC–725A (OMB Control No. 1902–0244) is an existing information collection that contains the requirements for the TOP–002–4 Reliability Standard.[52] As described in Docket No. RD24–1–000 above, Reliability Standard TOP–002–4 is approved to be retired and replaced by TOP–002–5.

31. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Jean Sonneman, email: *DataClearance@ferc.gov,* phone: (202) 502–8663, fax: (202) 273–0873].

32. Comments concerning the information collections and requirements approved for retirement in this order and the associated burden estimates, should be sent to the Commission (identified by Docket No. RD24–1–000), using the following methods: Electronic filing through *https://www.ferc.gov* is preferred. Electronic Filing should be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format. For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery: Mail via U.S. Postal Service Only: Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426. Hand (including courier) delivery: Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

V. Environmental Analysis

33. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[53] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion

[50] BA = Balancing Authority.

[51] The estimated hourly cost (salary plus benefits) is a combination based on the Bureau of Labor Statistics (BLS), as of 2023, for 75% of the average of an Electrical Engineer (17–2071) – $77.29, mechanical engineers (17–2141) – $87.38. $77.29 + $87.38/2 = 82.335 × .75 = 54.303 ($61.75 rounded) ($61.75/hour) and 25% of an Information and Record Clerk (43–4199) $56.14 × .25% = 14.035 ($14.04 rounded) ($14.04/hour), for a total ($61.75+$14.04 = $75.79/hour).

[52] This collection is currently pending at OMB for an unrelated matter.

[53] *Reguls. Implementing the Nat'l Env't Pol'y Act,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[54] The actions directed herein fall within this categorical exclusion in the Commission's regulations.

VI. Document Availability

34. 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*).

35. 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.

36. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's 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 orders:

(A) Reliability Standards EOP–011–4 and TOP–002–5 and their associated violation risk factors and violation severity levels are hereby approved, as discussed in the body of this order.

(B) The decision on whether to approve or modify NERC's proposed implementation date for Reliability Standard EOP–011–4 (and the proposed retirement of Reliability Standard EOP–011–2 and EOP–011–3) is hereby deferred until NERC submits its revised applicability section for Reliability Standard EOP–012–2.

By the Commission. Commissioner Clements is concurring with a separate statement attached.

[54] 18 CFR 380.4(a)(2)(ii) (2023).

Issued: February 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

United States of America

Federal Energy Regulatory Commission

North American Electric Reliability Corporation

Docket No. RD24–1–000

(Issued February 14, 2024)

CLEMENTS, Commissioner, *concurring:*

1. While I am voting with my colleagues to approve these revised Reliability Standards, I am writing separately to express my concern with the delayed implementation timeline for EOP–011–4.

2. Today's order highlights ''the importance of these revised Reliability Standards to maintaining the reliable operation of the Bulk-Power System.'' [1] But this stated importance is undercut by the extended time granted to affected Registered Entities to implement the new requirements. Specifically, NERC proposed that EOP–011–4 become effective on the first day of the first calendar quarter that is six months following regulatory approval,[2] and then for each affected Registered Entity to have *at least* 30 months after this effective date to comply with the new and revised provisions of the requirement.[3] Under the best of scenarios, this would mean that these new and revised provisions would be implemented no sooner than April 1, 2027—three years, and crucially, three winters from today.[4]

3. Three years after regulatory approval to implement changes to a Reliability Standard is an awfully long time. By the time these standards are implemented, recent experience has taught us that we are likely to face one or more dangerous winter storms. As with Uri in February 2021, Elliott in December 2022, and Gerri/Heather in January 2024, widespread, long duration winter storms that threaten the reliability of our system are no longer rare events, but rather nearly annual occurrences.

4. I appreciate that NERC has continually worked with its stakeholders to advance improved Reliability Standards for cold weather operations and preparedness following Winter Storm Uri and the subsequent Staff Report.[5] I also recognize that the 30-month implementation timeframe is responsive to some stakeholders' concerns about the potential time needed to implement any physical changes necessary to comply with the requirements of the revised standard. However, considering the urgency of the winter storm risk that faces our system, this is not the first time that I have been left wondering if our processes for drafting and implementing needed Reliability Standards, whether they be cold weather standards or cybersecurity standards, are too slow to keep up with needed change.[6]

For these reasons, I respectfully concur.

Allison Clements,

Commissioner.

[FR Doc. 2024–03608 Filed 2–21–24; 8:45 am]

BILLING CODE 6717–01–P

[1] Order, 186 FERC ¶ 61,115, at P 20 (2024).

[2] By my calculation, this would mean October 1, 2024.

[3] NERC, Petition, Docket No. RD24–1–000, Exhibit B ''Implementation Plan'' at 3 (filed Oct. 30, 2023).

[4] However, as discussed in the draft order, the actual effective date and implementation plan for EOP–011–4 hinges on NERC's upcoming submission, and Commission approval, of a revised applicability section for EOP–012. If the Commission was to reject the revised applicability section of EOP–012, it is unclear to me when we can expect the requirements to EOP–011–4 (and the preceding, but also yet to be effective, EOP–011–3) to be implemented.

[5] *See* FERC, NERC, and Regional Entity Staff, *The February 2021 Cold Weather Outages in Texas and the South Central United States,* 19 (Nov. 16, 2021) (November 2021 Report), *https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and.*

[6] *See, e.g., Transcript of the 1097th Meeting,* FERC, at 21 (Jan. 19, 2023), *https://www.ferc.gov/media/transcript-january-2023-commission-meeting* (''I'm very pleased that we are directing a firm 15-month deadline for NERC to propose the standards. . . . The processes take time, but it is imperative that we get this important cybersecurity measure in place as quickly as it is feasible.''); *Transcript of the 1098th Meeting,* FERC, at 23–24 (Feb. 16, 2023), *https://www.ferc.gov/media/transcript-february-2023-commission-meeting* (''[T]he critical generator weatherization requirements as proposed are, to be frank, not up to the task. The proposal before us requires existing generators to weatherize so they are capable of operating for one hour at extreme cold temperatures beginning in April of 2027. . . . [W]aiting [for] four additional winters before weatherization requirements actually kick in does not reflect the urgency we feel.'').

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7987–016]

Up Property 2, LLC; Notice of Intent To Prepare an Environmental Assessment

On October 5, 2023, as supplemented on October 20, 2023, November 3, 2023, and November 13, 2023, UP Property 2, LLC filed an application to surrender the exemption for and remove the High

Falls Project No. 7987. The project is located on the Deep River in Moore County, North Carolina. The project does not occupy Federal lands.

The Commission issued a public notice of the application on December 20, 2023, with protests, comments, and motions to intervene due to be filed by January 19, 2024. Commenters filed letters and motions to intervene in support of (American Rivers, Sam Warnock), in opposition to (Moore County), and neutral/not pertaining to (Zachariah Schiada) the proposed surrender and removal of the dam. Filings in support of the application cite benefits to migratory fish species and increased recreation opportunities. Filings in opposition cite water level and water table changes, displacement of fish, and concerns about increased recreation access.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the project. The planned schedule for the completion of the EA is January 2025.[1] Revisions to the schedule may be made as appropriate. The EA will be issued and made available for review by all interested parties. All comments filed on the EA will be reviewed by staff and considered in the Commission's final decision on the proceeding.

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.*

Any questions regarding this notice may be directed to Shana High at 202–502–8674 or *shana.high@ferc.gov* or Mary Karwoski at 678–245–3027 or *mary.karwoski@ferc.gov.*

Dated: February 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03610 Filed 2–21–24; 8:45 am]

BILLING CODE 6717–01–P

[1] 42 U.S.C. 4336a(g)(1)(B) requires lead Federal agencies to complete EAs within one year of the agency's decision to prepare an EA.

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: RP24–402–000.
Applicants: Black Hills Shoshone Pipeline, LLC.
Description: 4(d) Rate Filing: Black Hills Shoshone 2024 LAUF Filing to be effective 4/1/2024.
Filed Date: 2/15/24.
Accession Number: 20240215–5040.
Comment Date: 5 p.m. ET 2/27/24.

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.

Filings in Existing Proceedings

Docket Numbers: RP23–917–000.
Applicants: Viking Gas Transmission Company.
Description: Report Filing: Section 154.311 Updated Statements to be effective N/A.
Filed Date: 2/14/24.
Accession Number: 20240214–5198.
Comment Date: 5 p.m. ET 2/26/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: February 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03612 Filed 2–21–24; 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 corporate filings:

Docket Numbers: EC24–51–000.
Applicants: EnerSmart Chula Vista BESS LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of EnerSmart Chula Vista BESS LLC.
Filed Date: 2/14/24.
Accession Number: 20240214–5228.
Comment Date: 5 p.m. ET 3/6/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–112–000.
Applicants: Crossett Solar Energy, LLC.
Description: Crossett Solar Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/14/24.
Accession Number: 20240214–5213.
Comment Date: 5 p.m. ET 3/6/24.

Docket Numbers: EG24–113–000.
Applicants: Crossett Solar Energy, LLC.
Description: Crossett Solar Energy, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 2/14/24.
Accession Number: 20240214–5221.
Comment Date: 5 p.m. ET 3/6/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2641–002; ER23–2642–002.
Applicants: NRG Power Marketing LLC, NRG Power Marketing LLC.
Description: Notice Regarding Refund Report Requirement of NRG Power Marketing LLC.
Filed Date: 2/7/24.
Accession Number: 20240207–5150.

Comment Date: 5 p.m. ET 2/28/24.

Docket Numbers: ER24–948–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment of Amended ISA, SA No. 4322; Z1–036 in Docket ER24–948–000 to be effective 3/19/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5201.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1250–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, SA No. 7185; Queue No. O20 to be effective 4/16/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5028.

*Comment Date:*5 p.m. ET 3/7/24.

Docket Numbers: ER24–1251–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO–NMPC Joint 205: Scnd Amnd SGIA for Albany County 1 Solar SA2554 to be effective 2/1/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5074.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1252–000.

Applicants: PJM Interconnection, L.L.C.

Description: 205(d) Rate Filing: Original NSA, SA No. 7192; Queue No. AG1–386 to be effective 4/16/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5077.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1253–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 16 to be effective 4/15/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5105.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1254–000.

Applicants: New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.

Description: 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO–NMPC Joint 205: Scnd Amnd SGIA for Albany County 2 Solar SA2555 to be effective 2/1/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5114.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1255–000.

Applicants: PacifiCorp.

Description: 205(d) Rate Filing: UAMPS TSOA Rev 8 to be effective 4/16/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5119.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1256–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Duke Energy Renewables Solar (Durant Bend Solar) LGIA Amendment Filing to be effective 2/1/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5120.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1257–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4223 WAPA/City of Beresford, SD Interconnection Agreement to be effective 2/15/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5213.

Comment Date: 5 p.m. ET 3/7/24.

Docket Numbers: ER24–1258–000.

Applicants: Southwest Power Pool, Inc.

Description: 205(d) Rate Filing: 4224 WAPA/Goldenwest/Upper MO G&T Interconnection Agreement to be effective 2/15/2024.

Filed Date: 2/15/24.

Accession Number: 20240215–5219.

Comment Date: 5 p.m. ET 3/7/24.

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 15, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–03613 Filed 2–21–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OEJECR–2024–0048; FRL–11592–01–OCFO]

Agency Information Collection Activities; Proposed Information Collection Request; Comment Request; Promoting Readiness and Enhancing Proficiency To Advance Reporting and Data (PREPARED) Program: 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), Promoting Readiness and Enhancing Proficiency to Advance Reporting and Data (PREPARED) Program: Post-Award Reporting and Public Outreach Information Collections (EPA ICR Number 2804.01, OMB Control Number 2090–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 document allows 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–2024–0048, to EPA online using *https://www.regulations.gov* (our preferred method), by email to *Docket_OCFO@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: Alex Valdez, Office of the Chief Financial Officer, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; email address: *valdez.alex@epa.gov;* telephone number: 202–564–1746.

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 document 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 *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *https://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate 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** document to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: To help expand historically underserved and overburdened communities' access to critical resources, the U.S. Environmental Protection Agency (EPA) developed the Promoting Readiness and Enhancing Proficiency to Advance Reporting and Data (PREPARED) Program. The evidence-building technical assistance (TA) providers (thereafter referenced as *Providers*) will operate in cooperative agreements with EPA to remove barriers and improve access for communities who have applied for or received financial assistance awards to tackle their environmental justice concerns. The Providers will deliver TA and training that is intended to enhance capacity in: grant application and administration, collecting grant related data; meeting federal post-award reporting requirements; project planning/design; and generating information necessary for outcomes assessment, evaluation, and identification of opportunities for improvement. With this Information Collection Request (ICR), EPA seeks authorization to collect post-award information from each Provider to track their progress. Collection of this information enables EPA to assess and manage the PREPARED Program, 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 Providers to collect input and insights from communities who seek to obtain technical assistance services, as well as stakeholders who have valuable experience and expertise in community engagement and empowerment. These information collections will enable the Providers to document local priorities, needs, and norms to ensure that they develop useful and relevant technical assistance and training services. Furthermore, feedback about these services will enable the Providers to conduct self-assessments to identify best practices and areas for improvement.

Form numbers: None.

Respondents/affected entities: To be determined.

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: Up to 4 grant recipients and approximately 4,800 respondents (over 3 years) to Public Outreach Information Collections.

Frequency of response: Grant recipients will submit one workplan each before beginning their project. Progress reports are expected quarterly for three years. A final report is required no later than 120 days after project completion. Public outreach information collections (via surveys and focus groups) will occur throughout the life of the PREPARED project.

Total estimated burden: The estimated burden for grant recipients is estimated at 362 hours over 3 years. The estimated burden for public outreach information collections is estimated at 2,210 hours over 3 years.

Total estimated cost: The estimated cost for grant recipients is estimated at $39,820 over 3 years. The estimated cost for public outreach information collections is estimated at $75,227 over 3 years.

Katherine Dawes,

EPA Evaluation Officer, Office of the Chief Financial Officer.

[FR Doc. 2024–03614 Filed 2–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11732–01–OA]

Public Meetings of the Science Advisory Board Environmental Justice Science and Analysis Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public meetings of the Science Advisory Board Environmental Justice Science and Analysis Review Panel. The purpose of the meetings is to discuss charge questions, listen to agency presentations, listen to public comments and peer review the EPA's draft Revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EJTG). The Panel will also develop a self-initiated commentary outlining recommendations on advancing environmental justice science in rulemaking.

DATES:

Public meetings: The Science Advisory Board Environmental Justice Science and Analysis Review Panel will meet on the following dates. All times listed are in Eastern Time.

1. March 21, 2024, from 1 p.m. to 5 p.m.
2. April 3, 2024, from 9 a.m. to 5 p.m.
3. April 4, 2024, from 9 a.m. to 5 p.m.
4. April 5, 2024, from 9 a.m. to 1 p.m.

Comments: See the section titled ''Procedures for providing public input''

under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The meeting on March 21, 2024, will be conducted virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting. The meeting held on April 3, 4, and 5, 2024, will be conducted in person at DoubleTree by Hilton Hotel Washington DC—Crystal City located at 300 Army Navy Dr., Arlington, VA 22202, and virtually. Please refer to the SAB website at *https://sab.epa.gov* for information on how to attend the meeting.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this notice may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), via telephone (202) 564–2057, or email at *shallal.suhair@epa.gov.* General information about the SAB, as well as any updates concerning the meetings announced in this notice can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C. 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board Environmental Justice Science and Analysis Review Panel will hold two public meeting(s) to discuss charge questions, listen to agency presentations, listen to public comments and peer review the EPA's draft Revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EJTG). The Panel will also develop a self-initiated commentary outlining recommendations on advancing environmental justice science in rulemaking.

Availability of Meeting Materials: All meeting materials, including the agenda will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should follow the instruction below to submit comments.

Oral Statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes and individuals or groups requesting an oral presentation at an in-person meeting will be limited to five minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by March 14, 2024, for the March 21, 2024 virtual meeting and by March 28, 2024, for the April 3–5, 2024 in person meeting to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by March 14, 2024, for consideration at the March 21, 2024 meeting and March 28, 2024, for consideration at the April 3–4, 2024 meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days prior to the meeting(s), to give the EPA as much time as possible to process your request.

Meeting cancellation: The meetings announced in this Notice may be cancelled if a lapse in government funding occurs. If the meetings are cancelled, a cancellation notice will be posted on the SAB website at *https://sab.epa.gov.*

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2024–03547 Filed 2–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2024–0057; FRL–11683–01–OCSPP]

Certain New Chemicals; Receipt and Status Information for January 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 1/01/2024 to 1/31/2024.

DATES: Comments identified by the specific case number provided in this document must be received on or before March 25, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0057, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Additional instructions on commenting and 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: Jim Rahai, Project Management and Operations Division (MC 7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@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.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 1/01/2024 to 1/31/2024. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

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

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA

during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 1/01/2024 TO 1/31/2024

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–24–0001	2	01/19/2024	CBI	(G) Chemical production	(G) Chromosomally modified Saccharomyces cerevisiae.
J–24–0002	2	01/19/2024	CBI	(G) Chemical production	(G) Chromosomally modified Saccharomyces cerevisiae.
P–20–0031A	8	01/22/2024	CBI	(G) Intermediate	(G) Perfluorinated substituted 1,3-oxathiolane dioxide.
P–20–0033A	6	01/22/2024	CBI	(G) Intermediate	(G) Perfluorinated vinyl haloalkane sulfonate salt.
P–20–0034A	6	01/22/2024	CBI	(G) Intermediate	(G) Perfluorinated vinyl haloalkane sulfonyl halide.
P–22–0002A	6	01/05/2024	Materion Advanced Chemicals	(G) This product is used for the manufacturing of electronic devices.	(G) Metal Oxide Chloride.
P–22–0169A	4	01/24/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0170A	4	01/24/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0171A	4	01/24/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0172A	4	01/24/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0173A	4	01/24/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–22–0174A	4	01/24/2024	Solugen, Inc	(G) Additive for consumer, commercial, and industrial applications.	(G) Polycarboxylic acid, salt.
P–23–0001A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0002A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0003A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0004A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0005A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0022A	3	01/08/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.
P–23–0023A	3	01/08/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.
P–23–0024A	3	01/08/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.
P–23–0025A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, consumer, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0026A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, consumer, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0027A	2	01/23/2024	Solugen, Inc	(G) Additive for industrial, consumer, and commercial applications.	(G) Polycarboxylic acid, salt.
P–23–0033A	3	01/08/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Multi-walled carbon nanotubes.
P–23–0117A	4	12/29/2023	Braven Environmental, LLC	(S) Feedstock blended into fuels and fuel blendstocks. (S) Chemical feedstock	(G) Waste plastics, pyrolyzed, condensate.
P–23–0117A	5	01/03/2024	Braven Environmental, LLC	(S) Feedstock blended into fuels and fuel blendstocks. (S) Chemical feedstock	(G) Waste plastics, pyrolyzed, condensate.
P–23–0149	3	01/16/2024	CBI	(S) This material is a catalyst	(G) Dialkyltin Fatty acids ester.
P–24–0001A	2	01/10/2024	Cabot Corporation	(G) Additive used in industrial applications.	(G) Carbon Nanostructures, purified.
P–24–0002	4	01/18/2024	CBI	(G) Photocurable coatings and inks	(G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, ether with polyol (4:1), 2-propenoate.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 1/01/2024 TO 1/31/2024—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–24–0003	3	01/09/2024	CBI	(G) Photocurable coatings and inks	(G) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, ether with polyol (4:1), mono[2-[(9-oxo-9H-thioxanthen-2-yl)oxy]acetate] 2-propenoate.
P–24–0018	2	11/22/2023	CBI	(G) Additives for lubricating oil	(G) Copolymer of alkyl methacrylate, alkyl(C=32) methacrylate, alkyl(C=28) methacrylate and oxygen-substituted alkyl methacrylate.
P–24–0043A	2	01/22/2024	Clariant Corporation	(S) Catalyst for use in petrochemical operations.	(S) Iron potassium oxide (FeKO2).
P–24–0046	1	01/03/2024	The Euclid Chemical Company	(S) Grinding aid used in cement manufacture.	(G) Alkanol, alkoxyalkylimino, salt.
P–24–0047	1	01/03/2024	The Euclid Chemical Company	(S) Grinding aid used in cement manufacture.	(G) Alkanol, nitrilo, salt.
P–24–0048	1	01/05/2024	CBI	(G) Ingredient for consumer products	(G) Ethyl Octenenitrile.
P–24–0067	1	01/11/2024	Swan Chemical, Inc	(S) Rubber accelerator	(S) Methanethioic acid, 1,1′-tetrathiobis-, O1,O1′-bis(1-methylethyl) ester.
P–24–0069	1	01/17/2024	Soulbrain Mi	(S) Additive for use in battery electrolyte formulations.	(G) Oxa-thiaspiro alkane, oxide.
P–24–0075	1	01/23/2024	Allnex USA, Inc	(S) CYMEL NF 2264/87WA RESIN will be used as a water-based formaldehyde free crosslinking additive for acid resistance.	(G) Carbamic acid, N, N′, N″-1,3,5-triazine-2,4,6-tryltris-, mixed alkyl triesters.
SN–22–0007A	7	12/29/2023	Braven Environmental, LLC	(G) Product of Pyrolysis Manufacturing	(S) Waste plastics, pyrolyzed, C5–12 fraction.
SN–22–0008A	7	12/29/2023	Braven Environmental, LLC	(G) Product of Pyrolysis Manufacturing	(S) Waste plastics, pyrolyzed, C20–55 fraction.
SN–22–0008A	8	01/25/2024	Braven Environmental, LLC	(G) Product of Pyrolysis Manufacturing	(S) Waste plastics, pyrolyzed, C20–55 fraction.
SN–22–0009A	7	12/29/2023	Braven Environmental, LLC	(G) Product of Pyrolysis Manufacturing	(S) Waste plastics, pyrolyzed, C9–20 fraction.
SN–24–0002A	2	01/29/2024	CBI	(G) A component used in battery manufacture.	(G) Carbon.
SN–24–0003	3	01/17/2024	Diamond Green Diesel, LLC	(S) Transportation Fuel, Feedstock for monomer production for polymer manufacturing, Product will be a renewable blend component of consumer transportation fuels.	(S) Alkanes, C4–8–branched and linear.
SN–24–0004	1	01/11/2024	Olin Corporation	(G) Reactive diluent in coatings	(S) Oxirane, 2,2′-[1,6-hexanediylbis(oxymethylene)]bis-.

In table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 1/01/2024 TO 1/31/2024

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–17–0295A	01/30/2024	03/31/2023	Amended chemical name.	(S) 1-propene, 1-chloro-2,3,3,3-tetrafluoro-, (z)-.
P–19–0111	01/29/2024	01/28/2024	N	(G) Dibenzothiophenium, trifluoro-hydroxy-(triheterosubstitutedalkyl)alkaoate (1:1).
P–19–0180	01/23/2024	06/16/2023	N	(S) Benzoic acid, 2-chloro-5-fluoro-, sodium salt (1:1).
P–20–0139	01/30/2024	01/28/2024	N	(G) Sulfonium, triphenyl-, 1,2-fluoroalkyltricycloalkyl-1-carboxylate (1:1).
P–20–0142	01/30/2024	01/28/2024	N	(G) Dibenzothiophenium, 5-phenyl-, salt with 2,2-difluoro-2-sulfoethyl substituted-heterotricycloalkane-carboxylate (1:1).
P–20–0145	01/30/2024	01/28/2024	N	(G) Substituted heterocyclic onium compound, salt with fluoropolysubstitutedalkyl substitutedtricycloalkane carboxylate (1:1), polymer with disubstitutedaromatic compound and 1-methylcyclopentyl 2-methyl-2-propenoate, di-me 2,2′-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated.
P–20–0152	01/30/2024	01/28/2024	N	(G) Sulfonium, triphenyl-, salt with 2,2-difluoro-2-sulfoethyl-2-oxo substituted -heterotricycloalkane-heteropolycyclo-carboxylate (1:1).
P–21–0073A	01/03/2024	09/07/2023	Amended chemical name.	(S) 1,4-cyclohexanedicarboxylic acid, 1,4-dinonyl ester, branched and linear.

TABLE II—NOCS APPROVED * FROM 1/01/2024 TO 1/31/2024—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–22–0038	01/02/2024	12/21/2023	N	(G) Siloxanes and silicones, di-me, mixed (polyhydro-substituted heterocyclic) alkyl group and [(polyalkylsilyl)substituted]-terminated.
P–23–0028	01/09/2024	01/09/2024	N	(G) Gelatin and maltodextrin crosslinked with linear and cyclic aliphatic polyisocyanates.

In table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 1/01/2024 TO 1/31/2024

Case No.	Received date	Type of test information	Chemical substance
L–24–0109	01/05/2024	Melting Point/Melting Range (OECD Test Guideline 102); Boiling Point/Boiling Range (OECD Test Guideline 103).	(G) Amide, bis(carboheterocyclic)alkyl, polymer with alkylsubstituted polyalkylene glycol.
L–24–0111	01/10/2024	Skin Sensitization (OECD Test Guideline 406); Bacterial Reverse Mutation Test (OECD Test Guideline 471); Determination of the Number-Average Molecular Weight and the Molecular Weight Distribution of Polymers using Gel Permeation Chromatography (OECD Test Guideline 118); Determination of the Low Molecular Weight Content of a Polymer using Gel Permeation Chromatography (OECD Test Guideline119); Storage Stability (OECD Test Guideline 113); Density/Relative Density/Bulk Density (OECD Test Guideline 109).	(G) Amide, bis (carboheterocyclic)alkyl), polymer with polyether dialkanesulfonate, reaction products with heteromonocyclic alkyl carbomonocyclic amide.
P–09–0644	1/2/2024	Annual reporting pursuant to modified consent order	(G) Substituted alkyl phosphate ester.
P–09–0645	1/2/2024	Annual reporting pursuant to modified consent order	(G) Substituted alkyl phosphate ester, ammonium salt.
P–10–0317	1/04/2024	Impurity measurements	(G) Fluoroalkyl acrylate copolymer.
P–13–0679	1/04/2024	Impurity measurements	(G) Fluoroalkyl acrylate copolymer.
P–14–0053	01/26/2024	Ready Biodegradability (OECD Test Guideline 301) ..	(S) 2-pentanone, 3-methyl-5-(2,2,3-trimethylcyclopentyl)-.
P–14–0712	01/08/2024	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing.	(S) Waste plastics, pyrolyzed, C5–55 fraction.
P–14–0712	01/09/2024	Polychlorinated Dibenzodioxins and Polychlorinated dibenzofurans Testing.	(S) Waste plastics, pyrolyzed, C5–55 fraction.
P–21–0056	01/25/2024	*In Chemico* Skin Sensitization (OECD Test Guideline 442C); *In Vitro* Skin Sensitation (OECD Test Guideline 442E); Antioxidant-Response-Element Dependent Gene Activity and Cytotoxicity.	(G) Isocyanic acid, polyalkylenepolyarylene ester, polymer with alkyl-hydroxyalkyl-alkanediol, alkoxyalcohol and alkoxylalkoxyalcohol-blocked.
P–23–0136	01/02/2024	Acute Oral Toxicity (AOT)2 (OECD Test Guideline 425); *In Vitro* Skin Irritation: Reconstructed Human Epidermis Test Method (OECD Test Guideline 439); Melting Point/Melting Range (OECD Test Guideline 102); Boiling Point/Boiling Range (OECD Test Guideline 103); Density/Relative Density/Bulk Density (OECD Test Guideline 109); Partition Coefficient (n-octanol/water), Estimation by Liquid Chromatography (OECD Test Guideline 117); Water Solubility: Column Elution Method; Shake Flask Method (OECD Test Guideline 105); Vapor Pressure (OECD Test Guideline 104); Bacterial Reverse Mutation Test (OECD Test Guideline 471).	(G) Fatty acids, reaction products with hexamethylenediamine and 12-hydroxyoctadecanoic acid.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: February 15, 2024.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2024–03533 Filed 2–21–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11756–01–OA]

Announcement of Board of Directors of the National Environmental Education Foundation

AGENCY: Office of Public Engagement and Environmental Education, U.S. Environmental Protection Agency (EPA).

ACTION: Notice of appointment and re-appointment of Board of Directors.

SUMMARY: The National Environmental Education and Training Foundation (doing business as The National Environmental Education Foundation or ''NEEF'') was created as a private 501(c)(3) non-profit organization. It was established by Congress as a common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to raise a greater national awareness of environmental issues beyond traditional classrooms.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice of Appointment, please contact Hiram Tanner, 202–564–4988, Director for Office of Environmental Education, U.S. EPA 1200 Pennsylvania Avenue NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: As required by the terms of the NEEA, the Administrator of the U.S. Environmental Protection Agency appoints and reappoints eligible individuals to serve on NEEF's Board of Directors. The Administrator announces the following four-year appointments to NEEF's Board of Directors, effective 90 days after publication of this original notice:

- Kim Moore Bailey, President, and CEO, Justice Outside
- Arielle King, Consultant, Intersectional Environmentalist
- Chandra Taylor-Sawyer, Senior Attorney and Leader of Environmental Justice Initiative, Southern Environmental Law Center
- Marc Washington, Senior Director, Capital One
- John Whyte, MD, Chief Medical Officer, WebMD

Additionally, the Administrator re-appoints the following four individuals to serve a second four-year term:

- Katie Hogge, Digital Outreach Manager, The Ocean Conservancy
- Jennifer Love, Former Chief Security Officer and SVP, Safety, Health and Environment, Royal Caribbean Cruises Ltd.
- Lori McFarling, Non-profit Advisor, Former President, Social Impact, Discovery Education
- Stephen Sikra, Former Vice President and Head of the Americas, Alliance to End Plastic Waste

Additional Considerations: As an independent foundation, NEEF is different from the Agency's several federal advisory committees and scientific boards, which have their own appointment processes.

Because NEEA gives complete discretion to the Administrator in appointing members to NEEF's Board of Directors, EPA is taking additional steps to ensure all prospective members are qualified to serve on the Board and represent a variety of points of view and bring with them a variety of expertise and experiences.

Section 10(a) of the National Environmental Education Act of 1990 (NEEA) establishes the National Environmental Education Foundation and its underlying terms. The statute in its entirety is available on EPA's website and may be accessed here: *https://www.epa.gov/education/national-environmental-education-act#s10.*

Section 10 of the NEEA provides the following, in pertinent part:

Establishment and Purposes

Establishment—

There is hereby established the National Environmental Education Foundation. The Foundation is established in order to extend the contribution of environmental education and training to meeting critical environmental protection needs, both in this country and internationally; to facilitate the cooperation, coordination, and contribution of public and private resources to create an environmentally advanced educational system; and to foster an open and effective partnership among Federal, State and local government, business, industry, academic institutions, community based environmental groups, and international organizations.

The Foundation is a charitable and nonprofit corporation whose income is exempt from tax, and donations to which are tax deductible to the same extent as those organizations listed pursuant to section 501(c) of the Internal Revenue Code of 1986. The Foundation is not an agency or establishment of the United States.

Purposes—The purposes of the Foundation are—

Subject to the limitation contained in Section 10 (d) of the National Environmental Education Act of 1990 (NEEA) to encourage, accept, leverage, and administer private gifts for the benefit of, or in connection with, the environmental education and training activities and services of the United States Environmental Protection Agency;

To conduct such other environmental education activities as will further the development of an environmentally conscious and responsible public, a well-trained and environmentally literate workforce, and an environmentally advanced educational system; and

To participate with foreign entities and individuals in the conduct and coordination of activities that will further opportunities for environmental education and training to address environmental issues and problems involving the United States and Canada or Mexico.

Programs—The Foundation will develop, support, and/or operate programs and projects to educate and train educational and environmental professionals, and to assist them in the development of environmental education and training programs and studies.

Board of Directors

Establishment and Membership—

The Foundation shall have a governing Board of Directors (hereafter referred to in this section as 'the Board'), which shall consist of 13 directors, each of whom shall be knowledgeable or experienced in the environment, education and/or training. The Board shall oversee the activities of the Foundation and shall assure that the activities of the Foundation are consistent with the environmental and education goals and policies of the EPA and with the intents and purposes of this Act. The membership of the Board, to the extent practicable, shall represent diverse points of view relating to environmental education and training.

Appointment and Terms—

Members of the Board shall be appointed by the EPA Administrator.

Within 90 days of the date of the enactment of this Act, and as appropriate thereafter, the Administrator shall publish in the **Federal Register** an announcement of appointments of Directors of the Board. Such appointments become final and effective 90 days after publication of the notice of appointment.

The directors shall be appointed for terms of four years. The Administrator shall appoint an individual to serve as a director in the event of a vacancy on the Board within 60 days of said vacancy in the way the original appointment was made. No individual

may serve more than two consecutive terms as a director.

Dated: February 14, 2024.

Loni Cortez Russell,

Associate Administrator, Office of Public Engagement and Environmental Education.

[FR Doc. 2024–03531 Filed 2–21–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 203613]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Rescindment of a system of records notice.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, the Federal Communications Commission (FCC) proposes to rescind the FCC/OMD–7, FCC Transit Benefit and Parking Permit Programs, system of records. The FCC previously used information in this system to administer the transit benefit and parking permit programs for FCC employees. This information enabled the FCC to facilitate the timely processing of requests for parking permits, transit benefit subsidies, and other commuting arrangements, and related program, policies, and activities.

DATES: The rescindment will become effective 30 days after publication.

ADDRESSES: Comments can be submitted to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information please contact Brendan McTaggart at 202–418–1738 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act provides that an agency may collect or maintain in its records only information about individuals that is relevant and necessary to accomplish a purpose that is required by a statute or executive order. The FCC has determined that the FCC/OMD–7, FCC Transit Benefit and Parking Permit Programs, system of records no longer meets this standard, because the FCC no longer administers the transit benefit and parking permit programs. The FCC transferred its transit subsidy program to the Department of Transportation's TRANServe program in 2018. All transit subsidy information has been deleted in accordance with National Archives and Records Administration (NARA) General Records Schedule (GRS) 2.4, Employee Compensation and Benefits Records (DAA–GRS–2016–0015–0017 and DAA–GRS–2016–0015–0018). The FCC transferred administration of the parking permit program to a private vendor in August 2023 and no longer maintains any records related to FCC employee parking. FCC-issued parking permits and related records have been destroyed in accordance with NARA GRS 5.6, Security Management Records (DAA–GRS–2021–0001–0006). Therefore, the FCC proposes to rescind FCC/OMD–7, FCC Transit Benefit and Parking Permit Programs.

SYSTEM NAME AND NUMBER:

FCC/OMD–7, FCC Transit Benefit and Parking Permit Programs.

HISTORY:

81 FR 16176 (March 25, 2016).

Marlene Dortch,

Secretary.

[FR Doc. 2024–03534 Filed 2–21–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 25, 2024.

A. Federal Reserve Bank of Minneapolis (Stephanie Weber, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *CFB Mutual Holding Company and CFB Financial, Inc., both of Cumberland, Wisconsin;* to become a mutual savings and loan holding company and a mid-tier stock savings and loan holding company, respectively, by acquiring Cumberland Federal Bank, FSB, Cumberland, Wisconsin, in connection with Cumberland Federal Bank, FSB's conversion from mutual to stock form.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–03624 Filed 2–21–24; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: February 27, 2024 at 10 a.m. EST.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 675 746 624#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTIxOTM4MzAtYTUyOC00NzNkLWFkMTUtZGQ3ODVhZTY0OGQx%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%2241d6f4d1-9772-4b51-a10d-cf72f842224a%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the January 23, 2024, Board Meeting Minutes

2. Monthly Reports
   (a) Participant Report
   (b) Investment Report
   (c) Legislative Report
3. Quarterly Reports
   (d) Metrics
4. Enterprise Risk Management
5. ORM Annual Office Update
6. FEVS Update

Closed Session

7. Information covered under 5 U.S.C. 552b(c)(9)(B) and (c)(10).

Authority: 5 U.S.C. 552b(e)(1).

Dated: February 16, 2024.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2024–03587 Filed 2–21–24; 8:45 am]

BILLING CODE 6760–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–XXXX; Docket No. 2024–0001; Sequence No. 2]

Information Collection; Actual Place of Residence Determination (GSA Form 5047)

AGENCY: Office of Human Resource Management, Division of Human Capital Policy and Programs, General Services Administration (GSA).

ACTION: Notice of request for comments regarding a request for a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement.

DATES: Submit comments on or before April 22, 2024.

ADDRESSES: Submit comments identified by Information Collection 3090–XXXX; ''Actual Place of Residence Determination (GSA Form 5047)'' to: *https://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–XXXX; ''Actual Place of Residence Determination (GSA Form 5047).'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–XXXX; Actual Place of Residence Determination (GSA Form 5047).'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–XXXX; *Actual Place of Residence Determination (GSA Form 5047)*'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''Information Collection 3090–XXXX; Actual Place of Residence Determination (GSA Form 5047),'' in all correspondence related to this collection. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Colin C. Bennett, Human Resources Specialist, Office of Human Resources Management, Division of Human Capital Policy and Programs, at telephone 240–418–6822 or via email to *colin.bennett@gsa.gov* for clarification of content.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) routinely hires, reassigns, promotes and transfers Federal employees to duty stations in foreign areas (*i.e.,* locations outside of the United States, its territories and possessions). For this staffing activity, GSA pays for the cost of relocation, known as ''permanent change of station'' relocation benefits (see further 5 U.S.C. 5722(a) and 5724(d)). Relocation benefits include the cost of travel and transportation, as well as the cost of shipment of household goods to a new post outside of the Continental United States. In addition, most overseas employees are eligible for ''renewal agreement travel,'' a travel reimbursement authority that allows agency to leverage funds to pay for periodic travel back to the United States between overseas tours of duty for paid time off, known as ''home leave'' (see further, 5 U.S.C. 5728(a) and 5 U.S.C. 6305(a)).

For an agency to calculate the costs of relocation as well as renewal agreement travel, both federal travel laws require that the employee (or appointee) designate an ''actual place of residence.'' When such residence cannot be easily determined by the job candidate, the agency must instead make an administrative residency determination on behalf of the employee. The new GSA Form 5047 will help agency representatives (*i.e.* human resources specialists) make a determination of the actual place of residence based upon documents and input provided by the job candidates, considered members of the public.

Typically, agencies use the definition of ''residence'' from the Immigration and Naturalization Act of 1952, codified at 5 U.S.C. 1101(33), which defines ''residence'' as a ''place of general abode'' or the ''principal, actual dwelling place in fact, without regard to intent.'' While for most employees (or appointees) the determination of an actual place of residence in the U.S. is typically straightforward, residency may be unclear if the appointee is already overseas and has been overseas for a long period of time. Long-term posts overseas are often characterized by the lease (or even sale) of the employee's primary U.S. dwelling, changes in the declared U.S. voting registration location, and/or changes in the state and local income or property tax jurisdictions.

To more effectively administer permanent change of station relocation as well as renewal agreement travel, the General Services Administration (GSA) has created a new agency form, GSA Form 5047, *Actual Place of Residence Determination.* This form will allow employees, job candidates, and the agency's human resources specialists, to more easily determine the actual place of residence by working through a series of guided questions on the form's worksheet. Following completion of the form's worksheet, the employee, candidate, and human resources specialist can summarize the determination on the form's front cover sheet.

The questions on the worksheet portion of the form are drawn from governing administrative law authorities, primary Comptroller General decisions such as: *Rafael Arroyo,* decision B–197205 (May 16, 1980), decision B–157548 (Sept. 13, 1965), 45 Comp. Gen. 136, and decision B–140748 (Oct. 29, 1959), 39 Comp. Gen. 337. Under these administrative law authorities, the place of actual residence is established at the time of appointment or transfer (see also decision B–136029, June 24, 1958, 37 Comp. Gen. 846). Use of this form is therefore recommended for all overseas appointments, transfers or reassignments and, in particular, those personnel selections of job candidates via agency transfer employed by a different U.S. Government agency and already present overseas.

Use of this form will allow GSA to comply with the Federal Travel Regulations, which require the

administrative determination and documentation of the actual place of residence for all overseas appointments or placements (see further 41 CFR 302–3.509). In addition, this form will also allow the agency to leverage the renewal agreement travel authority (*i.e.,* the Home Leave Act of 1954, 68 Stat. 1008) only when appropriate and not in the rare cases of local foreign hires who have severed all jurisdictional nexuses with the U.S.

Significantly, this residency determination form can also be used to determine eligibility for the following other overseas allowance and benefit authorities: (a) the 45-day annual leave accrual authority (5 U.S.C. 6304(b)), (b) home leave (5 U.S.C. 6305(a)) and (c) living quarters allowance (5 U.S.C. 5923(a)(2)). Under each of these authorities, local hires who currently live in foreign areas are excluded from benefits eligibility unless they can demonstrate that foreign residence is temporary, is only pursuant to continuous employment overseas with the U.S. Government (or other U.S. interest), and finally, there exists a contractual transportation agreement that provides for the eventual return of the job candidate to a specifically-identified place of actual residence within the U.S.

B. Annual Reporting Burden

Respondents: 25 per year.
Responses per Respondent: 1.
Total Annual Responses: 25.
Hours per Response: 1.
Total Burden Hours: 25.

C. Public Comments

Public comments are encouraged, and are particularly invited, on: (a) whether this collection of information is necessary, (b) whether it will have practical utility, (c) whether our estimate of the public burden of this collection of information is accurate (and based on valid assumptions and methodology), (d) whether or not there are ways to enhance the new form's utility and clarity of the information to be collected, and (e) whether or not there might be ways in to minimize the data collection burden through the use of information technology.

Obtaining Copies of Proposals: We have provided a copy of the proposed draft GSA Form 5047 at the end of this notice below the signature block. A copy of the proposed draft form can alternatively be obtained through GSA's Regulatory Secretariat Division by calling (202) 501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–XXXX, *Actual Place of Residency Determination (GSA Form 5047),* in all correspondence.

Lois Mandell,

Director, Regulatory Secretariat Division, General Services Administration.

BILLING CODE 6820–FM–P

GSA Form 5047

ACTUAL PLACE OF RESIDENCE DETERMINATION
SECTION A - COVER SHEET

Name of Candidate

First _____ MI ____ Last _____

BACKGROUND. An employee's "actual place of residence in the U.S.," as determined by an appointing agency, is a statutory requirement that determines eligibility for "permanent change of station" (PCS) relocation costs (5 U.S.C. §§ 5722 and 5724(d)) under the Administrative Expenses Act of 1946 and home leave travel cost reimbursement (also known as "renewal agreement travel," 5 U.S.C. § 5728) under the Home Leave Act of 1954.

Note: This residency determination form can also be used to determine eligibility for: (a) the 45-day annual leave accrual authority (5 U.S.C. § 6304(b)), from the Annual and Sick Leave Act of 1951, (b) home leave (5 U.S.C. § 6305(a)) and (c) living quarters allowance (5 U.S.C. § 5923(a)(2)), both from the Overseas Allowances Act of 1960.

Under GSA Order 5730.1, usually the "actual place of residence" is the principal, actual dwelling place in fact, without regard to intent, at the time of selection for appointment or transfer. (See 8 U.S.C. § 1101(a)(33)). This rule is used for candidates who are selected while residing within the U.S.

For candidates residing in the U.S. at the time of appointment or transfer, the actual place of residence is [Worksheet Not Required]:

City _____ State (Postal Abbreviation) ____

For Department of Defense candidates residing in a foreign area at the time of selection by transfer, the actual place of residence determination is made as follows:

For employees selected from the Department of Defense, use the "Actual Residence at Time of Appointment," Line Item G, of DoD Form 1617, *Transfer of Civilian Employees Outside of CONUS.* Under GSA longstanding travel policy (i.e., former 41 C.F.R. § 302-1.12(c)(3)(iii), 1997 edition) this is considered a continuous designation unless this designation was in error or later circumstances entitle a different determination. The residence listed on the DoD Form 1617 is **[Worksheet Not Required]**:

City _____ State (Postal Abbreviation) ____

When Worksheet Required:

For candidates from DoD residing in a foreign area at the time of selection by transfer, who do not have the DoD Form 1617 available, as well as candidates from other federal agencies (e.g., Commerce Department, State Department, USAID), GSA must make an administrative determination of the actual place of residence. Use this form's worksheet to determine the most appropriate actual place of residence.

The generally recognized test for the "actual place of residence" test within GSA and other agencies is based upon the Comptroller General Opinions, *Rafael Arroyo*, B-197205, May 16, 1980, B-157548, 45 Comp. Gen. 136 (1965), and B-140748, 39 Comp. Gen. 337 (1959). These administrative law decisions require the employing office, at the time of appointment or transfer, to determine (and then document) the "actual place of residence" by consideration of the following categories of evidence:

(1) Physical residence (i.e., actual dwelling place of fact, regardless of intent, under 8 U.S.C. § 1101(a)(33)) discussed above) at the time of selection;
(2) Residence provided in agency records;
(3) Residence according to employment history;
(4) Individual or family association with an area;
(5) Exercising the privileges and duties of citizenship, such as: voting or paying state income or property taxes; and
(6) Place of birth, education, and marriage.

Based on evaluation of all the above facts and documents available, and following completion of the worksheet below, the employee's "actual place of residence" is:

Country (U.S. or Foreign) _____

City _____ State (if U.S.) _____

Name of Human Resources Specialist _____

Signature (Human Resources Specialist) _____

Date _____

SECTION B
ACTUAL PLACE OF RESIDENCE WORKSHEET

Based on *Rafael Arroyo*, Comptroller General decision B-197205 (1980), and other administrative law sources. Consider the preponderance of the evidence (from below) if there are multiple possible places of residence.

Name of Candidate

First _____ MI _____ Last _____

Current Physical Residence at Time of Appointment or Transfer
August 24, 1955, B-124663, 35 Comp. Gen. 101; B-122796, November 4, 1955, 35 Comp. Gen. 270

Country (U.S. or Foreign) _____

City _____ State (if U.S.) _____

Can this residence be considered temporary and only incident to the performance of Government duties? If Yes, disregard this factor (45 Comp. Gen. 136):

Yes ☐ No ☐

Note: If the current location is a foreign county, be aware that the appointee may not be eligible for foreign allowances and benefits. The 45-day annual leave accrual, home leave, renewal agreement travel, and living quarters allowance authorities all require current residents of foreign countries to have that foreign residence only temporarily, pursuant only to continuous U.S. Government employment, and supported by a documented transportation agreement (such as DoD Form 1617) that stipulates eventual return transportation to an annotated place of actual residence in the U.S. While B-122796, November 4, 1955, 35 Comp. Gen. 270 permits GSA to provide reciprocity to job candidates appointed by transfer from other agencies, in certain circumstances, such appointees are instead foreign "local" hires, meaning, they lack sufficient jurisdictional connections to the United States and are unable to satisfy the eligibility requirements of those authorities (i.e. continuous U.S. employment overseas pursuant to a documented transportation agreement). In situations where a documented transportation agreement was known to exist, and has been subsequently lost, or cannot be located, the job candidate's resume can be used instead to support continuous employment overseas by the U.S. Government and the transportation agreement requirement can be supported by obtaining a copy of the original relocation package used to send the job candidate overseas by the losing agency under the Administrative Expenses Act of 1946.

Residence Provided in Agency Records
(e.g., Mailing Address for W-2 and Leave and Earnings Statements)
B-125293, October 28, 1955, 35 Comp. Gen. 244

Country (U.S. or Foreign)

City State (if U.S.)

Historical Residence While Employed
(i.e., residence during the prior 5 years)
B-125293, October 28, 1955, 35 Comp. Gen. 244

Country (U.S. or Foreign)

City State (if U.S.)

Family Connections
B-140748, 39 Comp. Gen. 337 (1959); B-125293, October 28, 1955, 35 Comp. Gen. 244

Does your family (e.g., parents, siblings) live in a particular location where you maintain a historical or affinity connection? (For example, where you own a family burial plot and/or where you plan to retire at the conclusion of Federal service.)

Yes No

If Yes: City State (if U.S.)

Voting and Paying Taxes
January 15, 1947, 26 Comp. Gen. 488 and B-125293, October 28, 1955, 35 Comp. Gen. 244

1. Are you currently a registered U.S. voter?
   Yes No I am not sure
2. If you have voted in the past in U.S. elections, either in person, or by mail (e.g., absentee ballot), what historically has been your voting jurisdiction?

County State

3. Do you currently pay U.S. income tax? Yes No
4. Do you currently pay U.S. State and/or local Income tax? Yes No
5. If you currently pay U.S. State tax and/or local tax, what state and/or local jurisdiction?

State

Local Jurisdiction (County, City, etc.)

6. Do you pay income tax to a foreign country? Yes ☐ No ☐
7. If you pay income tax to a foreign country, what country?

Long-standing connections through birth, where you spent your youth, education (i.e., secondary schooling and/or college), and/or marriage
B-157548, 45 Comp. Gen. 136 (1965)

Do you identify with a particular U.S. State or Territory due to a long-standing, historical connection, such as through birth, marriage and/or education?

Yes ☐ No ☐

If yes, what State or Territory:

Local Jurisdiction (County, Township, etc.)

Name of Human Resources Specialist

Signature (Human Resources Specialist)

Date

PRIVACY ACT STATEMENT

Information collected via this form is pursuant to federal law, in particular: 5 U.S.C. § 3301 [rules for admission to the Federal service] and 5 U.S.C.§ 3302 [rules for the competitive service]. The information collected also facilitates the correct benefits determination decisions for the accumulation of annual leave (5 U.S.C. § 6304(b)), home leave and related renewal agreement travel (5 U.S.C. § 6305(a) and 5 U.S.C. § 5728(a)), and permanent change of station (5 U.S.C. §§ 5722, 2724a, and 5724(d)). Disclosure of information related to the candidate and position is mandatory under these authorities so that the correct pay and benefits can be provided upon appointment, transfer, or reassignment to a foreign area. Use of this information is governed by Civil Service regulations found within 5 U.S.C. Part 630 and the Federal Travel Regulations under 41 C.F.R. Part 302. The information collected via this form will only be used by the GSA Office of Human Resources Management and the employee's new supervisor under the provisions of 5 U.S.C. § 552a(b)(3) [routine use]. Such information is not releasable to the public due to 5 U.S.C. § 552(b)(6) and will be stored within the Office of Personnel Management's Electronic Personnel Folder (eOPF) application, under System of Record Notice (SORN) "OPM/GOVT-1" at 77 FR 73694 (December 11, 2012). An employee's failure to provide the information requested on this form may lead to the erroneous payment of compensation and benefits, or the non-payment of eligible compensation and benefits.

Instructions for Human Resources Offices

1. Interview the candidate and collect the DoD Form 1617 (if applicable) and demographic information.
2. Complete the Section B Worksheet (if necessary).
3. Based upon the totality of the evidence collected and all available facts (B-157548, Sept. 13, 1965, 45 Comp. Gen. 136), document via the Worksheet and complete the Cover Sheet. The place constituting the actual place of residence must be determined upon the facts and circumstances of each individual case (B-124663, August 24, 1955, 35 Comp. Gen. 101 and September 21, 1955, B-124492).
4. Sign and date both theSection B Worksheet (if applicable) and the Section A Cover Sheet.
5. Submit to the Office of the Chief Financial Officer (OCFO), Travel and Relocation Office, for use in their determination and inclusion within GSA Forms 87A and 2255.

[FR Doc. 2024–03606 Filed 2–21–24; 8:45 am]
BILLING CODE 6820–FM–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–1873]

Select Updates for the Medical Device User Fee Small Business Qualification and Certification Guidance; Draft Guidance for Industry; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Select Updates for the Medical Device User Fee Small Business Qualification and Certification Guidance.'' The guidance includes select updates to the guidance ''Medical Device User Fee Small Business Qualification and Certification'' which describe how FDA plans to determine if a small business is experiencing ''financial hardship'' which makes them eligible for a waiver of their registration fee. The guidance will detail what information FDA will review and consider in making this determination. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by April 22, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by April 22, 2024.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2018–D–1873 for ''Select Updates for the Medical Device User Fee Small Business Qualification and Certification Guidance.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this draft guidance document entitled ''Select Updates for the Medical Device User Fee Small Business Qualification and Certification Guidance'' to Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

With regard to the draft guidance: Jason Brookbank, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5234, Silver Spring, MD 20993–0002, 301–796–5498, *Jason.Brookbank@fda.hhs.gov* or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993, 240–402–7911.

With regard to the proposed collection of information: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Select Updates for the Medical Device User Fee Small Business Qualification and Certification Guidance.'' On December 29, 2022, the Food and Drug

Omnibus Reform Act of 2022 was signed into law as part of the Consolidated Appropriations Act, 2023, Public Law 117–328. section 3309 of the Omnibus—''Small Business Fee Waiver''—amended section 738(a)(3)(B) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding clause (ii) ''Small business fee waiver.'' The amended language gave FDA the discretion, beginning in fiscal year 2025, to waive the annual registration fee for device establishments that are small businesses if FDA determines that paying such fee represents a financial hardship. Additionally, the amended statute acknowledges that device establishments may be located in countries without a national taxing authority (NTA). As a result of this amended statutory language, FDA is issuing this draft guidance to propose select updates to the guidance ''Medical Device User Fee Small Business Qualification and Certification'' which will describe how FDA plans to determine if a small business is experiencing ''financial hardship'' which makes them eligible for a waiver of their registration fee. The guidance details what information FDA will review and consider in making this determination.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on Select Updates for the Medical Device User Fee Small Business Qualification and Certification guidance. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This guidance document is also available at *https://www.regulations.gov, https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Select Updates for the Medical Device User Fee Small Business Qualification and Certification Guidance'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00018007 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MDUFMA Small Business Qualification Certification

OMB Control Number 0910–0508—Revision

This information collection helps support implementation of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), most recently reauthorized in 2022 from October 1, 2022, until September 30, 2027. To qualify as a ''small business,'' and therefore be eligible for reduced or waived fees, respondents submit information to FDA so we can determine whether the applicant is a small business. Sections 738(d)(2)(A) and (e)(2)(A) of the FD&C Act (21 U.S.C. 379j(d)(2)(A) and (e)(2)(A)) define a ''small business'' as an entity that reported $100 million or less of gross receipts or sales in its most recent Federal income tax return, including such returns of its affiliates, partners, and parent firms. If a firm's gross receipts or sales are no more than $30 million (including all affiliates, partners, and parent firms), they will also qualify for a waiver of the fee for their first (ever) premarket application (PMA), product development protocol (PDP), biological licensing application (BLA), or premarket report.

The proposed updates to the Small Business Guidance describe how small businesses can show ''financial hardship'' to qualify for a small business waiver of the registration fee. Manufacturers seeking the small business fee waiver may provide evidence of a reported $1 million or less of gross receipts or sales in its most recent Federal income tax return, as well as evidence that they have filed a petition for bankruptcy and that the bankruptcy is currently active.

The proposed updates also reflect how firms based in jurisdictions without an NTA need not submit a certification from their NTA to be eligible for fee waivers or reductions.

Additionally, FDA intends to consolidate the forms previously known as FDA 3602 and FDA 3602A into a single form to be completed by foreign as well as U.S. businesses/applicants.

We propose the following revisions to the information collection:

- Consolidation of forms FDA 3602 and FDA 3602A into a single form, FDA 3602, to be completed by foreign as well as domestic businesses; and
- Addition of a ''Registration & Listing Fee Waiver'' section in the revised form, which asks if the business/applicant will apply for a registration and listing fee waiver and whether they have registered in the past. FDA recommends that applicants seeking this waiver include documentation supporting eligibility, including evidence that applicants have filed a petition for bankruptcy in United States Bankruptcy Court and that the bankruptcy is currently active (debts have yet to be discharged or a reorganization plan has not been confirmed) as well as evidence of prior registration as applicable.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA 3602 MDUFA Small Business Certification Request	4,500	1	4,500	1	4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Because we assume that current bankruptcy documentation is readily available to applicants, we assume no change to the Average Burden per Response for this information collection. Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our total burden estimate.

Dated: February 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–03619 Filed 2–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–0584]

Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment.'' Although the public health emergency declared by the Department of Health and Human Services under section 319 of the Public Health Services Act has ended, COVID–19 remains an ongoing public health problem with continued prevention and treatment efforts. FDA is issuing this guidance to provide sponsors and investigators with considerations for approaches on how common COVID–19-related symptoms can be measured and analyzed in clinical trials evaluating drugs or biological products for the prevention or treatment of COVID–19 in outpatient adult and adolescent subjects. This guidance supersedes the guidance of the same name issued on September 29, 2020.

DATES: The announcement of the guidance is published in the **Federal Register** on February 22, 2024.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–0584 for ''Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts

and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see § 10.115(g)(5) (21 CFR 10.115(g)(5))).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach, and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: David Reasner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6373, Silver Spring, MD 20993, 301–837–7667, or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a final guidance for industry entitled ''Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment.'' This guidance provides considerations for how common COVID–19-related symptoms can be measured and analyzed in clinical trials evaluating drugs or biological products for the prevention or treatment of COVID–19 in outpatient adult and adolescent subjects.

This guidance supersedes the guidance of the same name issued on September 29, 2020 (85 FR 61008). The September 2020 guidance was published to support public health efforts following a declaration, under section 319 of the Public Health Service Act (PHS Act) (42 U.S.C. 247d), by the Secretary of Health and Human Services of a public health emergency related to COVID–19. In the **Federal Register** of March 13, 2023 (88 FR 15417) FDA listed certain guidance documents that FDA was revising to continue in effect for 180 days after the expiration of the COVID–19 PHE declaration on May 11, 2023, during which time FDA planned to further revise the guidances. The September 2020 guidance on assessing COVID–19-related symptoms in outpatient adult and adolescent subjects in clinical trials of drugs and biological products for treatment or prevention of COVID–19 is included in this list.

FDA is issuing this guidance for immediate implementation in accordance with our good guidance practices regulation (§ 10.115(g)(3)) without initially seeking prior comment because the Agency has determined that prior public participation is not feasible or appropriate (see § 10.115(g)(2) and section 701(h)(1)(C)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)(1)(C)(i))). Specifically, we are not seeking prior comment because although the COVID–19 public health emergency under section 319 of the PHS Act has expired, COVID–19 remains a serious health risk for some individuals, and there is a need to ensure that sponsors are aware of FDA's recommendations to facilitate timely development of drugs and biological products for treatment and prevention of COVID–19. FDA is committed to supporting continued development of products to treat or prevent the COVID–19 virus by providing timely guidance. This guidance document is being implemented immediately, but it remains subject to comment in accordance with the Agency's good guidance practices.

FDA considered comments received on the 2020 guidance. Changes from the 2020 guidance to this guidance include updating the reference list to refer sponsors to new resources that could support their drug development program (*e.g.,* patient-focused drug development guidance series); providing considerations for determining which subset of symptoms, and aspects of those symptoms, to assess (*e.g.,* mechanism of action of the drug); clarifying the item-level questions to make them more specific and adequate to support development of endpoint measures (*e.g.,* recall period, response options); and adding recommendations for global scale measures to align with the concepts of interest. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the current thinking of FDA on ''Assessing COVID–19-Related Symptoms in Outpatient Adult and Adolescent Subjects in Clinical Trials of Drugs and Biological Products for COVID–19 Prevention or Treatment.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR parts 312 pertaining to investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 pertaining to new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 pertaining to biologics license applications have been approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 50 and 56 pertaining to protection of human subjects and institutional review boards have been approved under OMB control number 0910–0130. The collections of information in 21 CFR part 11 pertaining to electronic records and signatures have been approved under OMB control number 0910–0303.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 16, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–03622 Filed 2–21–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NSD–A/B Member Conflict Special Emphasis Panel.

Date: March 15, 2024.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Surojeet Sengupta, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Boulevard, Room 5134, Rockville, MD 20852, 301–496–9223, *surojeet.sengupta@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03598 Filed 2–21–24; 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 Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Support for Research Excellence—First Independent Research (SuRE-First) Award (R16).

Date: April 4–5, 2024.

Time: 10:00 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: 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.*

(Catalogue of Federal Domestic Assistance Program No. 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 15, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03550 Filed 2–21–24; 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; Interdisciplinary Aging Infrastructure.

Date: March 20, 2024.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kaitlyn Noel Lewis Hardell, Ph.D., M.P.H., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2E405, (301) 555–1234, *kaitlyn.hardell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 15, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03552 Filed 2–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Applied Immunology and Disease Control Integrated Review Group; Drug Discovery and Molecular Pharmacology A Study Section.

Date: March 19–20, 2024.

Time: 8:30 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0000, *bidyottam.mittra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–23–004: 2024 NIH Director's Pioneer Award Review.

Date: March 19–20, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: James J. Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065 *lijames@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.

Date: March 19–20, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Imoh S. Okon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–347–8881, *imoh.okon@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: ECHO Dissertation Research and Career Development Meeting.

Date: March 19, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Cynthia Chioma McOliver, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–2081, *mcolivercc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population and Public Health Approaches in HIV/AIDS.

Date: March 19, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ananya Paria, DHSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007H, Bethesda, MD 20892, (301) 827–6513 *pariaa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Clinical Informatics and Data Analytics.

Date: March 19–20, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Bellinger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, Bethesda, MD 20892, (301) 827–4446 *bellingerjd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Muscle and Exercise Physiology/Musculoskeletal Rehabilitation Sciences Study Sections.

Date: March 19, 2024.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800K, Bethesda, MD 20817, (301) 867–5309, *robert.gersch@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–21–061: Cancer Research Workforce Diversity.

Date: March 19, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sulagna Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (612) 309–2479, *sulagna.banerjee@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–23–064 Program Projects: Social and Community Influences Across the Lifecourse.

Date: March 19, 2024.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kate Fothergill, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3142, Bethesda, MD 20892, 301–435–1782 *fothergillke@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 15, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03569 Filed 2–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Optimization of Genome Editing Therapeutics for ADRD (U01) Review.

Date: March 22, 2024.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Eric S. Tucker, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/HHS, NSC, 6001 Executive Blvd., Rockville, MD 20852, 301–827–0799, *eric.tucker@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: February 16, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03596 Filed 2–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Mechanism for Time-Sensitive Research Opportunities in Environmental Health Sciences (R21).

Date: February 26, 2024.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Science, 530 Davis Drive, Keystone Building, Durham, NC 27713.

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, 530 Davis Drive, Keystone Building, Room 3094, Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 15, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03549 Filed 2–21–24; 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; Aging Trends and Caregiving.

Date: March 12, 2024.

Time: 2:30 a.m. to 4:30 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: Dario Dieguez, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2W200, (301) 827–3101, *dario.dieguez@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 15, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–03551 Filed 2–21–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0042]

New Merchant Mariner Credential

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the availability of a new style of Merchant Mariner Credential (MMC) for review. The new style of MMC is replacing the current passport-style MMC. The new MMC will be implemented on March 1, 2024. Issuance of the passport-style MMC will be discontinued on the same date. Passport-style MMCs will remain valid through their expiration date. The Coast Guard has included an example of the new MMC in this docket for review. The Coast Guard will continue to produce mariner medical certificates in their current format.

FOR FURTHER INFORMATION CONTACT: For additional information about this document, questions may be directed to Mr. Charles Bright, U.S. Coast Guard Office of Merchant Mariner Credentialing, telephone 202–372–1046, email *Charles.J.Bright@uscg.mil,* or to Mr. Brian Eichelberger, telephone 202–372–1450, email *Brian.T.Eichelberger@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Viewing Material in the Docket

To view documents mentioned in this notice as being available in the docket, go to the Federal Decision-Making Portal at *http://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0042 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Select ''Supporting & Related Material'' in the Document Type column.

The new credential may also be viewed on the U.S. Coast Guard National Maritime Center website at *https://www.dco.uscg.mil/national_maritime_center/.*

Discussion

The Coast Guard is issuing this notice of an update to the format of the Merchant Mariner Credential (MMC) by replacing the current passport-style MMC. The passport-style MMC was designed for the Coast Guard mariner credentialing program and is produced by the Coast Guard National Maritime Center (NMC) using specialty printers. These printers have been in use since 2015. They have reached the end of their lifecycles, and replacements are not readily available. The passport-style MMC requires printing on multiple pages to provide the requisite mariner information and endorsements. As noted, printing capabilities for the current passport-style MMC have diminished and, at times, creates production delays and backlogs in issuing MMCs to mariners.

To avoid future printing delays and production backlogs, the Coast Guard will implement a new MMC format and printing process. The new MMC is a single, two-sided page produced on synthetic paper with embedded security features. It is printed using readily available commercial printers. The paper is also tear and water resistant. A sample of the new credential is provided in this docket as described under the **SUPPLEMENTARY INFORMATION** portion of this notice. A document providing a more detailed overview of the individual sections and features of the new credential is also included in the docket.

The earliest implementation date for the new credential is March 1, 2024. We will notify the industry via the NMC website if the date changes due to unforeseen issues. The current passport-style MMC will not be immediately replaced for all mariners. Instead, the new credential will be issued during their next credential transaction. Mariners should not request a new MMC unless their current one is lost, damaged, or nearing expiration.

In the future, the Coast Guard intends to implement an electronically issued MMC that meets domestic and international requirements. In addition to the electronic credential, the Coast Guard anticipates maintaining some printing options to support the mariners and maritime industry needs.

This notice is issued under authority of title 46 of the United States Code (U.S.C.), sections 2104, 7101, and 7302.

Dated: February 16, 2024.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2024–03568 Filed 2–21–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2014–001]

Intent To Request Revision From OMB of One Current Public Collection of Information: TSA PreCheck™ Application Program

AGENCY: Transportation Security Administration, Department of Homeland Security (DHS).

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0059, abstracted below that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). This ICR is being revised to inform the public of the official launch of new TSA PreCheck™ enrollment providers, which has led to multiple price points for enrollments and renewals and additional enrollment locations; exploration of new enrollment capabilities to include remotely proctored enrollment; acceptance of Mobile Drivers Licenses and other Digital Identities upon TSA approval; and, revised customer experience surveys to better service the public. The ICR describes the nature of the information collection and its expected burden. The collection involves the voluntary submission of biographic and biometric information that TSA uses to verify identity and conduct a security threat assessment (STA) for the TSA PreCheck™ Application Program. The STA compares an applicant's information against criminal history, immigration, intelligence, and regulatory violations databases to determine if the person poses a low risk to transportation or national security and should be eligible for expedited screening through TSA PreCheck™ lanes at airports.

DATES: Send your comments by April 22, 2024.

ADDRESSES: Comments may be emailed to *TSAPRA@tsa.dhs.gov* or delivered to the TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Drive, Springfield, VA 22150.

FOR FURTHER INFORMATION CONTACT: Nicole Raymond at the above address, or by telephone (571) 227–2526.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *https://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Consistent with the requirements of Executive Order (E.O.) 13771, Reducing Regulation and Controlling Regulatory Costs, and E.O. 13777, Enforcing the Regulatory Reform Agenda, TSA is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents.

Information Collection Requirement

Pursuant to the statutory authorities explained below, TSA has implemented a voluntary enrollment program for individuals to apply for the TSA PreCheck™ Application Program. Section 109(a)(3) of the Aviation and Transportation Security Act, Public Law 107–71 (115 Stat. 597, 613, Nov. 19, 2001, codified at 49 U.S.C. 114 note) provides TSA with the authority to ''establish requirements to implement trusted programs and use available technologies to expedite security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.'' In addition, TSA has express, statutory authority to establish and collect a fee for any registered traveler program by publication of a notice in the **Federal Register** as outlined in the Department of Homeland Security Appropriations Act, 2006, Public Law 109–90 (119 Stat. 2064, 2088–89, Oct. 18, 2005).

Security Threat Assessment Process

Under the TSA PreCheck™ Application Program, individuals may submit biographic and biometric [1] information directly to TSA, which TSA uses to conduct identity verification and an STA of criminal, immigration, intelligence, and regulatory violation databases. Interested applicants must provide certain minimum required data elements, including, but not limited to, name, date of birth, gender, address, contact information, country of birth, images of identity documents, proof of citizenship or immigration status, and biometrics via a secure interface. TSA uses this information to verify identity at enrollment, conduct an STA, make a final eligibility determination for the TSA PreCheck™ Application Program, and verify the identities of TSA PreCheck™-enrolled and approved individuals when they are traveling.

As part of this process, TSA sends the applicants' fingerprints and associated information to the Federal Bureau of Investigation (FBI) for the purpose of comparing their fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems including civil, criminal, and latent fingerprint repositories. The FBI may retain

[1] Unless otherwise specified, or the purposes of this document, ''biometrics'' refers to fingerprints and/or facial imagery.

applicants' fingerprints and associated information in NGI after the completion of their application and, while retained, their fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI as part of the FBI's Rap Back program.[2] In retaining applicants' fingerprints, the FBI conducts recurrent vetting of applicants' criminal history until the expiration date of the applicant's STA. TSA also transmits applicants' biometrics for enrollment into the Department of Homeland Security Automated Biometrics Identification System and its successor systems for recurrent vetting of applicants' criminal history, lawful presence, and ties to terrorism and for future support of TSA's biometric-based identification at airport checkpoints.

TSA uses the STA results to decide if an individual poses a low risk to transportation or national security. TSA issues approved applicants a known traveler number (KTN) that they may use when making travel reservations. Airline passengers who submit a KTN when making airline reservations are eligible for expedited screening on flights originating from U.S. airports and select international locations including Nassau, Bahamas.[3] TSA uses the traveler's KTN and other information during passenger prescreening to verify that the individual traveling matches the information on TSA's list of known travelers and to confirm TSA PreCheck™ expedited screening eligibility.

When the STA is complete, TSA makes a final determination on eligibility for the TSA PreCheck™ Application Program and notifies applicants of its decision. Most applicants generally should expect to receive notification from TSA within 3 to 5 days and up to 60 days of the submission of their completed applications. If initially deemed ineligible by TSA, applicants will have an opportunity to correct cases of misidentification or inaccurate criminal records. Applicants must submit a correction of any information they believe to be inaccurate within 60 days of issuance of TSA's letter. If a corrected record is not received by TSA within the specified amount of time, the agency may make a final determination to deny eligibility. Individuals who TSA determines are ineligible for the TSA PreCheck™ Application Program will undergo standard or other screening at airport security checkpoints.

TSA PreCheck™ Enrollment and Renewal Enhancements

The introduction of additional enrollment providers, as discussed in the previous ICR revision, will allow enrollment providers to offer multiple price points for TSA PreCheck™ enrollment and renewal as well as additional enrollment locations, which will allow the public to select the best option for their needs. TSA plans to explore[4] new enrollment capabilities to include remote proctored enrollment to further expand TSA's ability to service the public. This revision also addresses TSA's plan to accept Mobile Drivers Licenses and other Digital Identities for identity verification at enrollment upon TSA approval. Lastly, TSA intends to continue to collect information from TSA PreCheck™ members after enrollment through voluntary customer experience surveys to better serve the public.

* * * * *

The TSA PreCheck™ Application Program enhances aviation security by permitting TSA to better focus its limited security resources on passengers who are unknown to TSA and whose level of risk is undetermined, while also facilitating and improving the commercial aviation travel experience for the public. Travelers who choose not to enroll in this initiative are not subject to any limitations on their travel because of their choice; they will be processed through normal TSA screening before entering the sterile areas of airports. TSA also retains the authority to perform standard or other screening on a random basis on TSA PreCheck™ Application Program participants and any other travelers authorized to receive expedited physical screening.

TSA estimates that there will be an average of 4,948,845 respondents over a 3-year period, for a total of 14,871,740 respondents. This estimate is based on current and projected enrollments with TSA's existing program. TSA estimates that there will be an average annual hour burden of 5,031,067 hours over a 3-year projection, for a total of 15,093,202 hours. TSA estimates an average of 1.015 hours per respondent to complete the enrollment process, which includes time to fill out the enrollment or renewal application, round trip travel time to an enrollment center (as needed), providing biographic and biometric information to TSA (via an enrollment center or pre-enrollment options), the time burden for any records correction for the applicant, and time for surveys. The applicant fee per respondent for those who apply for the program directly with TSA will average $80 for initial enrollments, $70 for online renewals, and $75 for in-person renewals, which covers TSA's program costs, TSA's enrollment vendor's costs, and the FBI fee for the criminal history records check.

Dated: February 15, 2024.

Nicole Raymond,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2024–03537 Filed 2–21–24; 8:45 am]

BILLING CODE 9110–05–P

[2] The FBI's Rap Back service allows authorized agencies to receive on-going status notifications of any criminal history reported to the FBI after the initial processing and retention of criminal or civil transactions using fingerprint identification.

[3] Passengers who are eligible for expedited screening typically will receive more limited physical screening; *e.g.,* will be able to leave on their shoes, light outerwear, and belt; to keep their laptop in its case; and to keep their ''3–1–1'' compliant liquids/gels bag in a carry-on.

[4] Remote Proctored Enrollment refers to enrollments conducted in-person by the applicant and monitored remotely by a trusted agent via real-time video stream. The remote trusted agent maintains the integrity of the enrollment by monitoring the entire process from start-to-finish including the collection of identity documents and the traditional capture of contact fingerprints.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–09]

30-Day Notice of Proposed Information Collection: OneCPD Technical Assistance Needs Assessment Tool; OMB Control No.: 2506–0198

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* March 25, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *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. Interested persons are also invited to submit comments regarding this proposal and comments

should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 20, 2023, at 88 FR 64921.

A. Overview of Information Collection

Title of Information Collection: OneCPD Technical Assistance Needs Assessment.

OMB Approval Number: 2506–0198.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, *i.e.,* the technical assistance providers best able to develop efficient and effective programs and projects that increase the supply of affordable housing units prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

Respondents: Grantees and subrecipient organizations receiving funding to operate and manage programs administered by various HUD program office.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Frequency of Response: 1.

Average Hours per Response: 8.

Total Estimated Burdens: 400.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Needs Assessment	50	1	50	8	400	69.02	$27,608.00

Note: Information provided for grantees participating in the assessment. Hourly rates based on March 2023 Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation for state and local government workers by occupational and industry group, the median annual wage of $44.04 for Management, Professional, and Related, state, and local government workers. Fringe costs of 56.7% were added to all hourly rates so the actual rates used were $69.02. For DOL rates, visit *https://www.bls.gov/news.release/pdf/ecec.pdf.*

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–03593 Filed 2–21–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L19900000.PO0000.LLWO320.24X; OMB Control Number 1004–0169]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Use and Occupancy Under the Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Land Management (BLM) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before March 25, 2024.

ADDRESSES: Written comments and recommendations for this information collection request (ICR) should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kirk Rentmeister by email at *krentmeis@blm.gov,* or by telephone at 775–453–5514. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we invite the public and other Federal

agencies to comment on new, proposed, revised and continuing collections of information. This helps the BLM assess impacts of its information collection requirements and minimize the public's reporting burden. It also helps the public understand BLM information collection requirements and ensure requested data are provided in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 13, 2023 (88 FR 62819). No comments were received in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on the proposed ICR described below. The BLM is especially interested in public comment addressing the following:

(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This information collection enables the BLM to regulate the use and occupancy of unpatented hardrock mining claims, and to take any action necessary to prevent unnecessary or undue degradation of public lands as a result of such use or occupancy. The BLM collects information from mining claimants who want to undertake the activities that are necessary to locate a mining claim or mill site. This OMB Control Number is currently scheduled to expire on June 30, 2024. This request is for OMB to extend approval of this OMB control number for an additional three (3) years.

Title of Collection: Use and Occupancy Under the Mining Laws (43 CFR Subpart 3715).

OMB Control Number: 1004–0169.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Mining claimants.

Total Estimated Number of Annual Respondents: 70.

Total Estimated Number of Annual Responses: 70.

Estimated Completion Time per Response: 4 hours.

Total Estimated Number of Annual Burden Hours: 280.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Darrin King,

Information Collection Clearance Officer.

[FR Doc. 2024–03535 Filed 2–21–24; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037405; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: California State University, Sacramento, Sacramento, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), California State University, Sacramento has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes in this notice. The human remains and associated funerary objects were removed from Sacramento County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 25, 2024.

ADDRESSES: Dr. Mark Wheeler, Chief of Staff to President Luke Wood, California State University, Sacramento, 6000 J Street Sacramento, CA 95819, telephone (916) 460–0490, email *mark.wheeler@csus.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of California State University, Sacramento. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by California State University, Sacramento.

Description

Associated funerary objects were removed from CA–SAC–16 (also known as the Bennett Site) in Sacramento County, CA, over a period of more than seven decades by several institutions, agencies, and individuals. Sacramento State's collections stem from a donation made to the University by the estates of Anthony Zallio and Charles McKee, a 1950s excavation by the University under the direction of Richard Reeve, collections transferred to the University in 1977 from American River College (excavation led by Charles Gebhardt), a 1971 excavation by the University led by Ann Peak, and a 1990 excavation by Far Western Anthropological Group who donated the collection to the University. Portions of the collection have been previously published in the **Federal Register** and repatriated to the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California. An additional 338,273 associated funerary objects have been identified by the Tribe and consist of baked clay objects; faunal and floral remains; flaked and ground stones; historic materials; modified bones, shells, and stones; unmodified stones; ash, column, flotation, wood, and soil samples; pigments; quartz crystals; asphaltum; unidentified objects; and manuports. Of this number, at least 1,672 objects are currently missing, and California State University, Sacramento continues to look for them.

Human remains representing, at minimum, one individual were removed

from site CA–SAC–26 (also known as *Pujune*) in Sacramento County, CA. These human remains and associated funerary objects came into the University's possession through excavations conducted in the 1950s under the direction of Richard Reeve and Clifford Curtice for the University; and donations made by the estates of Anthony Zallio and Charles McKee. Occupation of the site is estimated to have primarily occurred during the Late through Historic periods. The 1,837 associated funerary objects consist of baked clay objects; faunal and floral remains; flaked and ground stones; historic materials; modified bones, shells, and stones; unmodified stones; cordage fragments; ash; pigments; quartz crystals; and radiocarbon and pollen samples. Of this number, at least 20 objects are currently missing and California State University, Sacramento continues to look for them.

Human remains representing, at minimum, 68 individuals were removed from site CA–SAC–31 (also known as *Sek*) in Sacramento County, CA. These human remains and associated funerary objects came into the University's possession through excavations conducted in the 1960s and 1970s under the direction of Jerald Johnson, John Beck, Ann Peak and Consiglio. Occupation of the site is estimated to have primarily occurred during the Middle through Historic periods. The 29,765 associated funerary objects consist of baked clay objects; faunal and floral remains; flaked and ground stones; historic materials; modified bones, shells, and stones; unmodified stones; manuports; pigments; unidentified materials; and midden and ash samples. Of this number, at least 11 objects are currently missing and California State University, Sacramento continues to look for them.

Human remains representing, at minimum, 16 individuals were removed from site CA–SAC–32 (also known as Joe Mound) in Sacramento County, CA. These human remains and associated funerary objects came into the University's possession through excavations conducted in the 1950s under the direction of Richard Reeve. The age of the site is not known. The six associated funerary objects consist of faunal remains; modified bones; and flaked stones. Of this number, at least one object is currently missing and California State University, Sacramento continues to look for it. Additional objects may be missing, which may include other categories of artifacts not listed here.

Human remains representing, at minimum, 18 individuals were removed from site CA–SAC–192 (also known as *Kadema*) in Sacramento County, CA. These human remains and associated funerary objects came into the University's possession through excavations conducted by the University from 1959–1960 under the direction of William Beeson for a field school course; a 1977 transfer from American River College; miscellaneous small collections donated to the University by Inlow Cresta, David Boloyan and others; and a 1961 excavation led by William Olsen (collection donated to the University in the 1960s from the State Indian Museum). Occupation of the site is estimated to have primarily occurred during the Late through Historic periods. The 32,338 associated funerary objects consist of baked clay objects; faunal and floral remains; flaked and ground stones; historic materials; modified bones, shells, and stones; unmodified stones; ash; textiles; basketry fragments; quartz crystals; pigments; unidentified materials; and soil samples. Of this number, at least 1,533 objects are currently missing and California State University, Sacramento continues to look for them.

Human remains representing, at minimum, one individual were removed from site CA–SAC–199 in Sacramento County, CA. These human remains and associated funerary objects came into the University's possession through excavations conducted by the University in the 1950s and 1980s. Occupation of the site is estimated to have primarily occurred during the Late through Historic periods. The 15 associated funerary objects consist of faunal remains; flaked and ground stones; and modified shells, and stones. An unknown number of objects may be missing from the collection, including those that fall under different artifact categories than what is listed, and California State University, Sacramento continues to look for them.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes. The following types of information were used to reasonably trace the relationship: anthropological, archeological, folkloric, geographical, historical, kinship, linguistic, oral traditional, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, California State University, Sacramento has determined that:

- The human remains described in this notice represent the physical remains of 104 individuals of Native American ancestry.
- The 402,234 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; United Auburn Indian Community of the Auburn Rancheria of California; and the Wilton Rancheria, California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, California State University, Sacramento must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. California State University, Sacramento is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

This notice was submitted after the effective date of the revised regulations

(88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03572 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037408; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Museum of Riverside, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Museum of Riverside intends to repatriate certain cultural items that meet the definition of objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after March 25, 2024.

ADDRESSES: Robyn G. Peterson, Ph.D., Museum Director, Museum of Riverside, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5792, email *rpeterson@riversideca.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Museum of Riverside, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of two cultural items have been requested for repatriation. One item of cultural patrimony is an Oglala Sioux otter skin headdress or cape. From the Museum record: Item was worn by Chief Red Cloud/Sioux Warrior/Pine Ridge, SD; acquired by Harwood Hall, who had supervised Pine Ridge boarding school (1885–1893); donated to Museum in 1951; no documentation of associated hazardous substances. One item of cultural patrimony is an Oglala Sioux otter skin medicine bag including head, body, arms, legs, tail. From the Museum record: Acquired by Samuel Maus Purple (1878–1965) born Illinois; interested in fossils, archaeology; donated to Museum 1968; no documentation of associated hazardous substances.

Determinations

The Museum of Riverside has determined that:

- The two objects described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural items described in this notice and the Oglala Sioux Tribe.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the Museum of Riverside must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Museum of Riverside is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: February 9, 2024

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03575 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037410; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and determined they are reasonably believed to be related to lineal descendants in this notice. The human remains were collected at the Pierre Indian School in Hughes County, SD.

DATES: Repatriation of the human remains in this notice may occur on or after March 25, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were collected at the Pierre Indian School in Hughes County, SD. The human remains are hair clippings collected from one individual; Inez La Roche identified as ''Sioux'' who was recorded as being 16 years old. C.B. Dickinson took the hair clippings at the Pierre Indian School between 1930 and 1933. Dickinson sent the hair clippings to

George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Lineal Descent

The human remains in this notice are connected to an identifiable individual whose descendants can be traced directly and without interruption by means of a traditional kinship system or by the common law system of descendance.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of an individual of Native American ancestry.
- Virginia Wilhelm is a direct lineal descendant to the named individual's human remains described in this notice.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the lineal descendants, Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the lineal descendant, identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03577 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037406; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Fish and Wildlife Service, Klamath Falls, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Siskiyou County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 25, 2024.

ADDRESSES: Spencer Lodge, USFWS, 1936 California Avenue, Klamath Falls, OR 97601, telephone (541) 885–8481, email *spencer_lodge@fws.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the USFWS. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the USFWS.

Description

Human remains representing, at minimum, 46 individuals, along with associated funerary objects, were removed from Siskiyou County, CA by R. J. Squier and Gordon L. Grosscup during archeological excavations occurring between 1952–1954. Excavations took place at two national wildlife refuges (NWR) operated by the USFWS, Tule Lake and Lower Klamath NWR, where human remains and associated funerary objects were removed from four sites (CA-Sis-2, CA-Sis-108, CA-Sis-223, CA-Sis-239). These objects have been curated at the Phoebe A. Hearst Museum at the University of California Berkeley since exhumation.

There are 373 associated funerary objects within this collection. They include: 268 Olivella beads, 16 flakes, 13 bangles, 11 crystals, 10 scrapers, 10 bird bone tubes, five lots of ochre/pigment (red, yellow, white), four awls, four pipe and pipe fragments, four projectile points, four lots of shell fragments, three bone tools, three animal bone beads, two haliotis ornaments, two bone whistles, two obsidian blades, two choppers, two bone pendants, two bone pins, two pebbles (agate, quartz), one lot of ashes and charcoal from pipe, one projectile point fragment, one unworked Olivella shell, and one worked bone fragment. Nine beads and four lots of shell fragments are currently missing from the collection, and the Museum continues to looks for them.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. Here is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information and geographical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the USFWS has determined that:

- The human remains described in this notice represent the physical remains of 46 individuals of Native American ancestry.
- The 373 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Klamath Tribes and the Modoc Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the USFWS must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The USFWS is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03573 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037415; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Cleveland State University, Cleveland, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Cleveland State University has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Franklin County, MA.

DATES: Repatriation of the human remains in this notice may occur on or after March 25, 2024.

ADDRESSES: Andrew E. Kersten, Cleveland State University, 2121 Euclid Avenue, Cleveland, OH 44115–2214, telephone (216) 687–9350, email *a.e.kersten@csuohio.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Cleveland State University. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by Cleveland State University.

Description

Human remains representing, at minimum, one individual were removed from Franklin County, MA. The human remains collection currently held at Cleveland State University is largely the work of the former member of faculty in the CSU Department of Anthropology, Dr. John Blank (d. 2019). The sites known to be associated with the concerns of NAGPRA all fall within those excavated by (or alongside) Dr. Blank, beginning in the 1960s. Many of Dr. Blank's excavations took place as field schools for students, but some also contained components of rescue archeology (as sites emerged due to erosion). The human remains in question here were part of the Knapp site in Franklin County, MA. The individual appears to be 50–60 years of age. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, folklore, geographical information, historical information, kinship, linguistics, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Cleveland State University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, Cleveland State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. Cleveland State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03581 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037411; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Dallas and Wilcox Counties, Alabama.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 25, 2024.

ADDRESSES: Patricia Capone, PMAE, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were removed from the Dale Site (1Wx77) Wilcox County, Alabama, in 1899 by C.B. Moore and donated to the PMAE the same year. The one associated funerary object is one lot consisting of a ceramic vessel and fragments.

Human remains representing, at minimum, one individual were removed from the Durand (Durant's) Bend Site (1Ds1) Dallas County, Alabama, in 1899 by C.B. Moore and donated to the PMAE the same year. The 14 associated funerary objects are: seven beads; one lot consisting of ceramic fragments and a bead; four lots consisting of ceramic vessels and vessel fragments; one ceramic vessel fragment; and one shell gorget.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, geographical information, historical information, kinship, linguistics, oral tradition, other relevant information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The 15 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice as removed from the Dale Site (1Wx77; Wilcox County, Alabama), and the Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; The Choctaw Nation of Oklahoma; and The Muscogee (Creek) Nation.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice as removed from the Durand (Durant's) Bend Cemetery (1Ds1; Dallas County, Alabama), and the Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03578 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037414; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Santa Rosa Junior College Multicultural Museum, Santa Rosa, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Santa Rosa Junior College Multicultural Museum (SRJCMM) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Los Angeles County and Santa Barbara County, CA.

DATES: Repatriation of the cultural items in this notice may occur on or after March 25, 2024.

ADDRESSES: Rachel Minor, Santa Rosa Junior College Multicultural Museum, 1501 Mendocino Ave., Santa Rosa, CA 95401, telephone (707) 524–1862, email *rminor@santarosa.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the SRJCMM. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the SRJCMM.

Description

The three cultural items were removed from Santa Barbara and Los Angeles, CA. Accession #87.027: one Chumash Steatite Bowl, pre-1800, found on the island of Catalina. Bowl has several old breaks that have been repaired. Was probably found in shards. Donated by Charles Beardsley to the SRJCMM in 1987. Accession #92.065 A and B: one stone mortar and one stone pestle, found on the Santa Barbara Coast in the 1800s by the Harrington family. Donated in 1992 by Mr. Jess Rathbun.

The three unassociated funerary objects are one steatite bowl, one stone mortar, and one stone pestle.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: Geographical information and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the SRJCMM has determined that:

- The three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the SRJCMM must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The SRJCMM is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004, and the implementing regulations, 43 CFR 10.9.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03580 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037417; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Pawnee Indian Reservation in Pawnee County, OK, and Chilocco Indian Agricultural School in Kay County, OK.

DATES: Repatriation of the human remains in this notice may occur on or after March 25, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, three individuals were collected at the Pawnee Indian Reservation, Pawnee County, OK. The human remains are hair clippings collected from one individual who was recorded as being 37 years old, one individual who was recorded as being

30 years old, and one individual whose age was not recorded. All three individuals were described as ''Potawatomi.'' Arvel R. Snyder took the hair clippings at the Pawnee Indian Reservation between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual were collected at the Chilocco Indian Agricultural School, Kay County, OK. The human remains are hair clippings collected from one individual who was recorded as being 14 years old and described as ''Potawatomi.'' Lawrence E. Correll took the hair clippings at the Chilocco Indian School between 1930 and 1933. Correll sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Citizen Potawatomi Nation, Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03583 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037407; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Kansas State University, Manhattan, KS

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Kansas State University has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after March 25, 2024.

ADDRESSES: Megan Williamson, Department of Sociology, Anthropology, and Social Work, Kansas State University, 204 Waters Hall, 1603 Old Claflin Place, Manhattan, KS 66506–4003, telephone (785) 532–6005, email *mwillia1@ksu.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Kansas State University, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. The 2,292 associated funerary objects are debitage (approximately 2,131 fragments), unmodified stone (66), chipped stone debris (24), chipped stone tools (14), projectile points (seven), hematite (one), faunal (17), shell (one), beads (two), red ochre (two), charcoal (16), daub (10) and a bullet.

The human remains and associated funerary objects listed above were removed from Geary County, KS, at a site known as Witt Mound 1 (14GE608). Dr. Patricia J. O'Brien and students excavated as part of an archaeological field school during the summer of 1974. Since then, the items have been under the stewardship of Kansas State University.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by geographic location or acquisition history.

Determinations

Kansas State University has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 2,292 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the human remains and associated funerary objects described in this notice and the Kaw Nation, Oklahoma; Pawnee Nation of Oklahoma; The Osage Nation; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Wichita and

Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, Kansas State University must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. Kansas State University is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03574 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037404; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Fine Arts Museums of San Francisco, San Francisco, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Fine Arts Museums of San Francisco (FAMSF) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from the state of MS.

DATES: Repatriation of the cultural items in this notice may occur on or after March 25, 2024.

ADDRESSES: Christina Hellmich, Fine Arts Museums of San Francisco, 50 Hagiwara Tea Garden Drive, San Francisco, CA 94118, telephone (415) 750–2621, email *chellmich@famsf.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the FAMSF. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the FAMSF.

Description

The three cultural items were removed from the state of MS. The two earspools and mask were gifted to the FAMSF by Mr. and Mrs. Kenneth F. Siebel, Jr. in 1984. Earspools (pair), Limestone and copper foil, 2¾ in diam. (7 cm diam.) each, 1984.89.2ab. Mask Shell, 5½ H x 4 in W (14 H x 10.2 W cm), 1984.89.3.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: consultation with Tribes, museum documentation and art historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the FAMSF has determined that:

- The three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Chickasaw Nation and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the FAMSF must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The FAMSF is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004, and the implementing regulations, 43 CFR 10.9.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03571 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037409; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Hawai'i, Hawai'i

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Hawai'i intends to repatriate certain cultural items that

meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from a burial cave on the Kona coast of Hawai'i island.

DATES: Repatriation of the cultural items in this notice may occur on or after March 25, 2024.

ADDRESSES: Dr. Jonathan Osorio, Dean of Hawai'inuiākea School of Hawaiian Knowledge, University of Hawai'i-Mānoa, 2540 Maile Way, HI 96822, telephone (808) 956–0980, email *osorio@hawaii.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Hawai'i. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of Hawai'i.

Description

Two burial kapa (bark cloth) were recently discovered within numbered editions of a book entitled *Specimens of Hawaiian Kapa Vol I* by D.R. Severson within the UH Library system. One edition, No. 20, 2 was found in the UH-Manoa (UHM) Hamilton Library, GN432.S37, while the other edition, No. 28, was found in the UH-Hilo Mo'okini Library, GN432.S37. All respective numbered editions of the book (No.'s 1 to 95) were published by Severson in 1979, with No.'s 1–50 including samples of burial kapa. UH Mānoa acquired a copy (No. 20) in the same year it was published; UH Hilo received a donation of a copy (No. 28) in 2019. Each book contained actual kapa samples that Severson had gathered over the years from various notable collections and individuals; however, the burial kapa was from Severson's personal collection. The only detail regarding their acquisition indicates that they were acquired from burial caves on the Kona Coast of Hawai'i Island. There is no way to determine if they were illicitly acquired or not. As the book contains traditional Hawaiian kapa acquired during the 19th century, its assumed that the burial kapa may have also likely been acquired during the same time period. Its further unknown if these burial kapa were exclusively made for burial or if they were personal belongings of the deceased.

Cultural Affiliation

A detailed assessment of the unassociated funerary objects was made by UH staff in consultation with representatives of Hui Iwi Kuamo'o and the Office of Hawaiian Affairs (OHA). There is a relationship of shared group identity that can reasonably be traced between the unassociated funerary object and present-day Native Hawaiian organizations listed in this notice. The following types of information were used to reasonably trace the relationship: anthropological information, historical information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Hawai'i has determined that:

- The two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Hui Iwi Kuamo'o.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the University of Hawai'i must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of Hawai'i is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004, and the implementing regulations, 43 CFR 10.9.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03576 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037416; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Office of Indian Affairs Government School, Akutan Island, AK.

DATES: Repatriation of the human remains in this notice may occur on or after March 25, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, 14 individuals were collected at the Office of Indian Affairs Government School, Akutan Island, AK. The human remains are hair clippings collected from one individual who was recorded as being 68 years old, one individual recorded as being 67 years old, one individual who was recorded as being 65 years old, one individual who was recorded as being 47 years old, three individuals who were recorded as being 45 years old, two individuals who were recorded as being 40 years old, one individual recorded as being 30 years old, one individual who was recorded as being 19 years old, two individuals recorded as being 14 years old, and one individual recorded as being 13 years old. All individuals were identified as ''Aleut.'' Elizabeth Burrows took the hair clippings at the Office of Indian Affairs Government School, Akutan Island between 1930 and 1933. Burrows sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of 14 individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Native Village of Akutan.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03582 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037412; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the ''Carson Indian School,'' (now Stewart Indian School), Carson City County, NV, and the Sherman Institute, Riverside County, CA.

DATES: Repatriation of the human remains in this notice may occur on or after March 25, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were collected at ''Carson Indian School,'' (now Stewart Indian School), Carson City County, NV. The human remains are hair clippings collected from one individual, George Wessell, who was recorded as being male, 15 years old and identified as ''Digger.'' Frederic Snyder took the hair clippings at the ''Carson Indian School'' between 1930 and 1933. Snyder sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Human remains representing, at minimum, one individual were collected at the Sherman Institute, Riverside County, CA. The human remains are hair clippings collected from one individual, May Hadurick, who was recorded as being female, 16 years old and identified as ''Miwok.'' Samuel H. Gilliam took the hair clippings at the Sherman Institute between 1930 and 1933. Gilliam sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of

information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03579 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37439; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before February 10, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by March 8, 2024.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State≤.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before February 10, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name(if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

Los Angeles County

Brossart, John F. and Julia House, 512 S Ivy Avenue, Monrovia, SG100010097

Blair, Luther and Adah, House, 508 S Ivy Avenue, Monrovia, SG100010098

Los Feliz Boulevard Courtyard Apartments Historic District, parts of both sides of W Los Feliz Blvd., from Vermont to Hillhurst Aves, Los Angeles, SG100010099

Winona Boulevard Mid-Century Modern Historic District, both sides Winona Boulevard, Franklin Avenue to Hollywood Boulevard, Los Angeles, SG100010100

Mariposa Street Bridge roughly 10-ft. s of junction of S Mariposa St. and W Valley Heart Dr., Burbank, SG100010110

Marin County

The Last Resort Historic District, 230 Cintura Avenue and 2 Alta Avenue, Lagunitas, SG100010109

Riverside County

Bel Vista House at 1150 N Calle Rolph, 1150 N Calle Rolph, Palm Springs, SG100010094

Sacramento County

Sacramento Shops Historic District, 111 I Street, Sacramento, SG100010111

San Diego County

Talmadge Park Estates Historic District, Roughly bounded by 44th and 49th Streets; Norma, Constance and Natalie Drives; Adams and Monroe Avenues, San Diego, SG100010106

COLORADO

Delta County

Delta Municipal Light & Power Plant, 1133 Main St., Delta, SG100010079

Denver County

John and Nettie Kirtley House, 4524 Vrain Street, Denver, SG100010080

Montrose County

Knights of Pythias (KP) Building, 33 South Cascade Avenue, Montrose, SG100010081

CONNECTICUT

Middlesex County

Caleb Pratt House, 26 Gates Road, Essex, SG100010112

HAWAII

Honolulu County

Homelani House, 21 Homelani Place, Honolulu, SG100010091

Kauai County

Sakuichi and Chieko Matsumoto Residence, 2257 Kuai Road, Poipu, SG100010092

KENTUCKY

Jefferson County

Louisville Lead & Color Co. Paint Factory & Warehouse (West Louisville MRA), 1416–1426 Lytle St., Louisville, MP100010095

Great Atlantic & Pacific Tea Company Bakery & Warehouse, 901 S 15th Street, Louisville, SG100010096

MAINE

Cumberland County

Trefethen-Evergreen Improvement Association, 12 Trefethen Avenue, Peaks Island, Portland, SG100010086
Fort McKinley Torpedo Storehouse, 148 Coveside Drive, Portland, SG100010087

Penobscot County

Hasey's Maine Stages Building, 490 Broadway, Bangor, SG100010085

Sagadahoc County

Washington Park Historic District, Park and Winship Streets, Bath, SG100010084

Waldo County

Camp NEOFA, 213 Trotting Park Road, Montville, SG100010083

MONTANA

Cascade County

Baatz Block, 400–402 2nd Avenue South, Great Falls, SG100010108

NEW YORK

Washington County

Thomson District No. 10 School, 5158 NY Route 113, Greenwich, SG100010104

PENNSYLVANIA

Chester County

Hosanna Church and Cemetery, 531 University Road, Upper Oxford Township, SG100010101

Philadelphia County

Windsor Manufacturing Company, 3800 Jasper Street, Philadelphia, SG100010102

TENNESSEE

Haywood County

Esso Filling Station (Brownsville, Tennessee MPS), 41 N Washington Avenue, Brownsville, MP100010103

UTAH

Weber County

Sunnyfield Barn, 2103 North 5500 East, Eden, SG100010090

WISCONSIN

Trempealeau County

Hanson-Losinski Rockshelter Complex (Wisconsin Indian Rock Art Sites MPS), Address Restricted, Arcadia vicinity, MP100010089

A request for removal has been made for the following resource(s):

LOUISIANA

Beauregard Parish

Dry Creek High School Building, LA 113, Dry Creek, OT87002572

Caddo Parish

Antoine, C.C., House, 1941 Perrin St., Shreveport, OT99001013

De Soto Parish

Land's End Plantation, 7 mi. SE of Stonewall on Red Bluff Rd., Stonewall vicinity, OT72001453
Williams House, 407 Texas St., Mansfield, OT94000682

Franklin Parish

Baskin High School Building, LA 857, Baskin, OT81000295

Jefferson Parish

Kenner High School, Old, 1601 Rev. Richard Wilson, Kenner, OT08000014

St. Martin Parish

Fontenette-Bienvenu House (Louisiana's French Creole Architecture MPS), 201 N Main St., St. Martinville, OT97000876

Tangipahoa Parish

Green Shutters, Franklin St., Tangipahoa, OT82002797

MAINE

Androscoggin County

Gilead Railroad Station, Former Off NE end of Twin Rd., Auburn vicinity, OT92000272

Additional documentation has been received for the following resource(s):

NEW MEXICO

Otero County

La Luz Pottery Factory (Additional Documentation), 2 mi. (3.2 km) E of La Luz, La Luz vicinity, AD79001544

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2024–03541 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037403; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the State Historical Society of Wisconsin intends to repatriate a certain cultural item that meets the definition of both a sacred object and an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural item in this notice may occur on or after March 25, 2024.

ADDRESSES: Jacqueline Pozza Reisner, Curator of American Indian Collections, State Historical Society of Wisconsin, 204 S. Thornton Avenue, Madison, WI 53703, telephone (608) 263–3537, email *550acqueline.pozza@wisconsinhistory.org* and *nagpra@wisconsinhistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the State Historical Society of Wisconsin, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of one cultural item has been requested for repatriation. The one item that is both a sacred item and an object of cultural patrimony is a pipe bowl and stem that was removed an unknown location, probably in Wisconsin, possibly from Madeline Island. The State Historical Society of Wisconsin's documentation does not indicate the specific provenience nor provenance of this pipe and stem. The pipe and stem are housed at the Society's Madeline Island Museum, which was founded in 1958 by Bella and Leo Capser, who collected historical items of Madeline Island and of broader Native American communities. The Museum and the Capser's collections were donated to the State Historical Society on August 27, 1968 with legal control of its collections being turned over to the Society at that time. This 1968 agreement between Madeline Island Museum, Inc. and the State Historical Society of Wisconsin does not prohibit it from following federal mandates under NAGPRA. During this transfer, much of the documentation noting provenience and provenance of the Museum's holdings had been lost prior to that transfer. The collection was first cataloged by the Society in 1983. Much of the original provenience and provenance information is missing and is currently unknown.

The one sacred object/object of cultural patrimony is a pipe (bowl and stem) that was assigned the catalog number MI1983.237.356 by the Society. The bowl is made of catlinite and has lead inlay. The stem is carved out of wood to have a spiral shape and is painted with blue-green, yellow, and red pigments. An eagle and geometric figures are engraved on the stem. Four feathers are suspended from the pipe stem with strings of beads. The Society

has no records indicating that this pipe and stem were exposed to any hazardous substances while in the Society's stewardship.

Through consultation, it has been determined that the pipe and stem are used in a multitude of contemporary ceremonies by traditional religious leaders. They are also traditionally owned by an entire Tribe and are passed onto caretakers. They are not individually owned and are important to maintaining cultural and religious practices of the Tribe.

Determinations

The State Historical Society of Wisconsin has determined that:

- The one object described in this notice is, according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization, a specific ceremonial object needed by a traditional Native American religious leader for present-day adherents to practice traditional Native American religion, and has ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision).
- There is a reasonable connection between the cultural item described in this notice and the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin and the Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the State Historical Society of Wisconsin must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The State Historical Society of Wisconsin is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03570 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037418; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Newport County, RI.

DATES: Repatriation of the human remains in this notice may occur on or after March 25, 2024.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, one individual were removed from the Tiverton graves at Anaquaket Neck in Newport County, RI, by Andre Robeson in 1869 during a Peabody Museum Expedition directed by Jefferies Wyman. Copper staining on the remains indicate that the individual was buried sometime during the Historic/Contact period or later (post-A.D. 1500). In addition, the remains are described in PMAE sources as ''Pocasset,'' and such a specific attribution suggests that the burial dates to the Historic period. According to historic documentation and consultation with representatives of the Wampanoag Repatriation Confederation, the Pocasset are a historically known Wampanoag community. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from the Stone Bridge burial site in Tiverton, Newport County, RI at an unknown date by an unknown collector. The interment most likely dates to the Historic/Contact period or later (post-A.D. 1500) as the Stone Bridge burial site is a known Historic period burial ground. In addition, the remains are described in PMAE sources as ''Pocasset,'' and such a specific attribution suggests that the burial dates to the Historic period. According to historic documentation and consultation with representatives of the Wampanoag Repatriation Confederation, the Pocasset are a historically known Wampanoag community. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological, archeological, geographical, historical, and oral tradition.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Mashpee Wampanoag Tribe and the

Wampanoag Tribe of Gay Head (Aquinnah).

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Assonet Band of the Wampanoag Nation, a non-federally recognized Indian group.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after March 25, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted before the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024). As the notice conforms to the mandatory format of the **Federal Register** and includes the required information, the National Park Service is publishing this notice as submitted.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: February 9, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–03584 Filed 2–21–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–600]

United States-Mexico-Canada Agreement (USMCA) Automotive Rules of Origin: Economic Impact and Operation, 2025 Report; Proposed Information Collection; Comment Request; The USMCA Automotive Rules of Origin Motor Vehicle Producer Questionnaire

AGENCY: United States International Trade Commission.

ACTION: Notice of request for public comments.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995, the U.S. International Trade Commission (Commission or USITC) hereby gives notice that it plans to submit a request for approval of a questionnaire to the Office of Management and Budget (OMB) for review and requests public comment on its draft proposed collection.

DATES: To ensure that the Commission will consider your comments, it must receive them no later than 60 days after publication of this notice in the **Federal Register**.

ADDRESSES: All Commission offices are in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Please direct all questions to the project team via email at *USMCAAutoROO@usitc.gov* or via phone to Aaron Woodward at 202–205–2663.

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* General information concerning the Commission may be obtained by accessing its internet address (*https://www.usitc.gov*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–600, *USMCA Automotive Rules of Origin: Economic Impact and Operation, 2025 Report,* instituted under section 202A(g)(2) of the United States-Mexico-Canada Agreement Implementation Act (19 U.S.C. 4532(g)(2)) (USMCA Implementation Act). The USMCA Implementation Act requires the Commission to prepare a series of five biennial reports on the USMCA automotive rules of origin (ROOs) and their impact on the U.S. economy, effect on U.S. competitiveness, and relevancy considering recent technology changes, and to provide those reports to the President, the House Committee on Ways and Means, and the Senate Committee on Finance. The first of the reports was delivered on June 30, 2023, with four additional reports due in 2025, 2027, 2029, and 2031. This investigation was initiated on October 15, 2023, and the notice of investigation was published in the **Federal Register** on November 21, 2023 (88 FR 81100). The Commission will deliver its report to the President and Congress by July 1, 2025. The 2025 report will be the second of five reports. The Commission indicated in its notice of investigation that it will need to obtain data and information through a survey. The survey will assist the Commission in gathering responses and data from motor vehicle producers to determine the direct impacts of the ROOs on the aforementioned factors.

Summary of Proposal: The Commission intends to submit the following draft information collection plan to OMB and invites public comment.

(1) *Number of forms submitted:* 1.

(2) *Title of forms:* The USMCA Automotive Rules of Origin Motor Vehicle Producer Questionnaire.

(3) *Type of request:* New.

(4) *Frequency of use*: Industry questionnaire, single data gathering, scheduled for 2024.

(5) *Description of respondents:* North American motor vehicle producers with U.S. production operations.

(6) *Estimated number of respondents:* 30.

(7) *Estimated total number of hours to complete the questionnaire per respondent:* 10 hours.

(8) Information obtained from the questionnaire will be treated as confidential business information by the Commission and not disclosed in a manner that would reveal the individual operations of a business.

Method of Collection: Respondents will be sent a letter with a link and individual code for accessing the online form. Once the online form is complete, respondents will be directed to submit the form by selecting a submit button.

Request for Comments: Comments are invited on (1) the elements of the draft questionnaire; (2) whether the proposed collection of information is necessary; (3) the accuracy of the agency's estimate of the burden of the proposed information collection; (4) ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The draft questionnaire and other supplementary documents may be downloaded from the USITC website at *https://www.usitc.gov/USMCAAutoROO.*

Any comments on the draft questionnaire should be sent via email at *USMCAAutoROO@usitc.gov.* Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they will also become a matter of public record. As such, proprietary or confidential business information should not be submitted as part of comments on the draft questionnaire.

By order of the Commission.

Issued: February 15, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–03553 Filed 2–21–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint regarding *Certain Firearm Disassembly Tongs,* DN 3725; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of GTUL, LLC on February 15, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain firearm disassembly tongs. The complaint names as respondents: Anthony Drouget of France; OFFROADCALI of Livermore, CA; roadrunnercarparts of Azusa, CA; DRP-California of Livermore, CA; Eurasiaparts Automotive Parts of Temecula, CA; Brementech of Antioch, CA; MTCPARTS.COM of Livermore, CA; Homelifegoods of Stone Mountain, GA; and Joybuy Marketplace Jingdong E-Commerce (Trade) Hong Kong Corporation Limited of Hong Kong.

The complainant requests that the Commission issue a permanent exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3725'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 16, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–03592 Filed 2–21–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–23–008]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: February 29, 2024 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. No. 731–TA–344 (Fifth Review) (Tapered Roller Bearings from China). The Commission currently is scheduled to complete and file its determination and views of the Commission on March 8, 2024.
5. *Outstanding action jackets:* none.

CONTACT PERSON FOR MORE INFORMATION: Sharon Bellamy, Supervisory Hearings and Information Officer, 202–205–2000.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: February 20, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–03717 Filed 2–20–24; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–672–673 (Fifth Review)]

Silicomanganese From China 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 silicomanganese from China 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: Kenneth Gatten III (202–708–1447), 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 Ukraine to its notice of institution (88 FR 75029, November 1, 2023) were adequate, and determined to conduct a full review of the order on imports from Ukraine. The Commission also found that the respondent interested party group response from China was inadequate but determined to conduct full review of the order on imports from that country in order to promote administrative efficiency in light of its determination to conduct a full review of the order with respect to 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. 2024–03557 Filed 2–21–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–739 (Fifth Review)]

Clad Steel Plate From Japan; Scheduling of an Expedited Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DATES: February 5, 2024.

FOR FURTHER INFORMATION CONTACT: Alexis Yim (202–708–1446), 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 this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 5, 2024, the Commission determined that the domestic interested party group response to its notice of institution (88 FR 75026, November 1, 2023) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of this review 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, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the review has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for this review on March 11, 2024. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before 5:15 p.m. on March 14, 2024 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by March 14, 2024. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must 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 review must be served on all other parties to the review (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.

Determination.—The Commission has determined this review is extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Act; 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. 2024–03546 Filed 2–21–24; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the response submitted on behalf of NobelClad to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Henry Manning Pickett, M.D.; Default Decision and Order

On July 10, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Henry Manning Pickett, M.D., (Respondent) of Lakewood, Colorado. Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC/ISO informed Respondent of the immediate suspension of his DEA Certificate of Registration, Control No. AP1388948, pursuant to 21 U.S.C. 824(d), alleging that Respondent's continued registration constitutes '' 'an imminent danger to the public health or safety.' '' *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Respondent's registration, alleging that Respondent's continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

The OSC/ISO notified Respondent of his right to file with DEA a written request for hearing within 30 days after the date of receipt of the OSC/ISO; the OSC/ISO also notified Respondent that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 8–9 (citing 21 CFR 1301.43). Here, Respondent filed an untimely request for hearing on August 17, 2023,[1] and within his request for hearing, failed to answer the allegations contained in the OSC/ISO as required by 21 CFR 1301.43. *See* RFAAX 3. On August 17, 2023, Chief Administrative Law Judge John J. Mulrooney, II, (the Chief ALJ) issued an Order requiring Respondent to, among other things, answer the allegations by August 23, 2023. *See* RFAAX 4. Respondent failed to file answers to the allegations or to otherwise respond to the order. Ultimately, the Chief ALJ determined that Respondent was in default, and on August 28, 2023, issued an Order Terminating Proceedings. *See* RFAAX 5. ''A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing

[1] Based on the Government's submissions in its RFAA dated August 29, 2023, the Agency finds that service of the OSC/ISO on Registrant was adequate and rendered on July 11, 2023. Specifically, on August 23, 2023, the Government filed a Notice of Service and Motion to Dismiss Request for Hearing as Untimely and to Terminate Proceedings, which included as an attachment the Declaration of a DEA Diversion Investigator asserting that on July 11, 2023, Registrant was personally served with the OSC/ISO at his registered address. RFAAX 2, at 1, 3, 13.

and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.'' *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Respondent's default pursuant to 21 CFR 1301.43(c), (f). *See also id.* § 1316.67.

I. Findings of Fact

The Agency finds that, in light of Respondent's default, the factual allegations in the OSC/ISO are admitted.

Colorado Standard of Care

Respondent is deemed to have admitted that the applicable standard of care for the practice of medicine in Colorado indicates that prior to prescribing opioid medication, a physician must, among other things: (1) establish a bona fide provider-patient relationship; (2) establish a diagnosis and legitimate medical purpose through performing a history, physical exam, laboratory imaging, and other studies; (3) assess the risk of opioid therapy, including identifying patient and family history and medication history through review of Prescription Drug Monitoring Program (PDMP) data; (4) assess the patient's pain for its nature, intensity, type, frequency, duration, and impact on function; (5) assess the patient's functional ability during treatment and prior to change in medications; (6) consider referrals to other providers for mental health assessments if necessary; and (7) review the PDMP patient profile. RFAAX 1, at 2. Further, Respondent admits that the applicable standard of care provides that clinicians should continue opioid therapy only if there is a clinically meaningful improvement in pain and function that outweighs the risk to patient safety and should practice particular caution when co-prescribing opioid pain medication with benzodiazepines or muscle relaxants and/or sedative hypnotics. *Id.* at 2–3.

Patient N.B.

According to the OSC/ISO, between June 2021 and October 2022, Respondent issued prescriptions for controlled substances to Patient N.B. on an approximately monthly basis; these prescriptions included prescriptions for fentanyl 50 mg (a schedule II opioid), zolpidem tartrate 10 mg (a schedule IV sedative), oxycodone/acetaminophen 10/325 mg (a schedule II opioid), alprazolam 2 mg (a schedule IV benzodiazepine), and tramadol 50 mg (a schedule V opioid). RFAAX 1, at 3. Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical purpose in the usual course of professional practice. *Id.* at 4.

Patient K.C.

According to the OSC/ISO, between June 2021 and February 2023, Respondent issued prescriptions for controlled substances to Patient K.C. on an approximately monthly basis; these prescriptions included prescriptions for oxycodone 30 mg (a schedule II opioid), carisoprodol 350 mg (a schedule IV muscle relaxant) and pregabalin 300 mg (a schedule V anti-convulsant). *Id.* at 4. Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical purpose in the usual course of professional practice. *Id.*

Patient B.M.

According to the OSC/ISO, between June 2021 and March 2023, Respondent issued prescriptions for controlled substances to Patient B.M. on an approximately monthly basis; these prescriptions included prescriptions for oxycodone 10 mg, alprazolam 2 mg, oxycodone/acetaminophen 10/325 mg, OxyContin 30 mg (a brand name drug containing an extended release formulation of oxycodone), and carisoprodol 350 mg. *Id.* at 5. Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical purpose in the usual course of professional practice. *Id.*

Patient R.M.

According to the OSC/ISO, between June 2021 and February 2023, Respondent issued prescriptions for controlled substances to Patient R.M. on an approximately monthly basis; these prescriptions included prescriptions for oxycodone 10 mg and 20 mg, zolpidem tartrate 10 mg, and lorazepam 0.5 mg (a schedule IV benzodiazepine). *Id.* Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical purpose in the usual course of professional practice. *Id.* at 6.

Patient S.S.

According to the OSC/ISO, between June 2021 and February 2023, Respondent issued prescriptions for controlled substances to Patient S.S. on an approximately monthly basis; these prescriptions included prescriptions for oxycodone 10 mg and 20 mg, alprazolam 0.5 mg and 1 mg, lorazepam 0.5 mg, and OxyContin 60 mg. *Id.* at 6. Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical purpose in the usual course of professional practice. *Id.*

Patient P.M.

According to the OSC/ISO, between June 2021 and March 2023, Respondent issued prescriptions for controlled substances to Patient P.M. on an approximately monthly basis; these prescriptions included prescriptions for oxycodone 30 mg, hydromorphone 4 mg and 8 mg (a schedule II opioid), alprazolam 2 mg, and testosterone 200 mg/ml (a schedule III steroid). *Id.* at 6–7. Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* at 7. Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical

purpose in the usual course of professional practice. *Id.*

Patient D.J.

According to the OSC/ISO, between June 2021 and December 2022, Respondent issued prescriptions for controlled substances to Patient D.J. on an approximately monthly basis; these prescriptions included prescriptions for oxycodone 30 mg and lorazepam 2 mg. *Id.* Respondent has admitted that he issued these prescriptions without conducting an appropriate evaluation, without appropriately establishing a medical justification, without proper medical records, and without conducting proper ongoing monitoring of the patient. *Id.* Respondent has also admitted that he did not issue the above-referenced controlled substance prescriptions for a legitimate medical purpose in the usual course of professional practice. *Id.* at 8.

II. Discussion

A. The Five Public Interest Factors

Under the Controlled Substances Act (CSA), ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant]'s experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant]'s conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),[2] the Government's evidence in support of its *prima facie* case for revocation of Respondent's registration is confined to Factors B and D. *See* RFAAX 1, at 2–8. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4).

B. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Sualeh Ashraf, M.D.,* 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Respondent violated both federal and state law regulating controlled substances. RFAAX 1, at 2–8. Specifically, federal law states that ''[a] prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Further, Colorado state law defines ''unprofessional conduct'' as ''[a]dministering, dispensing, or prescribing any habit-forming drug or any controlled substance . . . other than in the course of legitimate professional practice,'' as well as ''[a]ny act or omission that fails to meet generally accepted standards of medical practice.'' Colo. Rev. Stat. section 12–240–121(1)(c), (j).

Here, Respondent has admitted that he repeatedly issued prescriptions for controlled substances without conducting appropriate evaluations, without appropriately establishing medical justifications, without taking and keeping proper medical records, and without conducting proper ongoing monitoring of his patients. Respondent further admitted that none of the above-referenced controlled substance prescriptions were issued for a legitimate medical purpose or in the usual course of professional practice. As such, the Agency finds that Respondent repeatedly violated 21 CFR 1306.04(a) and Colorado Revised Statutes section 12–240–121(1)(c).

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Respondent's registration and thus finds Respondent's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Respondent failed to provide any evidence to rebut the Government's *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds to revoke Respondent's registration, the burden shifts to Respondent to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18882, 18910 (2018). When a respondent has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos. 219 and 5195,* 77 FR 62316, 62339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33738, 33746 (2021).

Here, although Respondent initially requested a hearing, he repeatedly failed to answer the allegations contained in the OSC/ISO, failed to file any other responses as directed by the Chief ALJ, and did not otherwise avail himself of the opportunity to refute the Government's case. As such, Respondent has made no representations as to his future compliance with the CSA nor made any demonstration that he can be entrusted

[2] As to Factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence ''does not weigh for or against a determination as to whether continuation of the [registrant's] DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,*76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor. *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010). Agency cases have therefore found that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* Finally, as to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

with registration. Moreover, the evidence presented by the Government shows that Respondent violated the CSA, further indicating that Respondent cannot be entrusted.

Accordingly, the Agency will order the revocation of Respondent's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AP1388948 issued to Henry Manning Pickett, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Henry Manning Pickett, M.D., to renew or modify this registration, as well as any other pending application of Henry Manning Pickett, M.D., for additional registration in Colorado. This Order is effective March 25, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on February 14, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–03548 Filed 2–21–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On February 13, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Indiana in the case entitled *United States* v. *Navistar, Inc. et al.,* Civil Action No. 1:24–cv–00285.

In this action the United States is seeking reimbursement of response costs and future costs incurred from Defendants Arconic Corporation, Navistar, Inc., and Ford Motor Company for alleged violations of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* Under the proposed Consent Decree, the Defendants are required to reimburse the United States for costs incurred for response activities undertaken in response to the release and threatened release of hazardous substances at or from the A.A. Oil Site, a former waste oil collection, storage, and transfer facility located in Indianapolis, Indiana. The proposed Consent Decree also seeks a declaratory judgment that the Defendants are liable for future response costs that the United States may incur in connection with response actions that may be performed at the A.A. Oil Site.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Navistar, Inc. et al.,* D.J. Ref. No. 90–11–3–12580. 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, DC 20044–7611.

Any comments submitted in writing 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 proposed Consent Decree may be examined and downloaded at this Justice Department website: *http://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Patricia McKenna,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–03564 Filed 2–21–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Delinquent Filer Voluntary Compliance Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before March 25, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Under title I of ERISA, the administrator of each welfare plan and each pension plan, unless otherwise exempt, is required to file an annual report with the Secretary containing the information set forth in section 103 of ERISA. The statutory annual reporting requirements under titles I and IV of ERISA, as well as the Internal Revenue Code (the Code), are satisfied generally by filing the appropriate annual return/report (the Form 5500).

On April 27, 1995, the Department implemented the Delinquent Filer

Voluntary Compliance Program (the DFVC Program) in an effort to encourage annual reporting compliance. Under the DFVC Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under title I of ERISA. The only information collection requirement included in the DFVC Program is the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment is associated with the relevant plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending, along with the penalty payment, a copy of the delinquent annual report (without attachments or schedules) which is filed with the Department at a different address under the EFAST system. In the event that the plan administrator files the delinquent annual report using a 1998 or prior plan year form, a paper copy of only the first page of the Form 5500 or Form 5500–C, as applicable, should be submitted along with the penalty payment.

Certain pension plans for highly compensated employees, commonly called ''top hat'' plans, and apprenticeship plans may file a one-time statement in lieu of annual reports. With respect to such plans, information collection requirements of the DFVC Program are satisfied by sending a completed first page of an annual report form along with the penalty payment. The one-time statements are required to be sent to a different address within the Department. The DFVC Program is designed to allow the processing of all penalty payments at a single location within the Department. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 25, 2023 (88 FR 58312).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–EBSA.

Title of Collection: Delinquent Filer Voluntary Compliance Program.

OMB Control Number: 1210–0089.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 10,638.

Total Estimated Number of Responses: 10,638.

Total Estimated Annual Time Burden: 5,319 hours.

Total Estimated Annual Other Costs Burden: $9,393.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–03538 Filed 2–21–24; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (24–012)]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Aeronautics and Space Administration (NASA) announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). This meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Wednesday, March 13, 2024, 10:30 a.m.–4:30 p.m., ET.

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Designated Federal Officer, Aeronautics Research Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0984, or *irma.c.rodriguez@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be virtual and available to the public online. Dial-in audio teleconference and webcast details to watch the meeting remotely will be available on the NASA Advisory Council Aeronautics Committee website at *https://www.nasa.gov/nasa-advisory-council-aeronautics-committee/.* Enter the meeting as a guest and type your name and affiliation. *Note:* If dialing in, please ''mute'' your telephone.

The agenda for the meeting includes the following topics:

—Aeronautics Research Mission Directorate FY25 Budget Overview
—Workforce Efforts
—NASA 2040

It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2024–03620 Filed 2–21–24; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–24–0003; NARA–2024–016]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by April 8, 2024.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-24-0003/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on

submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Eddie Germino, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–3758. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Energy, Agency-wide, Financial Management and Reporting Records (DAA–0434–2021–0001).
2. Department of Health and Human Services, Office of the Secretary, Official Enforcement Case Files of the Office for Civil Rights (DAA–0468–2023–0001).
3. Department of Justice, Federal Bureau of Investigation, Career Board Records (DAA–0065–2022–0001).
4. Department of Transportation, Federal Transit Administration, Transit Integrated Appian Development platform (DAA–0408–2021–0001).
5. American Battle Monuments Commission, Agency-Wide, Cemetery Maintenance and Facilities (DAA–0117–2023–0001).
6. Peace Corps, Agency-Wide, Authorization To Use Personal Materials Agreement (DAA–0490–2023–0002).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2024–03561 Filed 2–21–24; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; NRC–2024–0023]

Kewaunee Solutions, Inc; Kewaunee Power Station; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request from Kewaunee Solutions, Inc. that would permit it to use funds from the Kewaunee Power Station nuclear decommissioning trust for the management of site restoration activities and allow trust disbursements for site restoration activities to be made without prior notice to the NRC.

DATES: The exemption was issued on January 26, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0023 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search

for Docket ID NRC–2024–0023. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Karl Sturzebecher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8534, email: *Karl.Sturzebecher@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: February 15, 2024.

For the Nuclear Regulatory Commission.

Marlayna V. Doell,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

Nuclear Regulatory Commission

Docket No. 50–305

Kewaunee Solutions, Inc.

Kewaunee Power Station

Exemption

I. Background

The Kewaunee Power Station (KPS) consists of a permanently shutdown and defueled pressurized water reactor located in Kewaunee County, Wisconsin. On May 7, 2013, the licensee at that time, Dominion Energy Kewaunee (DEK), permanently ceased power operations at KPS. On May 14, 2013, DEK certified that it had permanently defueled the KPS reactor vessel (Agencywide Documents Access and Management System (ADAMS) Accession No. ML13135A209). On May 21, 2014 (ML13225A224), the U.S. Nuclear Regulatory Commission (NRC) approved an exemption from the specific requirements of paragraph (a)(8)(i)(A) of Section 50.82 ''Termination of license,'' of Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of Title 10 of the Code of Federal Regulations (10 CFR) and paragraph (h)(1)(iv) of 10 CFR 50.75, ''Reporting and recordkeeping for decommissioning planning,'' for KPS. This exemption authorizes the licensee to use funds from the KPS nuclear decommissioning trust (NDT) for the management of spent nuclear fuel, and allows trust disbursements for spent fuel management to be made without prior NRC notice.

By letter dated March 29, 2023 (ML23093A031), Kewaunee Solutions, Inc., and EnergySolutions, LLC (Kewaunee Solutions and EnergySolutions, respectively, or the licensees), submitted, pursuant to 10 CFR 50.12, ''Specific Exemptions,'' a request for an exemption to 10 CFR 50.82(a)(8)(i)(A) that would allow KPS to use funds from the NDT for site restoration activities. Pursuant to 10 CFR 50.12, the licensees also requested an exemption from 10 CFR 50.75(h)(1)(iv), which would allow trust disbursements for site restoration activities to be made without prior notice to the NRC, similar to withdrawals in accordance with 10 CFR 50.82(a)(8) for decommissioning activities.

By letter dated October 5, 2023 (ML23278A100), the licensees provided a response to an NRC request for additional information (RAI), dated August 29, 2023 (ML23222A152), pertaining to decommissioning trust fund (DTF) cash flows that were provided in the initial exemption request submittal. The funds within the DTF were collected in compliance with the 10 CFR 50.75 financial requirements while KPS was operating. The licensees included with the exemption request a cash flow analysis reflecting the balance of funds within the trust throughout the decommissioning period, based upon a DECON decommissioning method ending in 2055, which is the year of anticipated license termination.

II. Request/Action

The request for an exemption from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would allow the licensees to use funds from the KPS NDT for the management of site restoration activities and allow trust disbursements for site restoration activities to be made without prior notice to the NRC. The licensee's initial basis for the exemption request relied upon financial and other decommissioning data reflected in a May 13, 2021, letter from EnergySolutions titled ''Notification of Amended Post Shutdown Decommissioning Activities Report (Revision 2) for Kewaunee Power Station'' (ML21145A083), as well as on decommissioning cost estimate data provided with that letter. However, during the course of its review the NRC staff concluded that the status of funding in the KPS DTF had changed since submission of the May 13, 2021, letter. Specifically, the NRC staff noted that there were significant differences in the expenditure and cash flow data reported in the Post-Shutdown Decommissioning Activities Report (PSDAR) and site-specific decommissioning cost estimate (SSDCE) that formed the basis of the exemption request, and a more recent DTF Status Report, dated March 30, 2023 (ML23089A304), for the KPS NDT, which reflects financial data through December 31, 2022. Therefore, the NRC staff raised a concern that the PSDAR and SSDCE data on which the NRC was to base its analysis of the portion of the exemption request relating to the requirement in 10 CFR 50.82(a)(8)(i)(A), to allow use of funds from the KPS NDT for site restoration activities, was outdated, and thus did not provide the timely information necessary for the staff to complete its analysis.

Subsequently, the NRC staff requested additional information from the licensees in an RAI letter dated August 29, 2023, requesting, in part, ''. . . revised license termination, spent fuel management, and site restoration plans, including forecasted cash flow expenditure data, that reflect Kewaunee Solution's current assumptions about the decommissioning method, decommissioning activities, and the schedule of such activities for KPS,'' so that the staff could perform its analysis of the requested exemption with more timely data. The licensees responded by letter dated October 5, 2023, explaining that the basis for demonstrating adequate funding for the exemption request is provided in (1) the March 30, 2023, KPS DTF Status Report, which includes detailed license termination, spent fuel management, and site restoration costs; and (2) the total forecasted expenditure data provided in

the RAI response, which is based on the DECON decommissioning method and the current schedule for decommissioning and license termination activities for KPS.

The requirement at 10 CFR 50.82(a)(8)(i)(A) restricts withdrawals from an NDT to expenses for legitimate decommissioning activities consistent with the definition in 10 CFR 50.2, ''Definitions.'' The definition of ''decommission'' in 10 CFR 50.2 does not include activities associated with site restoration. Specifically, the definition of ''decommission'' in 10 CFR 50.2 is ''to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license; or (2) release of the property under restricted conditions and termination of the license.''

The requirement at 10 CFR 50.75(h)(1)(iv) also restricts the use of DTF disbursements (other than for ordinary administrative costs and other incidental expenses of the fund in connection with the operation of the fund) to decommissioning expenses until final radiological decommissioning is completed. While the NRC previously approved an exemption for KPS to use funds from the KPS NDT for the management of spent fuel, an additional exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is needed to allow the licensees to use funds from the KPS NDT for site restoration activities at KPS. The requirement at 10 CFR 50.75(h)(1)(iv) further provides that, except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the fund in connection with the operation of the fund, no disbursement may be made from the DTF without written notice to the NRC at least 30 working days in advance. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is also needed to allow the licensees to use funds from the KPS NDT for site restoration activities at KPS without prior NRC notification.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 (1) when the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things:

> (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; and
>
> (iii) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

A. Authorized by Law

The requested exemption from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would allow the licensees to use a portion of the funds from the KPS DTF for site restoration activities at KPS without prior notice to the NRC, in the same manner that withdrawals are made under 10 CFR 50.82(a)(8) for decommissioning activities and through use of a previously authorized exemption for KPS spent fuel management activities. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50 when the exemptions are authorized by law. The NRC staff has determined, as explained below, that granting the licensees' proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is to provide reasonable assurance that adequate funds will be available for the radiological decommissioning of power reactors. Based on the licensees' PSDAR, SSDCE, the most recent KPS DTF Status Report, additional information provided by the licensees in response to the NRC staff's RAI on this exemption request, and conclusions reached by the NRC staff in its independent cash flow analysis, the use of a portion of the KPS DTF for site restoration activities at KPS will not adversely impact the licensees' ability to complete radiological decommissioning within 60 years and terminate the KPS license. Furthermore, an exemption from 10 CFR 50.75(h)(1)(iv) to allow KPS to make withdrawals from the DTF for site restoration activities without prior written notification to the NRC will not affect the sufficiency of funds in the DTF to accomplish radiological decommissioning. This is because such withdrawals are still constrained by the provisions of 10 CFR 50.82(a)(8)(i)(B)–(C) and are reviewable under the annual reporting requirements of 10 CFR 50.82(a)(8)(v)–(vii). Therefore, KPS decommissioning trust funds, in accordance with 10 CFR 50.82(a)(8)(i)(B)–(C), may only be used by the licensee if: (1) an expenditure would not reduce the value of the decommissioning trust below an amount necessary to place and maintain the reactor in a safe storage condition if unforeseen conditions or expenses arise and; (2) the withdrawals would not inhibit the ability of the licensees to complete funding of any shortfalls in the DTF needed to ensure the availability of funds to ultimately release the site and terminate the license.

Based on the NRC staff's analysis of the information provided in support of this exemption request, as supplemented, there are no new accident precursors created by using the DTF in the proposed manner. Thus, the probability of postulated accidents is not increased. In addition, based on the above, the consequences of postulated accidents are not increased. No changes are being made in the types or amounts of effluents that may be released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, the requested exemption will not present an undue risk to public health and safety.

C. Consistent With the Common Defense and Security

The requested exemption would allow the licensees to use funds from the KPS NDT for the management of site restoration activities and allow trust disbursements for site restoration activities to be made without prior notice to the NRC. Spent fuel management under paragraph (bb) of 10 CFR 50.54, ''Conditions of licenses,'' is an integral part of the planned KPS decommissioning and license termination process; the NRC previously approved an exemption for KPS to use funds from the KPS NDT for the management of spent fuel. The current change, to enable the use of a portion of the funds from the DTF for site restoration activities, and to do so without prior written NRC notification, has no relation to security issues. Therefore, the common defense and security is not impacted by the requested exemption.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not

necessary to achieve the underlying purpose of the regulation.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), which restrict withdrawals from the DTF to expenses for radiological decommissioning activities, is to provide reasonable assurance that adequate funds will be available to complete radiological decommissioning of power reactors and achieve license termination. Strict application of these requirements would prohibit the withdrawal of funds from the KPS DTF for activities other than radiological decommissioning activities at KPS, such as for spent fuel management and site restoration activities, until final radiological decommissioning at KPS has been completed. As noted above, the NRC previously approved an exemption for the licensees to use funds from the KPS NDT for the management of spent fuel on May 21, 2014.

According to the March 30, 2023, KPS DTF Status Report, the DTF for KPS contained $745.6 million as of December 31, 2022. The licensees' analysis projects that the total remaining radiological decommissioning costs at KPS will be approximately $654 million (2023 dollars), including the costs for decommissioning the onsite independent spent fuel storage installation (ISFSI). As required by 10 CFR 50.54(bb), the licensees estimated the costs associated with spent fuel management at KPS to be $36.1 million (2023 dollars). Site restoration costs are estimated at $38.1 million (2023 dollars). This reflects a total remaining estimated cost of approximately $728.2 million for radiological decommissioning, spent fuel management, and site restoration activities, with license termination anticipated in 2055. In its analysis, the NRC staff assumed a 2 percent annual real rate of return on the DTF balance as allowed by 10 CFR 50.75(e)(1)(ii), and determined the projected earnings of the DTF.

The NRC staff's independent cash flow analysis projects that the KPS DTF will contain approximately $84.3 million following completion of radiological decommissioning activities at the site (year 2031), and $122.9 million at the end of all license termination, spent fuel management, and site restoration activities (year 2055), when considering use of the KPS DTF for payment of spent fuel management and site restoration expenses. The NRC staff's analysis aligns with the cash flow analysis provided by the licensees in their submittals. Tax liabilities related to DTF investments are not reflected in the NRC staff's analysis.

The NRC staff confirmed that the current funds and projected earnings of the KPS DTF provide reasonable assurance of adequate funding to complete all NRC-required radiological; decommissioning activities at KPS, as well as to pay for spent fuel management and site restoration activities. Therefore, the NRC staff finds that the licensees have provided reasonable assurance that adequate funds will be available for the radiological decommissioning of KPS, even with the disbursement of funds from the DTF for spent fuel management and site restoration activities. Consequently, the NRC staff concludes that application of the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv), in addition to application of a previously authorized exemption for spent fuel management activities at KPS, which provide that funds from the DTF only be used for radiological decommissioning activities and not for site restoration activities, is not necessary to achieve the underlying purpose of the rule. Thus, special circumstances are present supporting approval of the exemption request.

In its submittal, the licensees also requested exemption from the requirement of 10 CFR 50.75(h)(1)(iv) concerning prior written notification to the NRC of withdrawals from the DTF to fund activities other than radiological decommissioning. The underlying purpose of notifying the NRC prior to withdrawal of funds from the DTF is to provide the opportunity for NRC intervention, when deemed necessary, if the withdrawals are for expenses other than those authorized by 10 CFR 50.75(h)(1)(iv), 10 CFR 50.82(a)(8), and by the previously approved exemption for spent fuel management expenditures from the DTF, which could result in there being insufficient funds in the DTF to accomplish radiological decommissioning.

By granting the exemption to 10 CFR 50.75(h)(1)(iv) and 10 CFR 50.82(a)(8)(i)(A), the NRC staff considers that withdrawals consistent with the licensees' submittal dated March 29, 2023, are authorized. As stated previously, the NRC staff determined that there are sufficient funds in the KPS DTF to complete radiological decommissioning activities, as well as to conduct spent fuel management and site restoration activities, consistent with the licensees' PSDAR and SSDCE, dated May 13, 2021, as well as the information provided in support of its exemption request, as supplemented.

Pursuant to the requirements in 10 CFR 50.82(a)(8)(v) and (vii), licensees are required to monitor and annually report to the NRC the status of the DTF and the licensee's funding for spent fuel management. These reports provide the NRC staff with awareness of, and the ability to take action on, any actual or potential funding deficiencies. Additionally, 10 CFR 50.82(a)(8)(vi) requires that the annual DTF Status Report must include additional financial assurance to cover the estimated cost of completion of radiological decommissioning if the sum of the balance of any remaining decommissioning funds, plus earnings on such funds calculated at not greater than a 2-percent real rate of return, together with the amount provided by other financial assurance methods being relied upon, does not cover the estimated cost to complete decommissioning.

The requested exemption would not allow the withdrawal of funds from the KPS DTF for any purpose that is not currently authorized in the regulations, or that has previously been authorized by exemption from the NRC, without prior notification to the NRC. Therefore, the granting of the exemption to 10 CFR 50.75(h)(1)(iv) to allow the licensees to make withdrawals from the KPS DTF to cover authorized expenses for site restoration activities without prior written notification to the NRC will still meet the underlying purpose of the regulation.

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(iii), are present whenever compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated. The licensees state, and the NRC staff has confirmed, that the KPS DTF contains funds in excess of the estimated costs of radiological decommissioning. The licensees further state that these excess funds are needed for spent fuel management and site restoration activities. The NRC does not preclude the use of funds from the NDT in excess of those needed for radiological decommissioning for other purposes, such as spent fuel management or site restoration activities.

The NRC has previously stated that funding for spent fuel management and site restoration activities may be commingled in the DTF, provided that the licensee is able to identify and account for the radiological decommissioning funds separately from the funds set aside for spent fuel

management and site restoration activities (see NRC Regulatory Issue Summary 2001–07, ''10 CFR 50.75 Reporting and Recordkeeping for Decommissioning Planning,'' Revision 1, dated January 8, 2009 (ML083440158), and Regulatory Guide 1.184, ''Decommissioning of Nuclear Power Reactors,'' Revision 1, dated October 2013 (ML13144A840)). Preventing access to those excess funds in DTFs because spent fuel management and site restoration activities are not associated with radiological decommissioning would create an unnecessary financial burden without any corresponding safety benefit. The adequacy of the KPS DTF to cover the cost of activities associated with site restoration, in addition to radiological decommissioning and spent fuel management, is supported by the licensees' SSDCE for KPS. If the KPS DTF cannot be used for site restoration activities, the licensees would need to obtain additional funding that would not be recoverable from the DTF, or would have to modify the decommissioning approach and methods planned at KPS. The NRC staff concludes that either outcome would impose an unnecessary and undue burden significantly in excess of that contemplated when 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) were adopted.

The underlying purpose of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would continue to be achieved by allowing the licensees to use a portion of the KPS DTF for site restoration activities without prior NRC notification, and compliance with the regulations would result in an undue hardship or other costs that are significantly in excess of those contemplated when the regulations were adopted. Thus, the special circumstances required by 10 CFR 50.12(a)(2)(ii) and (iii) exist and support the approval of the requested exemption.

E. Environmental Considerations

In accordance with paragraph (a) of 10 CFR 51.31, ''Determinations based on environmental assessment,'' the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment, as discussed in the NRC staff's Environmental Assessment and Finding of No Significant Impact published on January 25, 2024 (89 FR 4999).

IV. Conclusion

In consideration of the above, the NRC staff finds that the proposed exemption confirms the adequacy of funding in the KPS DTF, considering growth, to complete radiological decommissioning of the site and to terminate the license, as well as to cover the estimated costs of spent fuel management and site restoration activities.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Kewaunee Solutions, Inc., and EnergySolutions, LLC an exemption from the requirements of 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) to allow the use of a portion of the funds from the KPS DTF for site restoration activities in accordance with (1) the licensees' PSDAR and SSCE, (2) forecasted cost and scheduling information from the most recent KPS DTF Status Report, and (3) as provided in response to the NRC's RAI on this exemption request. Additionally, the Commission hereby grants the licensees an exemption from the requirement of 10 CFR 50.75(h)(1)(iv) to allow such withdrawals from the KPS DTF for site restoration activities without prior NRC notification.

This exemption is effective upon issuance.

Dated: January 26, 2024.

For the Nuclear Regulatory Commission.

/RA/

Jane Marshall,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–03543 Filed 2–21–24; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: Date of notice: February 22, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 2, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 36 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–180 and CP2024–186.

Christopher Doyle,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2024–03563 Filed 2–21–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International & Commercial ePacket Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International & Commercial ePacket contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* February 22, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 7, 2024, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International & Commercial ePacket Contract 4 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2024–186 and CP2024–192.

Colleen Hibbert-Kapler,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–03633 Filed 2–21–24; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99548; File No. SR–MIAX–2024–10]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 1308 To Extend the Temporary Remote Inspection Relief for Members Through June 30, 2024

February 15, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the U.S. Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members [3] through June 30, 2024.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* at MIAX's principal office, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

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 Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members through June 30, 2024. The Exchange makes this proposal to provide its Members continuity related to conducting inspections as part of satisfying the obligations of Exchange Rule 1308, Supervision of Accounts, at offices and locations requiring inspection during the first half of calendar year 2024.[4] The Exchange believes that the proposed extension is necessary to provide firms the time to prepare for the implementation of the FINRA pilot program on remote inspections (''FINRA Pilot Program''). The U.S. Securities and Exchange Commission (''Commission'' or ''SEC'') approved the FINRA Pilot Program on November 17, 2023,[5] and on January 23, 2024, FINRA announced the implementation date of July 1, 2024.[6] The Exchange plans to make a rule filing to incorporate the FINRA Pilot Program into Exchange Rule 1308, Supervision of Accounts, prior to the FINRA Pilot Program implementation date.

The COVID–19 pandemic has caused a host of operational disruptions to the securities industry and impacted Members, regulators, investors, and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to Members from specified Exchange Rules and requirements, including Exchange Rule 1308(d), Annual Branch Office Inspections, for calendar years 2020, 2021, 2022, and 2023, subject to specified conditions,[7] due to the logistical challenges of going on-site while public health and safety concerns related to COVID–19 persisted. The temporary relief provided in Exchange Rule 1308(d), Annual Branch Office Inspection, lapsed on December 31, 2023.

The pandemic accelerated the industry's adoption of a broad remote work environment and the Exchange recognizes that the pandemic has profoundly changed attitudes on where work can occur. As a result of this change many firms have adopted, in varying scale, hybrid work models involving personnel who are working at least part time from alternative work locations (*e.g.,* private residences). As part of an effort to modernize its rules to reflect evolving technologies and business models, in April 2023, FINRA filed the FINRA Pilot Program with the Commission.[8] The FINRA Pilot Program provides for a voluntary, three-year remote inspection pilot program to allow broker-dealers to elect to fulfill their obligation under FINRA Rule 3110(c), Internal Inspections, by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms. On November 17, 2023, the Commission approved the FINRA Pilot Program.[9] The FINRA Pilot Program is designed to allow both FINRA and the firms that are planning to participate in the FINRA Pilot Program additional time to develop the technology and processes that will be essential to operationalize compliance with the FINRA Pilot Program's requirements. For example, firms will need to conduct an eligibility review, and conduct and

[4] Commission staff and FINRA have stated in guidance that inspections must include a physical, on-site review component. *See* SEC National Examination Risk Alert, Volume I, Issue 2 (November 30, 2011) *and* FINRA Regulatory Notice 11–54 (November 2011) (joint SEC and FINRA guidance stating, a ''broker-dealer must conduct onsite inspections of each of its office locations; [OSJs] and non-OSJ branches that supervise non-branch locations at least annually, all non-supervising branch offices at least every three years; and non-branch offices periodically.'') (footnote defining an OSJ omitted). *See also* SEC Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004) (stating, in part, that broker-dealers that conduct business through geographically dispersed offices have not adequately discharged their supervisory obligations where there are no on-site routine or ''for cause'' inspections of those offices).

[5] *See* Securities Exchange Act Release Nos. 97398 (April 28, 2023), 88 FR 28620 (May 4, 2023) (''FINRA Pilot Program Proposal''); 98982 (November 17, 2023), 88 FR 82464 (November 24, 2023) (''FINRA Pilot Program Approval Order'') (SR–FINRA–2023–007).

[6] *See* FINRA Regulatory Notice 24–02 (''FINRA Pilot Program Notice''), *https://www.finra.org/rules-guidance/notices/24-02. See supra* note 5.

[7] *See* Securities Exchange Act Release Nos. 90937 (January 15, 2021), 86 FR 6944 (January 25, 2021) (SR–MIAX–2021–01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts, To Adopt Temporary Rules To Extend the Time by Which Members Must Complete Their Branch Office Inspections for the Calendar Year 2020 and To Provide Temporary Remote Inspection Relief for Their Office Inspections for Calendar Years 2020 and 2021); 94251 (February 15, 2022), 87 FR 9764 (February 22, 2022) (SR–MIAX–2022–09) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami International Securities Exchange, LLC To Amend Exchange Rule 1308, Supervision of Accounts); and 96867 (February 9, 2023), 88 FR 9919 (February 15, 2023) (SR–MIAX–2022–04) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts).

[8] *See supra* note 5.

[9] *Id.*

document a risk assessment for each office and location that they elect to inspect remotely, and implement technology to collect and report the required data and information to FINRA. Firms that do not elect to participate or would be excluded from participating in the FINRA Pilot Program will also be impacted and would need additional time to staff, schedule, and resume on-site inspections of offices or locations [10] within the context of some lingering health concerns and fluid work locations.[11]

In sum, as calendar year 2024 begins, the proposed extension of Exchange Rule 1308(d) would provide firms continuity in meeting their inspection obligations and would allow FINRA time to operationalize the FINRA Pilot Program. Relatedly, the proposed extension would give time for: (1) firms that are planning to participate in the FINRA Pilot Program to implement the processes needed to comply with the proposed terms therein; and (2) firms that are not planning to participate or are excluded from participating in the FINRA Pilot Program, to prepare to resume conducting on-site inspections of their offices and locations as part of satisfying the obligations of Exchange Rule 1308(d).

The Exchange is not proposing to amend the other conditions of Exchange Rule 1308. The current conditions of the rule for firms that elect to conduct remote inspections would remain unchanged: such firms must amend or supplement their written supervisory procedures for remote inspections, use remote inspections as part of an effective supervisory system, and maintain the required documentation. The Exchange continues to believe this temporary remote inspection option is a reasonable alternative for firms to fulfill their Exchange Rule 1308 obligations under the current circumstances described above. This proposed extension is designed to maintain the investor protection objectives of the inspection requirements under these circumstances. As part of those objectives, firms should consider whether, under their particular operating conditions, continued reliance on Exchange Rule 1308(d) to conduct remote inspections would be reasonable under the circumstances. For example, firms with offices that are open to the public or that are otherwise doing business as usual should consider whether some in-person inspections would be feasible and add value to the firms' supervisory program. The Exchange emphasizes that the inspection requirement is one aspect of a firm's overall supervisory system, and that the inspection, whether done remotely under Exchange Rule 1308 or in accordance with the proposed FINRA Pilot Program, or on-site, would be held to the existing standards of review under Exchange Rule 1308.[12]

The Exchange notes that the proposed rule change is substantively identical to the proposed rule changes recently filed the Investors Exchange LLC (''IEX'').[13] The Exchange notes that MIAX Chapter XIII is incorporated by reference into the rulebooks of the Exchange's affiliates, MIAX PEARL, LLC (''MIAX Pearl'') and MIAX Emerald, LLC (''MIAX Emerald''). As such, the amendments to MIAX Chapter XIII proposed herein will also apply to MIAX Pearl and MIAX Emerald Chapters XIII.

2. Statutory Basis

The Exchange believes that 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.[14] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) [15] 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 system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes that 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's rule proposal is intended to harmonize the Exchange's supervision rules, specifically with respect to the requirements for inspections of Members' branch offices and other locations, with those of FINRA, on which they are based. Consequently, the proposed change will conform the Exchange's rules to changes made to corresponding FINRA rules, thus promoting application of consistent regulatory standards with respect to rules that FINRA enforces pursuant to its regulatory services agreement with the Exchange. The proposed rule change would also avoid a potential lapse in the temporary relief while FINRA prepares for the implementation of its recently approved FINRA Pilot Program, and allow firms time to adapt to the pilot program, and prepare for conducting on-site inspections, as applicable, while continuing to serve and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issue but to align the Exchange's rules with those of FINRA, which will assist FINRA in its oversight work done pursuant to a regulatory services agreement with the Exchange. The proposed rule change will also provide for consistent application of the Exchange's supervision rules with those of FINRA, on which they are based. Consequently,

[10] *See supra* note 4.

[11] While the World Health Organization declared an end to COVID–19 as a public health emergency, COVID–19 remains an ongoing public health problem. *See* WHO Director-General, Statement on the fifteenth meeting of the IHR (2005) Emergency Committee on the COVID–19 pandemic (May 5, 2023) (stating, in part, that the ''[w]hile the global risk assessment remains high, there is evidence of reducing risks to human health. . .''), *available at https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic?_sm_au_=iVVWFFPz51g33QZrctQ2NK76F2NJ1* (last visited January 10, 2024); *see also* Benjamin J. Silk, et al., COVID–19 Surveillance After Expiration of the Public Health Emergency Declaration—United States, May 11, 2023 (stating, among other things, that ''[a]lthough COVID–19 no longer poses the societal emergency that it did when it first emerged in late 2019, COVID–19 remains an ongoing public health challenge. By April 26, 2023, more than 104 million U.S. COVID–19 cases, 6 million related hospitalizations, and 1.1 million COVID–19–associated deaths were reported to CDC[.]''), 72 MMWR Morb Mortal Wkly Rep, 523–528 (2023), *https://www.cdc.gov/mmwr/volumes/72/wr/pdfs/mm7219e1-H.pdf* (last visited January 10, 2024). Recent data on hospitalizations from the CDC indicate that the number of hospitalizations is up 20.4% in the most recent week (as of December 24 to December 30, 2023). *See* Centers for Disease Control and Prevents (''CDC''), COVID Data Tracker, Data Update for the United States, *https://covid.cdc.gov/covid-data-tracker/#datatracker-home* (last visited January 10, 2024).

[12] Those standards provide, in part, that based on the factors set forth under that supplementary material, members ''may need to provide for more frequent review of certain locations.''

[13] *See* Securities Exchange Act Release No. 99383 (Jan.17, 2024), 89 FR 4355 (Jan. 23, 2024) (SR–IEX–2024–02).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

the Exchange does not believe that the proposed change implicates competition at all.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. In addition, the Exchange provided the Commission with 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.[19]

The Exchange believes that this filing is non-controversial because it raises no novel issues and is consistent with FINRA rules previously approved by or filed with the Commission. In particular, the purpose of the proposed rule change is to harmonize with and conform to FINRA rules. The Exchange believes that the proposal promotes the protection of investors as it will harmonize the Exchange's supervision rules with those of FINRA, which will simplify the oversight process conducted by FINRA pursuant to a regulatory services agreement with the Exchange. Moreover, the Exchange does not believe that the proposed rule change implicates competition at all because the proposed change aligns the Exchange's rules with those of FINRA, which will assist it in its oversight work done pursuant to such regulatory services agreement. The proposed rule change is based on the recent changes by IEX,[20] and therefore, does not present any new or novel issues not already considered by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6) [21] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and public interest. The Exchange has asked the Commission to waive the 30-day operative delay to permit the Exchange to harmonize its rules with FINRA, as described herein, upon effectiveness of the proposed rule filing.

Since the proposed rule change would address Members' ability to conduct remote inspections for any inspections to be conducted through June 30, 2024, waiving the 30-day operative delay would help ensure that Members could plan their 2024 inspection program and conduct remote inspections under a harmonized rule set, while at the same time helping ensure that its Members continue to perform their supervisory obligations. The Exchange stated that the proposed rule change does not present any new or novel issues because the Exchange is harmonizing its supervision rules with those of FINRA, on which they are based. The Exchange further stated that the proposed rule change would provide only temporary relief during the period in which the Exchange harmonizes its supervision rules with FINRA. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act 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–MIAX–2024–10 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–MIAX–2024–10. 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–MIAX–2024–10 and should be submitted on or before March 14, 2024.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See supra* note 13.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99545; File No. 4–631]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Twenty-Third Amendment to the National Market System Plan To Address Extraordinary Market Volatility by Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX Pearl, LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

February 15, 2024.

I. Introduction

On October 24, 2023, NYSE Group, Inc., on behalf of the Participants [1] to the National Market System Plan to Address Extraordinary Market Volatility (''Plan''),[2] filed with the Securities and Exchange Commission (''Commission''), pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [3] and Rule 608 thereunder,[4] a proposal (''Proposal'' or ''Proposed Amendment'') to amend Appendix A to the Plan to provide that all exchange-traded products (''ETPs'') will be assigned to Tier 1 of the Plan, except for single stock ETPs, which will be assigned to the same tier as their underlying stock, and in each case adjusted for any leverage factor. The Proposed Amendment was published for comment in the **Federal Register** on November 21, 2023.[5]

This order institutes proceedings under Rule 608(b)(2)(i) of Regulation NMS [6] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Background

The Participants filed the Plan with the Commission on April 5, 2011 [7] to create a market-wide limit up-limit down mechanism intended to address extraordinary market volatility in NMS Stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Exchange Act.[8] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements to prevent trades in individual NMS Stocks from occurring outside of the specified Price Bands.[9] These limit up-limit down requirements are coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves. In particular, the Participants adopted the Plan to address extraordinary volatility in the securities markets, *i.e.,* significant fluctuations in individual securities' prices over a short period of time, such as those experienced during the ''Flash Crash'' on the afternoon of May 6, 2010.

As set forth in more detail in the Plan, the single plan processor (''Processor'' or ''Processors''), which is responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act, calculates and disseminates a lower Price Band and upper Price Band for each NMS Stock. As set forth in Section V of the Plan, the Price Bands are based on a Reference Price for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The Price Bands for an NMS Stock are calculated by applying the Percentage Parameters, as set out in Appendix A to the Plan,[10] for such NMS Stock to the Reference

[25] 17 CFR 200.30–3(a)(12).

[1] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX Pearl, LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, ''Participants'').

[2] On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Securities Exchange Act Release No. 67091, 77 FR 33498 (June 6, 2012) (File No. 4–631) (''Approval Order''). On February 20, 2013, the Commission noticed for immediate effectiveness the Second Amendment to the Plan. *See* Securities Exchange Act Release No. 68953, 78 FR 13113 (February 26, 2013). On April 3, 2013, the Commission approved the Third Amendment to the Plan. *See* Securities Exchange Act Release No. 69287, 78 FR 21483 (April 10, 2013). On August 27, 2013, the Commission noticed for immediate effectiveness the Fourth Amendment to the Plan. *See* Securities Exchange Act Release No. 70273, 78 FR 54321 (September 3, 2013). On September 26, 2013, the Commission approved the Fifth Amendment to the Plan. *See* Securities Exchange Act Release No. 70530, 78 FR 60937 (October 2, 2013). On January 7, 2014, the Commission noticed for immediate effectiveness the Sixth Amendment to the Plan. *See* Securities Exchange Act Release No. 71247, 79 FR 2204 (January 13, 2014). On April 3, 2014, the Commission approved the Seventh Amendment to the Plan. *See* Securities Exchange Act Release No. 71851, 79 FR 19687 (April 9, 2014). On February 19, 2015, the Commission approved the Eight Amendment to the Plan. *See* Securities Exchange Act Release No. 74323, 80 FR 10169 (February 25, 2015). On October 22, 2015, the Commission approved the Ninth Amendment to the Plan. *See* Securities Exchange Act Release No. 76244, 80 FR 66099 (October 28, 2015). On April 21, 2016, the Commission approved the Tenth Amendment to the Plan. *See* Securities Exchange Act Release No. 77679, 81 FR 24908 (April 27, 2016). On August 26, 2016, the Commission noticed for immediate effectiveness the Eleventh Amendment to the Plan. *See* Securities Exchange Act Release No. 78703, 81 FR 60397 (September 1, 2016). On January 19, 2017, the Commission approved the Twelfth Amendment to the Plan. *See* Securities Exchange Act Release No. 79845, 82 FR 8551 (January 26, 2017). On April 13, 2017, the Commission approved the Thirteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80455, 82 FR 18519 (April 19, 2017). On April 28, 2017, the Commission noticed for immediate effectiveness the Fourteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 80549, 82 FR 20928 (May 4, 2017). On September 26, 2017, the Commission noticed for immediate effectiveness the Fifteenth Amendment to Plan. *See* Securities Exchange Act Release No. 81720, 82 FR 45922 (October 2, 2017). On March 15, 2018, the Commission noticed for immediate effectiveness the Sixteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 82887, 83 FR 12414 (March 21, 2018) (File No. 4–631). On April 12, 2018, the Commission approved the Seventeenth Amendment to the Plan. *See* Securities Exchange Act Release No. 83044, 83 FR 17205 (April 18, 2018). On April 11, 2019, the Commission approved the Eighteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 85623, 84 FR 16086 (April 17, 2019) (''Amendment 18''). On February 5, 2020, the Commission noticed for immediate effectiveness the Nineteenth Amendment to the Plan. *See* Securities Exchange Act Release No. 88122, 85 FR 7805 (February 11, 2020) (File No. 4–631). On April 21, 2020, the Commission approved the Twentieth Amendment to the Plan. *See* Securities Exchange Act Release No. 88704, 85 FR 23383 (April 27, 2020). On July 29, 2020, the Commission noticed for immediate effectiveness the Twenty-First Amendment to the Plan. *See* Securities Exchange Act Release No. 89420, 85 FR 46762 (August 3, 2020) (File No. 4–631). On October 1, 2020, the Commission noticed for immediate effectiveness the Twenty-Second Amendment to the Plan. *See* Securities Exchange Act Release No. 90068, 85 FR 63322 (October 7, 2020) (File No. 4–631).

[3] 15 U.S.C. 78k–1(a)(3).

[4] 17 CFR 242.608.

[5] *See* Securities Exchange Act Release No. 98928 (November 14, 2023), 88 FR 81131 (''Notice''). Comments received in response to the Notice can be found on the Commission's website at: *https://www.sec.gov/comments/4-631/4-631.htm.*

[6] 17 CFR 242.608(b)(2)(i).

[7] On May 31, 2012, the Commission approved the Plan, as modified by Amendment No. 1. *See* Approval Order, *supra* note 2.

[8] 17 CFR 242.600(b)(47).

[9] *See* Notice, 88 FR at 81144–45 (setting forth the defined terms as used under the Plan). For purposes of this order, all capitalized terms referenced, but not otherwise defined, herein shall have the meanings as defined under the Plan or as defined in the Notice.

[10] *See* Notice, 88 FR at 81148 (Appendix A to the Plan).

Price, with the lower Price Band being a Percentage Parameter below the Reference Price, and the upper Price Band being a Percentage Parameter above the Reference Price.

Appendix A to the Plan sets out the definitions of Tier 1 and Tier 2 NMS Stocks and the Percentage Parameters for each. Appendix A currently provides that Tier 1 includes all NMS Stocks included in the S&P 500 Index and the Russell 1000 Index, as well as ''eligible'' ETPs. Appendix A specifies:

> To determine eligibility for an ETP to be included as a Tier 1 NMS Stock, all ETPs across multiple asset classes and issuers, including domestic equity, international equity, fixed income, currency, and commodities and futures will be identified. Leveraged ETPs will be excluded, and the list will be sorted by notional consolidated average daily volume (''CADV''). The period used to measure CADV will be from the first day of the previous fiscal half year up until one week before the beginning of the next fiscal half year. Daily volumes will be multiplied by closing prices and then averaged over the period. ETPs, including inverse ETPs, that trade over $2,000,000 CADV will be eligible to be included as a Tier 1 NMS Stock.

The eligible ETPs are then listed in Schedule 1 to Appendix A, and the list is reviewed and updated semi-annually. All ETPs that do not meet the ''eligibility'' definition are currently assigned to Tier 2.

For Tier 1 NMS Stocks, Appendix A defines the Percentage Parameters as:

- 5% for Tier 1 NMS Stocks with a Reference Price more than $3.00;
- 20% for Tier 1 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00; and
- The lesser of $0.15 or 75% for Tier 1 NMS Stocks with a Reference Prices less than $0.75.

For Tier 2 NMS Stocks, Appendix A defines the Percentage Parameters as:

- 10% for Tier 2 NMS Stocks with a Reference Price of more than $3.00;
- 20% for Tier 2 NMS Stocks with a Reference Price equal to $0.75 and up to and including $3.00; and
- The lesser of $0.15 or 75% for Tier 2 NMS Stocks with a Reference Price less than $0.75.

The Percentage Parameter for a Tier 2 NMS Stock that is a leveraged ETP is the applicable Percentage Parameter set forth above, multiplied by the leverage ratio of such product.

III. Summary of the Proposed Amendment [11]

The Participants propose to amend Appendix A to delete the definition of ETPs ''eligible'' for Tier 1, and to specify that all ETPs except for single-stock ETPs would be assigned to Tier 1. The Participants also propose to delete Schedule 1 to Appendix A as obsolete. Under the Proposal, Appendix A, Section I, paragraph (1) would read as follows:

> Tier 1 NMS Stocks shall include all NMS Stocks included in the S&P 500 Index and the Russell 1000 Index, and all exchange-traded products (''ETP''), except for single stock ETPs, which will be assigned to the same Tier as their underlying stock, adjusted for any leverage factor.

Because all leveraged ETPs (except Tier 2 single stock ETPs) would be assigned to Tier 1, the Participants also propose to add text into Section I of Appendix A describing how the Percentage Parameters would be set for leveraged ETPs. The Participants propose to insert the following as paragraph (5) of Section I, and to renumber the paragraphs of Section I accordingly:

> Notwithstanding the foregoing, the Percentage Parameters for a Tier 1 NMS Stock that is a leveraged ETP shall be the applicable Percentage Parameter set forth in clauses (2), (3), or (4) above, multiplied by the leverage ratio of such product.

A. Study Data

The Participants reviewed trading and quoting in all ETPs during the period from Q4 of 2019 through Q2 of 2021. This time span afforded the Participants the opportunity to study how the Plan performed during certain stressful periods. The ETPs studied covered several asset classes, including domestic equities, international equities, fixed income, currency, commodity, and digital currency ETPs.

At the time the Participants conducted the study, there were not yet any single stock ETPs listed in the U.S. markets. Because a single stock ETP should closely track the price movement and volatility of its underlying security, the Participants assert that it should be assigned to the same tier, adjusted for any leverage factor, to maintain uniform and congruous application of controls.

The Participants also excluded Tier 2 ETPs with a Reference Price of $3.00 or less, since ETPs with a Reference Price of $3.00 or less are subject to identical Percentage Parameters under Tier 1 and Tier 2. The Participants also excluded the last 25 minutes of the trading day from the study, since the Percentage Parameters for Tier 1 and Tier 2 NMS Stocks with Reference Prices more than $3.00 are identical during that period.

B. Study Methodology

The Participants' study consists of three parts. First, the Participants compared the realized volatility and incidence of Limit States and Trading Halts in Tier 2 ETPs against both Tier 1 and Tier 2 non-ETPs, to review the reasonableness of assigning ETPs to Tier 2.

Second, the Participants calculated theoretical Tier 1 (*i.e.,* 5%) Price Bands for all Tier 2 ETPs in the study. For example, normally a Tier 2 ETP with a Reference Price of $10.00 would have a lower Price Band of $9.00 and an upper Price Band of $11.00 (*i.e.,* 10% bands). For purposes of the study, that same ETP would have a theoretical Tier 1 lower Price Band of $9.50 and an upper Price Band of $10.50 (*i.e.,* 5% bands). Once the theoretical narrower bands were calculated, the Participants identified all trades that occurred at prices between the theoretical narrower bands and the actual Tier 2 bands. The Participants then calculated the total notional value if all trades beyond the theoretical narrow bands had been prevented, as well as the total notional value if all such trades had occurred at the price of the new bands, to determine the range of potential notional value impact of applying Tier 1 bands to Tier 2 ETPs. The Participants also studied the price movement following these ''breaches'' of the theoretical narrower bands and the likelihood of reversion to determine the efficacy of tightening the bands.

Third, the Participants compared market quality changes and the frequency of Limit States and Trading Halts for Tier 1 ETPs vs. Tier 2 ETPs by studying the ETPs that shift from one tier to the other as part of the current semi-annual review process.

C. Study Results

1. Volatility of Tier 2 ETPs vs. Tier 1 and Tier 2 Non-ETPs

For the first part of the study, the Participants compared the volatility of Tier 2 ETPs during the study period to the volatility of non-ETP securities. If the purpose of Tier 2's wider bands is to address higher expected volatility in Tier 2 NMS Stocks, but ETPs in Tier 2 are already less volatile than non-ETPs in Tier 1, that would suggest that ETPs do not actually need Tier 2's wider bands.

According to the Participants, except for single-stock, commodity, and foreign exchange-based ETPs, ETPs are, by definition, diversified instruments.

[11] This section summarizes the proposed changes to the Plan and the Participants' analysis supporting the proposed changes, as described in the Notice. For a full discussion of the Proposed Amendment, including the Participants' justifications for the Proposed Amendment, *see* Notice, *supra* note 5.

Notwithstanding the lower trading volumes associated with the less liquid ETPs included in Tier 2, Tier 2 ETPs exhibit volatilities that are lower than those observed for Tier 1 non-ETPs that already trade with narrower Price Bands today.

The Participants calculated quote volatilities [12] for all securities that were part of the Plan during 2021. Non-leveraged Tier 2 ETPs had an average quote volatility of 0.241 basis points with a 90th percentile of 0.275 basis points. Those figures are lower than for Tier 1 non-ETPs during the same period, which had an average quote volatility of 0.258 basis points with a 90th percentile of 0.446 basis points. Tier 2 non-ETPs had more than four times higher average quote volatility and almost double the average quote volatility at the 90th percentile compared to Tier 2 non-leveraged ETPs. Leveraged Tier 2 ETPs were somewhat higher than non-leveraged Tier 2 ETPs, with an average quote volatility of 0.736 basis points and a 90th percentile of 1.317 basis points. Most leveraged ETPs represent commodities or volatility index products, which would be expected to exhibit higher volatility. However, these products' Price Bands are also multiplied by their leverage factor, which makes their higher volatility relative to other ETPs acceptable.

In comparing the incidence of Trading Pauses and Limit States during 2021 by Tier 1 non-ETPs, Tier 2 ETPs, and Tier 2 non-ETPs priced above $3.00, the data shows that during 2021, Tier 2 non-leveraged ETPs had fewer Trading Pauses and Limit States than Tier 1 non-ETPs, even though the Tier 2 non-leveraged ETPs comprised nearly 50% more securities. In addition, Tier 2 non-ETPs had roughly four times the number of symbols, but 63 times the number of Limit States per day compared to Tier 2 non-leveraged ETPs. Tier 2 ETPs at the 90th percentile did not have any Trading Pauses, while there were 30 Trading Pauses for Tier 2 non-ETPs.

Overall, the comparison between Tier 1 non-ETPs and Tier 2 ETPs shows that quote volatility of Tier 2 ETPs operating under wider Price Bands is lower than Tier 1 non-ETPs, and that the incidence of Limit States and Trading Pauses for Tier 1 non-ETPs is substantially higher than that of Tier 2 ETPs. By contrast, Tier 2 non-ETPs are considerably more volatile than Tier 1 non-ETPs, which substantiates the wider Price Bands applied to these securities, as the higher number of Limit States and Trading Pauses in Tier 2 non-ETPs are occurring under 10% Price Bands. The Participants believe that these data indicate that the Price Bands are not well-calibrated to the realized volatility for Tier 2 ETPs and should not be twice as wide as those for Tier 1 non-ETPs.

2. Analysis of ETP Trades Executing Past Theoretical Tier 1 Bands

For the second part of the study, the Participants sought to identify the range of potential notional value that would have been impacted during the study period if trades in Tier 2 ETPs had been bounded by 5% Price Bands instead of 10% Price Bands. Specifically, the Participants calculated theoretical Tier 1 (*i.e.,* 5%, adjusted for leverage factor) Price Bands for all Tier 2 ETPs in the study (''Theoretical Tier 1 Bands''). Once the theoretical narrower bands were calculated, the Participants identified 101,956 trades that occurred at prices between the Theoretical Tier 1 Bands and the actual Tier 2 bands. The Participants then calculated the upper and lower ranges of the notional value of the trades that would have been impacted during the study period if Tier 2 ETPs had been subject to the narrower Theoretical Tier 1 Bands instead of the actual Tier 2 bands.

The Participants drilled down into the results to determine, on a day-by-day basis, the amount of notional value prevented, and the number of symbols impacted, by the narrower Theoretical Tier 1 Bands. Most of the notional value that would have been prevented by using the narrower Theoretical Tier 1 Bands for Tier 2 ETPs occurred across a handful of trade dates when the markets were very volatile. Together, the 10 days with the highest notional value for trades prevented account for 59% of the trades prevented and 61% of the total notional value overall. More than $45 million in trades could have been prevented during the pandemic-driven volatility in 2020. In contrast, over the entire study period, the number of Tier 2 ETPs that would have been impacted by using narrower Theoretical Tier 1 Bands was a median of nine ETPs per day.

The Participants conclude that on most days, tighter Price Bands would have had little impact on the trading of Tier 2 ETPs. However, during periods of extreme volatility overall, the narrower bands may prevent unnecessary volatility in Tier 2 ETPs. Using narrower Tier 1 Bands for these ETPs could protect investors from executing trades at inferior prices that may occur due to transitory gaps in liquidity.

The Participants recognize that the positive impacts of using narrower Theoretical Tier 1 Bands would be blunted if the price trend that triggers a Trading Pause continues in the same direction. To study this issue, the Participants computed several statistics to measure the impact of blocking these trades at the narrower Theoretical Tier 1 Bands. The Participants calculated these statistics as a fraction of simple trade counts, as well as the percentage of shares that were impacted by the theoretical narrower bands. The calculations are as follows:

1. Last mid-quote 5 minutes after the blocked trade compared to the trade execution price.
2. Last mid-quote 10 minutes after the blocked trade compared to the trade execution price.
3. Same as #1, except cases where the stock paused in the next 5 minutes (because there may not be reliable 5-minute mid-quotes).
4. Same as #2, except cases where the stock paused in the next 10 minutes (because there may not be reliable 10-minute mid-quotes).
5. Same as #1–#4, except measured against the theoretical narrower bands. This measures the worst-case situation, where none of the trades would have occurred and the full impact of blocking the trades is shown.

Prices 5 and 10 minutes after a theoretically prevented trade usually reverted away from the offending trade price towards prior prices, and less often moved back to levels inside the new bands. When prices do not revert, the benefit of the tighter bands is less clear, but the tendency toward reversion is further evidence in support of narrowing the bands to Tier 1 levels. After 5 minutes, more than 70% of the trades and nearly 75% of the shares impacted had their last quote return to price levels prior to the move that caused the breach of the Theoretical Tier 1 Band. After 10 minutes, reversion rates improved further (*i.e.,* more than 75% of trades and 78% of shares). When Trading Pauses are excluded, the results appeared even more positive, although the Participants believe that including Trading Pauses is the superior measure, as these situations better reflect the general direction of the market.

The Participants note that during the study period, only 7.1% of the trades that executed beyond the narrower Theoretical Tier 1 Bands (4.6% of shares executed across the entire study period) ultimately resulted in a Trading Pause under the bands currently in place. Prices did ultimately hit a Limit State within 10 minutes in 12.6% of the trades that moved through the bands, accounting for 10.3% of shares traded, but as noted above, less than half of these shares resulted in a Trading Pause.

The Participants note that by narrowing the bands, in all likelihood,

[12] The Participants measured quote volatility as the average basis point change of each second's mid-point during core hours annualized.

there may be an increase in Trading Pauses, even with market makers moving liquidity in front of the revised tighter bands. Because prices may likely revert inside the bands after 10 minutes, these Trading Pauses may be beneficial for investors. Such Trading Pauses may also be beneficial for investors because many Tier 2 ETPs do not trade actively. Their initial Price Bands are often based on the prior day's official closing price, which may not perfectly reflect current market conditions, but their Reference Prices and Price Bands are not reset if there are no trades. In such cases, it may be beneficial to trigger a Trading Pause that will permit a reopening auction, which can more efficiently aggregate liquidity, determine equilibrium prices, reset the Price Bands, and further mitigate volatility.

3. Market Quality Changes When ETPs Change Tier Designation

For the third part of the study, the Participants examined ETPs that have moved between tiers. As background, at launch, each ETP is assigned to Tier 2. Per Appendix A, tiers are recalculated at the end of each June and December and any non-leveraged ETPs that trade over $2,000,000 CADV during the measurement period move from Tier 2 to Tier 1. It is common for an otherwise-illiquid ETP to have one or two very high-volume days immediately after listing, causing it to be recategorized into Tier 1, and then ultimately settle back into Tier 2 following its second measurement period.

These tier changes provide the Participants with an opportunity to evaluate and compare the market quality of ETPs under different price band regimes. The Participants understand that, in some cases, changes in the volume of trades are what cause an ETP to change from one tier to another, and the improvements in market quality may be attributable to that increased volume, and not the tier change in and of itself. But as noted above, the Plan initially assigns ETPs into Tier 2 irrespective of their volume of trades, and many are then subsequently reassigned to Tier 1 due to high notional volume on a few days after they are first funded, without experiencing any real change in notional volume overall. As such, the Participants believe that market quality changes after a tier shift are meaningful because they are often not due to developments in the character of the market for the ETPs.

The Participants compared quoted spreads and notional liquidity at the NBBO, comparing changes in these two values from half-year to half-year for ETPs that: stayed in Tier 1; stayed in Tier 2; switched from Tier 1 to Tier 2; and switched from Tier 2 to Tier 1.

ETPs that were in Tier 1 in the second half of 2019 and stayed in Tier 1 during the first half of 2020 had their consolidated quoted spread increase by 102.0%, while those that shifted to Tier 2 saw their consolidated quoted spread widen by 152.3%. Tier 2 ETPs that moved to Tier 1 in the first half of 2020 had their spreads rise 96.6%—less than those that stayed in Tier 1 for both periods. ETPs that stayed in Tier 2 performed the worst, with their spreads increasing by 175.7%. The pattern is similar regarding ETPs that changed tier in the second half of 2020. ETPs that stayed in Tier 1 had their spreads narrow by 34.2% while those that moved to Tier 2 performed worse, with their spreads tightening by 26.7%. Tier 2 ETPs that remained in Tier 2 performed similarly to those that stayed in Tier 1, with their spreads narrowing by 35.7%. The best performing category was ETPs that moved to Tier 1 from Tier 2, as their spreads narrowed by 43.6%.

The Participants note that narrower spreads can lead to less available liquidity, but the tier changes studied above do not appear to have caused a negative impact on liquidity. For ETPs that changed tiers between the second half of 2019 and the first half of 2020, the amount of available liquidity dropped a similar amount for Tier 1 ETPs that stayed in Tier 1 or moved to Tier 2. Tier 2 ETPs in general lost fewer dollars at the inside, but those Tier 2 ETPs that transferred to Tier 1 did lose slightly more—12.2% versus 10.1%. For ETPs that changed tiers between the first half and second half of 2020, Tier 2 ETPs again saw the largest increase in liquidity, with those that moved to Tier 1 gaining 51.0% versus just 38.0% for those that stayed in Tier 2. Tier 1 ETPs that moved to Tier 2 saw a drop in liquidity inside of 4.2%. Finally, for those ETPs that changed tiers between the second half of 2020 and the first half of 2021, Tier 2 ETPs that moved to Tier 1 saw the smallest gains in liquidity at the inside, increasing just 32.1% compared to Tier 2 ETPs that remained in Tier 2, which gained 42.7%. Tier 1 ETPs, whether they stayed in Tier 1 or moved to Tier 2, garnered larger gains of liquidity at the inside.

In sum, for two of the three half-year changes the Participants studied, spreads improved and there was a neutral to positive effect on inside liquidity for ETPs shifting from Tier 2 to Tier 1. The opposite was true for Tier 2 ETPs that changed tier from the second half of 2020 to the first half of 2021. These results show that, on balance, market quality statistics improved for Tier 2 ETPs that moved to Tier 1.

The Participants note that even if market quality statistics improved for Tier 2 ETPs that moved to Tier 1, the efficacy of such a move might be questioned if the move created notably more Limit States or Trading Pauses. To study this issue, the Participants examined three statistics for ETPs that had a tier change in either direction from one period to the next:

- the average number of Trading Pauses per symbol during the next half-year;
- the average number of Limit States per symbol during the next half-year; and
- the average number of seconds in a Limit State per symbol during the next half-year.

Narrowing the Price Bands for ETPs that moved from Tier 2 into Tier 1 did not increase the incidence of Trading Pauses, Limit States, or the amount of time spent in Limit States. The Participants assert that this is likely because market participants adjust their behavior and provide more liquidity to ETPs once their bands are tightened. The Participants acknowledge that the number of ETPs that move between Tiers, especially into Tier 1 after being in Tier 2, is relatively small and may not provide a significant enough population to offer strong support for that statistic. The Participants note, however, that Amendment 18 removed double-wide bands at the open for all stocks and at the close for Tier 2 stocks, market participants adjusted to the tighter bands without a large increase in Trading Pauses.

D. Study Conclusions

In sum, the Participants' study shows the following:

- Tier 1 non-ETPs are far more likely than Tier 2 ETPs to enter into Limit States and Trading Pauses due to the underlying volatility of these securities. This finding suggests that the Price Band width for Tier 2 ETPs is poorly calibrated relative to their actual trading behavior.
- During the study period, the notional value of trades that would have been prevented if Tier 2 ETPs had used tighter Tier 1 bands would have been substantial for such thinly traded products, bounded on the lower end at $36.8 million and the upper end at $711.1 million.
- In the majority of cases where a trade would have been prevented by the narrower Theoretical Tier 1 Bands, prices reverted by the end of the following 5- and 10-minute periods,

suggesting that having these thinly-traded ETPs in Tier 1 would protect investors from executing trades at inferior prices that may occur due to transitory gaps in liquidity rather than fundamental valuation changes.

• In most cases where ETPs have been reclassified from Tier 2 to Tier 1, market quality improved as evidenced by the lower quote volatility, tighter spreads, and increased liquidity for ETPs that moved from Tier 2 to Tier 1.

• Using tighter Tier 1 bands for all ETPs would provide greater investor protection from temporary liquidity gaps, which are facilitated by the wider price bands in Tier 2.

• The number of Limit States and Trading Pauses decreased when Tier 2 ETPs moved to Tier 1 and increased when Tier 1 ETPs moved to Tier 2.

From this evidence, the Participants conclude that moving Tier 2 ETPs to Tier 1 would improve market quality, more effectively dampen volatility, provide greater investor protection, and decrease the number of unnecessary Limit States and Trading Pauses.

The Participants also state that the Proposed Amendment does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Participants assert that the Proposed Amendment to the Plan would apply to all market participants equally and would not impose a competitive burden on one category of market participants in favor of another category of market participant. The Proposed Amendment would apply to trading on all Trading Centers and all NMS Stocks would be subject to the amended Plan's requirements. The Participants do not believe that the Proposed Amendment introduces terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Exchange Act because it would apply to all market participants equally.

IV. Summary of Comments

In response to the Notice, the Commission received several comments on the Proposed Amendment.[13] A few commenters generally oppose the Plan and Proposed Amendment,[14] and one commenter representing a consortium of market participants support the Proposal.[15]

Several commenters believe that the Proposed Amendment poses a significant threat to the foundational principles of a free and open markets.[16] Some commenters state that the proposed tighter price bands would effectively limit the natural price discovery process, which would infringe upon free market principles.[17] One commenter states that these tighter controls may lead to increased volatility.[18] The commenter further states that leveraged derivatives, such as options and futures, allow significant positions to be taken with relatively less capital. In the hands of large market participants, according to this commenter, these instruments could potentially be used in conjunction with the predictable price range boundaries to manipulate market conditions, highlighting the need for a thorough evaluation of the rule's implications on market dynamics and fairness.[19] The same commenter concludes that the Proposal caters to the interests of larger, institutional investors who may benefit from reduced volatility and more predictable price movements at the expense of smaller, retail investors.[20] Some commenters state that the Proposal enables the Participants to control the price of a security inappropriately.[21]

Separately, one commenter in support of the Proposal concludes that using Tier 1 Percentage Parameters for all ETPs would better protect investors during temporary liquidity gaps, which may be exacerbated by the wider price bands for Tier 2 NMS Stocks.[22] The commenter asserts that ETP liquidity gaps can occur for reasons that may not reflect the ETP's fundamental value.[23] The commenter states that in these instances, the risk of an inefficient execution away from the fair value of the ETP's holdings (as far as 10% away from a Tier 2 ETP's reference price) rises, and the application of Tier 1 Percentage Parameters would improve transparency and efficiency, particularly during periods of extreme volatility.[24] In addition, the commenter states that, in instances of sustained order imbalances and/or gaps in liquidity in the market for an ETP, a trading pause would help attract liquidity from diverse market participants and promote price discovery through the reopening mechanism, helping to keep ETP prices in line with the value of underlying holdings.[25] The commenter agrees that ETPs were assigned to tiers based on an assumption that lower-volume ETPs were more suited for wider price parameters, and states that the data presented in the Proposed Amendment suggests that assumption was wrong.[26] The commenter states that the analysis demonstrated that on average, Tier 2 ETPs across asset classes exhibit lower quote volatility than Tier 1 non-ETP stocks.[27] In light of the findings derived from the study, the imposed semi-annual migration of ETPs from one tier to the other appears to be overly complex, arbitrary, and unnecessary.[28]

V. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[29] and Rules 700 and 701 of the Commission's Rules of Practice,[30] to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate. The Commission is instituting proceedings to have sufficient time to consider the complex issues raised by Proposed Amendment, including comments received. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall

[13] *See supra* note 5.

[14] *See* Letters from Alexander Kuchta dated November 27, 2023 (''Kuchta Letter''); Anonymous dated November 27, 2023 (''Anonymous Letter''); Subhra Mazumdar dated November 27, 2023 (''Mazundar Letter''); Joe Edwards dated November 27, 2023 (''Edwards Letter''); Rax Nahali dated November 27, 2023 (''Nahali Letter''); and Rene Wright dated November 27, 2023 (''Wright Letter'').

[15] *See* Letter to Vanessa Countryman, Secretary, Commission, from Samara Cohen, Chief Investment Officer of ETF and Index Investments, BlackRock, et al. dated December 18, 2023 (''BlackRock Letter'').

[16] *See, e.g.,* Kuchta Letter; Nahali Letter; Wright Letter.

[17] *See* Kuchta Letter; Edwards Letter; Nahali Letter (noting that volatility is a part of the market).

[18] *See* Kuchta Letter (stating that ''as trades accumulate at the band limits, the resumption of trading could trigger sudden and sharp price movements, contrary to the proposal's intent to reduce volatility'').

[19] *See id.*

[20] *See id.*

[21] *See* Mazundar Letter; Nahali Letter.

[22] *See* BlackRock Letter at 1.

[23] *See id.* at 2 (noting that outsized or aggressive orders, temporary uncertainty about any inputs into the calculation of the ETP's fair value, or lower levels of market participation, which is more common in newly listed ETPs, can cause these ETP prices not to reflect fundamental value).

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] 17 CFR 242.608.

[30] 17 CFR 201.700; 17 CFR 201.701.

approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.'' [31] Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[32] In the Notice, the Commission sought comment on the Proposed Amendment, including whether the Proposed Amendment is consistent with the Exchange Act.[33] In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[34] the Commission is providing notice of the grounds for disapproval under consideration:

- Whether, consistent with Rule 608 of Regulation NMS, the Participants have demonstrated how the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.[35]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder. . . . is on the plan participants that filed the NMS plan filing.'' [36] The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[37] Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.[38]

[31] 17 CFR 242.608(b)(2).

[32] *Id.*

[33] *See* Notice, *supra* note 5.

[34] 17 CFR 242.608(b)(2)(i).

[35] 17 CFR 242.608(b)(2).

[36] 17 CFR 201.701(b)(3)(ii).

[37] *Id.*

[38] *Id.*

VI. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposal. In particular, the Commission invites the written views of interested persons concerning whether the Proposal is consistent with Section 6(b)(5), Section 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[39] any request for an opportunity to make an oral presentation.[40] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment,[41] in addition to any other comments they may wish to submit about the Proposed Amendment. In particular, the Commission seeks comment on the following:

1. The Participants propose to amend Appendix A of the Plan by deleting the definition of ETPs ''eligible'' for Tier 1 and to specify that all ETPs, except for single stock ETPs, would be assigned to Tier 1. What are commenters' views on whether the Proposal is consistent with the Exchange Act?

2. Because all leveraged ETPs (except Tier 2 single stock ETPs) would be assigned to Tier 1, the Participants also propose to add text into Section I of Appendix A describing how the Percentage Parameters would be set for leveraged ETPs. What are commenters' views on whether this Proposal regarding leveraged ETPs to the Plan is consistent with the Exchange Act?

3. The Proposal acknowledges that the ETPs studied covered several asset classes, including domestic equities, international equities, fixed income, currency, commodity, and digital currency ETPs. For example, the Participants' analysis provides aggregate statistical information with respect to Tier 2 ETPs as a whole. In addition, the Proposal states that, except for single-stock, commodity, and foreign exchange-based ETPs, ETPs are by definition diversified instruments and that the analysis in the Proposal supports the modern portfolio theory that portfolios of securities exhibit lower volatility than individual securities, unless those products are perfectly correlated. The Proposed Amendment to the Plan, which would assign all ETPs to Tier 1, only excludes single stock ETPs, but does not propose to exclude other ETPs based on other single reference assets, such as ETPs based on single commodities or single digital currency-related assets. Do commenters agree that the methodology and results of the analysis support the conclusions drawn by the Participants? Please explain. Does this aggregated approach to evaluating Tier 2 ETPs as a whole support the conclusions drawn by the Participants with respect to different segments of Tier 2 ETPs? For example, what are commenters' views on whether the Proposal's study explains why such other ETPs, such as those based on a single asset (other than stocks) or those that might not otherwise reflect the volatility characteristics described in the Proposal, should be assigned to Tier 1?

4. The Proposal provides analysis concerning the potential impacts that the Proposal could have on the market. Among other things, the analysis states that the proposed narrower bands may have caused minimal disruption during periods of less volatility, amounting usually to a few dozen trades per day. In contrast, the analysis shows that the Proposal could have had a much larger impact on trading during periods of greater volatility. Table 4, Panel A, for example, shows that during the first half of 2020, the Proposal could have impacted approximately $147 million of trading in Tier 2 ETPs on a single day; approximately $577 million of trading in Tier 2 ETPs could have been impacted over these six months. Chart 1 of the Proposal [42] also shows that over 500 Tier 2 ETPs would have been affected daily during March 2020, a significant percentage of the total number of Tier 2 ETPs. In the Proposal, the Participants also provide analysis that supports the view that the potential impact on trading likely would not be as significant as suggested in Table 4, Panel A. For example, in Table 4, Panel B, the Proposal provides analysis that assumes that all impacted trading would execute at the proposed price bands; under this more conservative assumption, notional volume in Tier 2 ETPs would only change by $8 million on any given day in the first half of 2020, while total notional volume in Tier 2 ETPs over these six months would only change by $30 million. The Proposal states that it is not likely that the Proposal's impact would be as significant as suggested by the analysis in Table 4, Panel A, because there could be significant additional volume executed at or near the proposed price bands. What are commenters' views on the Proposal's analysis of the potential impact on trading? Are commenters concerned that the Proposal's impact on trading during periods of significant volatility would further contribute to that market stress?

5. One of the Proposal's conclusions is that, in a majority of cases where a trade

[39] 17 CFR 242.608(b)(2)(i).

[40] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

[41] *See* Notice, *supra* note 5.

[42] According to the Participants, Chart 1 describes the amount of notional value prevented, and the number of symbols impacted, by the narrower Theoretical Tier 1 Bands on a day-to-day basis. *See* Notice, 88 FR at 81136.

would have been prevented by the proposed narrower bands (Theoretical Blocked Trades), prices reverted back to within the proposed narrower bands. To support this conclusion, the Proposal provides an analysis that trades in Tier 2 ETPs that executed outside the proposed narrower bands are generally followed by mid-point prices within the narrower bands. According to the Proposal, this analysis suggests that the Proposal would protect investors from trading at inferior prices that may occur because of transitory gaps in liquidity instead of fundamental valuation changes. Do commenters agree that the analysis appropriately measures price reversion and that the Theoretical Blocked Trades often executed during temporary liquidity gaps? If not, how do commenters suggest the analysis could examine the extent to which Theoretical Blocked Trades executed during temporary liquidity gaps? Please explain.

6. The Proposal compares the quote volatility of Tier 2 ETPs to that of Tier 1 non-ETPs, where quote volatility is measured using the mid-point at each second. With this measure of volatility, the Proposal concludes that Tier 2 ETPs have lower quote volatility than Tier 1 non-ETPs, suggesting that Tier 2 ETPs are not too volatile for the Tier 1 price bands. In addition, the Proposal acknowledges that Tier 2 ETPs are often thinly traded. What are commenters' views on whether the comparative analysis has adequately captured Tier 2 ETP volatility in support of the conclusion that they are not too volatile for the Tier 1 price bands? For example, would infrequent trading interest bias the analysis due to infrequent updates of the mid-point? Are there other measures of volatility that would be more appropriate? Please explain.

7. The Participants state that the Plan does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Do commenters believe that the Plan, as proposed to be amended, imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act?

8. Further, would the Proposal have a positive, negative, or neutral impact on competition? Please explain. How would the Proposal impact competition across ETP issuers or ETPs on similar baskets of securities currently in different tiers? Please explain. How would any impact on competition from the Proposal benefit or harm the national market system or the various market participants? Please describe and explain how, if at all, aspects of the national market system or different market participants would be affected. Please support any response with data, if possible.

9. More generally, to the extent possible please provide specific data, analyses, or studies for support regarding any impacts of the Proposal on competition.

The Commission requests that commenters provide analysis to support their views, if possible.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Amendment should be approved or disapproved by March 14, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 28, 2024. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number 4–631 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 4–631. 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 Participants' principal offices. 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 4–631 and should be submitted on or before March 14, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–03539 Filed 2–21–24; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12336]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Auschwitz. Not long ago. Not far away." Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Auschwitz. Not long ago. Not far away.'' by the Cincinnati Museum Center, Cincinnati, Ohio, at The Castle at Park Plaza, Boston, Massachusetts, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street, NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of

[43] 17 CFR 200.30–3(a)(85).

Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2024–03545 Filed 2–21–24; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2471; Summary Notice No. 2024–05]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before March 13, 2024.

ADDRESSES: Send comments identified by docket number FAA–2023–2471 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, AIR–624, Federal Aviation Administration, phone (206) 231–3209, email *Shannon.Lennon@faa.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 15, 2024.

Daniel J. Commins,

Manager, Integration and Performance, Policy & Standards Division, Aircraft Certification Service.

Petition for Exemption

Docket No.: FAA–2023–2471.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: § 25.795(b)(2), (c)(1), (c)(3), and (d).

Description of Relief Sought: The Boeing Company is seeking relief from 14 CFR 25.795(b)(2), (c)(1), (c)(3), and (d), which requires certain security design requirements for the Boeing Model 777–8F airplane. Specifically, the request relates to the carriage of supernumeraries, who are considered passengers with respect to part 25 requirements, when the airplane is operated as a freighter.

[FR Doc. 2024–03599 Filed 2–21–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the NYS Route 33 Kensington Expressway Project, City of Buffalo, Erie County, New York

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces action taken by FHWA and other Federal Agencies that are final. The actions relate to the NYS Route 33 Kensington Expressway Project located in the city of Buffalo, Erie County, New York.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 22, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Richard J. Marquis, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 11A Clinton Avenue, Suite 952, Albany, New York 12207, Telephone (518) 431–4127.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA and other Federal Agencies have taken final Agency actions by issuing approvals for the following highway project in the State of New York: NYS Route 33 Kensington Expressway Project, City of Buffalo, Erie County, New York. The purpose of the Project is to reconnect the community surrounding the defined transportation corridor and improve the compatibility of the corridor with the adjacent land uses, while addressing the geometric, infrastructure, and multi-modal needs within the corridor in its current location.

The following objectives have been established to further define the Project purpose:

- Reconnect the surrounding community by creating continuous greenspace to enhance the visual and aesthetic environment of the transportation corridor.
- Maintain the vehicular capacity of the existing transportation corridor.
- Improve vehicular, pedestrian, and bicycle mobility and access in the surrounding community by implementing Complete Street2 roadway design features; and
- Address identified geometric and infrastructure deficiencies within the transportation corridor.

The actions by the Federal Agencies, and the laws under which such actions were taken, are described in the FHWA Final Design Report/Environmental Assessment (FDR/EA) for the project, signed February 16, 2024, in the Finding of No Significant Impact (FONSI) for the project, issued on February 16, 2024, and in other documents in the FHWA administrative record. The FDR/EA, FONSI, and other documents in the FHWA administrative record files are available by contacting FHWA at the

address provided above. The FDR/EA and FONSI can also be viewed and downloaded from the project website at: *http://kensingtonexpressway.dot.ny.gov.*

This notice applies to FHWA agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act [42 U.S.C. 4321–4351].
2. Federal-Aid Highway Act [23 U.S.C. 109].
3. Clean Air Act [42 U.S.C. 7401–7671(q)].
4. Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
5. Endangered Species Act [16 U.S.C. 1531–1544 and 1536].
6. Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)].
7. Migratory Bird Treaty Act [16 U.S.C. 703–712].
8. Bald and Golden Eagle Protection Act [16 U.S.C. 668–668c].
9. Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470].
10. Farmland Protection Policy Act [7 U.S.C. 4201–4209].
11. Clean Water Act (Section 319, Section 401, Section 402, Section 404) [33 U.S.C. 1251–1377].
12. Safe Drinking Water Act [42 U.S.C. 300(f) *et seq.*].
13. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [42 U.S.C. 4601 *et seq.*].
14. Noise Control Act of 1972 [42 U.S.C. 4901 *et seq.*].
15. Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)].
16. Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675].
17. Americans with Disabilities Act of 1990 [42 U.S.C. 12101].
18. Executive Order 11990 Protection of Wetlands.
19. Executive Order 11988 Floodplain Management.
20. Executive Order 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.
21. Executive Order 11593 Protection and Enhancement of Cultural Resources.
22. Executive Order 13007 Indian Sacred Sites.
23. Executive Order 13287 Preserve America.
24. Executive Order 13175 Consultation and Coordination with Indian Tribal Governments.
25. Executive Order 11514 Protection and Enhancement of Environmental Quality.
26. Executive Order 13112 Invasive Species.
27. Executive Order 13166 Improving Access to Services for Persons with Limited English Proficiency.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139(l)(1))

Richard J. Marquis,

Division Administrator, Albany, NY.

[FR Doc. 2024–03634 Filed 2–21–24; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0067]

Federal Motor Vehicle Safety Standard (FMVSS) No. 213 Test Procedure (TP–213–11)

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Request for comments (RFC).

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) seeks public comment on the Office of Vehicle Safety Compliance (OVSC) laboratory test procedure (TP) number TP–213–11, specifically relating to FMVSS No. 213a, *Child restraint systems—side impact protection.* This TP, prepared for the limited purpose of use by contracted independent laboratories conducting tests for NHTSA, is an agency guidance document intended for use by NHTSA test contractors. TPs are not rules, regulations, or agency interpretations regarding the meaning of a Federal motor vehicle safety standard. The TP serves as a contractual document between NHTSA and its contract test laboratories. The updated OVSC laboratory test procedure, TP–213–11, includes new instructions for how labs should test for compliance with the recently created FMVSS No. 213a, *Child restraint systems—side impact protection.*

DATES: Comments must be received no later than May 22, 2024.

ADDRESSES:

Documents: The OVSC laboratory test procedure TP–213–11, described in this RFC, is available for viewing in PDF format in the docket identified in the heading of this document.

Comments: You may submit comments to the docket, identified by the docket number identified in the head of this document, by any of the following methods:

- *Federal eRulemaking Portal:* To submit comments electronically, go to the U.S. Government regulations website at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* Written comments may be faxed to 202–493–2251.
- *Mail:* Send comments to: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* If you submit written comments by hand or courier, please do so at 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202–366–9826 before coming.

Instructions: For detailed instructions on submitting comments and additional information, see the Public Participation section of this document, which can be found below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: 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 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

If you wish to provide comments containing proprietary or confidential information, please follow the instructions in the section of this notice titled ''*How do I submit confidential business information?*''

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Corey Barlet, Compliance Engineer, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Ave SE, Washington, DC 20590. Telephone: 202–366–1119. Email: *corey.barlet@dot.gov.*

For legal issues: Mr. Matthew Filpi, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–3179. Email: *matthew.filpi@dot.gov.*

SUPPLEMENTARY INFORMATION: On June 30, 2022, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 213a, *Child restraint systems—side impact protection* (87 FR 39234). This final rule requires child restraint systems (CRS) designed to seat children weighing up to 18.1 kilograms (kg) or in a height range that includes heights up to 1,100 millimeters, to meet certain minimum

side impact performance requirements. This RFC is strictly limited to the contents of OVSC laboratory test procedure TP–213–11, including subsequent amendments, if any, resulting from the agency's response to petitions for reconsideration. TP–213–11 is available for viewing in PDF format in the docket identified in the heading of this document.

Introduction

To investigate whether specific vehicles or products comply with the Federal Motor Vehicle Safety Standards (FMVSS), NHTSA's Office of Vehicle Safety Compliance (OVSC) contracts with labs to conduct compliance testing. OVSC laboratory test procedures are prepared for the limited purpose of use by contracted independent laboratories conducting compliance tests for the OVSC.[1] OVSC laboratory test procedures are not rules, regulations, or NHTSA interpretations. OVSC laboratory test procedures are not intended to limit the requirements of the applicable FMVSS. In some cases, the OVSC laboratory test procedure, or the report produced as a result of the work performed by the contracted laboratory, does not include all of the various FMVSS minimum performance requirements.

Background

Under the National Traffic and Motor Vehicle Safety Act, NHTSA has the statutory authority to issue Federal Motor Vehicle Safety Standards (FMVSS) applicable to new motor vehicles and items of motor vehicle equipment. Child restraint systems fall under NHTSA's regulatory authority because they are considered motor vehicle equipment. The law establishes a self-certification process in which the vehicle and equipment manufacturers themselves certify that all of their products are in compliance with all applicable FMVSS, which establish minimum criteria that the product must meet. It is up to manufacturers to determine what steps are necessary in order to ensure that every product manufactured meets or exceeds the applicable requirements before the products are imported, sold, offered for sale, or introduced into interstate commerce in the United States.

NHTSA enforces its standards, in part, by procuring equipment from the marketplace and testing to the requirements of the applicable standard at independent test labs. Not all available products, applicable requirements, or every claim a manufacturer makes will be tested. Further, NHTSA's testing does not constitute nor confirm a manufacturer's certification of compliance of a product. It is up to manufacturers to certify compliance with the relevant FMVSS for their product, and they may choose to do so however they see fit.

In the spirit of transparency with public and industry, OVSC laboratory test procedures are published on NHTSA's website so interested parties may see how NHTSA is instructing its contracted labs to collect data to help OVSC investigate if products sold in the US comply with certain FMVSS. Because OVSC laboratory test procedures are OVSC's instructions for NHTSA contracted labs and OVSC may not be testing strictly enough to ensure compliance of a vehicle or item of motor vehicle equipment, compliance is not necessarily guaranteed if the manufacturer limits its certification tests to those described in an OVSC laboratory test procedure. A manufacturer should not depend on the test reports produced as a result of OVSC's laboratory testing as the basis for certification that its vehicle or item of motor vehicle equipment complies with all applicable requirements of a FMVSS, as OVSC's laboratory tests evaluate a product's performance under some, but not necessarily all, conditions and procedures described in an FMVSS, and the findings in those reports are the findings of the test laboratory and not necessarily of NHTSA. Under the National Traffic and Motor Vehicle Safety Act, manufacturers are responsible for certifying the compliance of their products with *all* applicable requirements of the FMVSSs.

OVSC's Current Test Procedure

Over the years, NHTSA has drafted numerous versions of OVSC the laboratory test procedure for FMVSS No. 213 *Child Restraint Systems, Child Restraint Systems—Side Impact Protection.* Because FMVSS No. 213 was originally written in the late 1970s, the agency updated the test procedure numerous times because of changes in technology, the CRS market, and the standard itself. The previous OVSC laboratory test procedure for FMVSS No. 213, TP–213–10,[2] was published in February 2014. When the agency published the side impact final rule in June of 2022,[3] the agency felt that an update to the OVSC laboratory test procedure for FMVSS No. 213 was necessary. Among other updates to FMVSS No. 213, the side impact final rule created FMVSS No. 213a, which is a new standard requiring CRSs to meet certain minimum side impact performance requirements. Because this is a new standard, NHTSA is seeking feedback from the public on the side impact procedures in the new updated FMVSS No. 213 OVSC laboratory test procedure, TP–213–11. The collected feedback will be reviewed and considered by NHTSA and a future revision of the OVSC test procedure will be published to include potential updates made from the consideration of this solicitation, as well as FMVSS No. 213b updates.

The Updated OVSC Laboratory Test Procedure Draft and Request for Comment

In the interest of ensuring a robust OVSC laboratory test procedure for a new safety standard, NHTSA invites public comment on TP–213–11 specifically relating to sections of the OVSC laboratory test procedure that include FMVSS No. 213a requirements.

Public Participation

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number indicated in this document in your comments.

Please limit your comments to 15 pages. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

If you are submitting comments electronically as a PDF (Adobe) file, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

[1] OVSC laboratory test procedures are distinct from regulatory test procedures that are included as part of most Federal Motor Vehicle Safety Standards. OVSC laboratory test procedures are generally based off of the regulatory test procedures in specific FMVSS, but are prepared by the agency to give contracted labs specific instructions on how to conduct a specific test. The agency publishes the OVSC laboratory test procedures on NHTSA's website for transparency. The OVSC laboratory test procedures are simply agency guidance for contracted labs, and do not constitute official agency action.

[2] Docket No. NHTSA–2023–0067.

[3] 87 FR 39234.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *https://www.transportation.gov/regulations/dot-information-dissemination-quality-guidelines.*

How can I be sure that my comments were received?

If you submit comments by hard copy and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you submit comments electronically, your comments should appear automatically in the Docket identified in the heading of this document on *www.regulations.gov.* If they do not appear within two weeks of posting, NHTSA suggested that you call the Docket Management Facility at (202) 366–9826.

How do I submit confidential business information?

You should submit a redacted ''public version'' of your comment (including redacted versions of any additional documents or attachments) to the docket using any of the methods identified under **ADDRESSES**. This ''public version'' of your comment should contain only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. See below for further instructions on how to do this.

You also need to submit a request for confidential treatment directly to the Office of the Chief Counsel. Requests for confidential treatment are governed by 49 CFR part 512. Your request must set forth the information specified in part 512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to § 512.8; and a certificate, pursuant to § 512.4(b) and part 512, appendix A.

You are required to submit to the Office of the Chief Counsel one unredacted ''confidential version'' of the information for which you are seeking confidential treatment. Pursuant to § 512.6, the words ''ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION'' or ''CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS'' (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: ''[ ].''

You are also required to submit to the Office of the Chief Counsel one redacted ''public version'' of the information for which you are seeking confidential treatment. Pursuant to § 512.5(a)(2), the redacted ''public version'' should include redactions of any information for which you are seeking confidential treatment (*i.e.,* the only information that should be unredacted is information for which you are not seeking confidential treatment).

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA's headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov.* You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to Matthew Filpi at *Matthew.Filpi@dot.gov.*

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How will the agency utilize comments received?

The agency will consider all comments received, and will incorporate comments as it deems appropriate into the OVSC laboratory test procedure.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, at *www.regulations.gov,* identified by the docket number at the heading of this notice. Please note that, even after the comment closing date, NHTSA will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the docket for new material.

(Authority: 49 U.S.C. 30166: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke, III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–03591 Filed 2–21–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Tax on Chemical Substances; Request To Modify List of Taxable Substances; Notice of Filing for Nylon 6

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed requesting that nylon 6 be added to the list of taxable substances. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before April 22, 2024.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate public docket number IRS–2024–0005 or nylon 6) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal. Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:01:PR (Notice of Filing for Nylon 6), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Camille Edwards Bennehoff at (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Request To Add Substance to the List

(a) *Overview.* A petition was filed pursuant to Rev. Proc. 2022–26 (2022–29 I.R.B. 90), requesting that nylon 6 be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code (List). The petition requesting the addition of nylon 6 to the List is based on weight and contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition information in this notice of filing is not a determination and does not constitute Treasury Department or IRS confirmation of the accuracy of the information published.

(b) *Petition Content.*

(1) *Substance name:* Nylon 6.

(2) *Petitioner:* AdvanSix Inc., an exporter of nylon 6.

(3) *Proposed classification numbers:*

(i) *HTSUS number:* 3908.10.00.

(ii) *Schedule B number:* 3908.10.0000.

(iii) *CAS number:* 25038–54–4.

(4) *Petition filing dates:*

(i) *Petition filing date for purposes of making a determination:* November 8, 2023.

(ii) *Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26:* July 1, 2022.

(5) *Description from petition:* According to the petition, nylon 6, or poly(caprolactam), is a semicrystalline polyamide that has broad use in textile fibers, engineering plastics, food packaging films, and monofilaments. The number ''6'' in nylon 6 refers to the number of carbon atoms in each polymeric repeat unit. Nylon 6 may be utilized neat or with functional additives by melt processing into the desired final form.

Nylon 6 is made from benzene, propylene, ammonia, methane, and sulfuric acid; however, sulfuric acid is cancelled from the stoichiometric material consumption equation due to no net consumption/production. Taxable chemicals constitute 46.64 percent by weight of the materials used to produce this substance.

(6) *Process identified in petition as predominant method of production of substance:* The predominant method of production of nylon 6 is the ''hydrolytically initiated ring-opening polymerization of caprolactam'' which is also referred to in industry literature as the ''hydrolytic polymerization of nylon 6.'' This process is termed ''hydrolytic'' because water plays a key role in the chemical mechanism. Nylon 6 is produced almost exclusively through this method because it is easier to control and better adapted for large-scale operations.

The hydrolytic polymerization of nylon 6 generally entails heating a mixture of caprolactam and water to ~270°C in an inert atmosphere of nitrogen and holding until equilibrium conditions are achieved. The three principal reactions in this process are summarized below:

1. In the initiation step of the process, the caprolactam ring is hydrolyzed via ring opening with the addition of one water molecule to become amino-caproic acid.

2. In the next step of the mechanism, the amino-caproic acid acts as the initiating species to begin the addition polymerization by ring-opening of caprolactam.

3. The last major mechanism step of the hydrolytic polymerization of nylon 6 is the condensation of primary amine and carboxylic acid chain-ends to form an amide linkage in the now higher molecular weight polyamide with the simultaneous loss of a water molecule.

(7) *Stoichiometric material consumption equation, based on process identified as predominant method of production:*

nC_6H_6 (benzene) + nC_3H_6 (propylene) + $2.5nO_2$ (oxygen) + $0.5nCH_4$ (methane) + $5nNH_3$ (ammonia) + $2nH_2O$ (water) + $2nSO_2$ (sulfur dioxide) → $(C_6H_{11}NO)_n$ (nylon 6) + nC_3H_6O (acetone) + $2n(NH_4)_2SO_4$ (ammonium sulfate) + 0.5 CO_2 (carbon dioxide)

Where n indicates the number of repeating units.

(8) *Tax rate calculated by Petitioner, based on Petitioner's conversion factors for taxable chemicals used in production of substance:*

(i) *Tax rate:* $14.77 per ton.

(ii) *Conversion factors:* 0.69 for benzene; 0.37 for propylene; 0.75 for ammonia; 0.07 for methane.

(9) *Public docket number:* IRS–2024–0005.

Michael Beker,

Senior Counsel (Passthroughs and Special Industries), IRS Office of Chief Counsel.

[FR Doc. 2024–03588 Filed 2–21–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Superfund Tax on Chemical Substances; Request To Modify List of Taxable Substances; Notice of Filing for Caprolactam

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of filing and request for comments.

SUMMARY: This notice of filing announces that a petition has been filed requesting that caprolactam be added to the list of taxable substances. This notice of filing also requests comments on the petition. This notice of filing is not a determination that the list of taxable substances is modified.

DATES: Written comments and requests for a public hearing must be received on or before April 22, 2024.

ADDRESSES: Commenters are encouraged to submit public comments or requests for a public hearing relating to this petition electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate public docket number IRS–2024–0006 or caprolactam) by following the online instructions for submitting comments. Comments cannot be edited or withdrawn once submitted to the Federal eRulemaking Portal.

Alternatively, comments and requests for a public hearing may be mailed to: Internal Revenue Service, Attn: CC:PA:01:PR (Notice of Filing for Caprolactam), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All comments received are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available. If a public hearing is scheduled, notice of the time and place for the hearing will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Camille Edwards Bennehoff at (202) 317–6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Request To Add Substance to the List

(a) *Overview.* A petition was filed pursuant to Rev. Proc. 2022–26 (2022–29 I.R.B. 90), *as modified by* Rev. Proc. 2023–20 (2023–15 I.R.B. 636), requesting that caprolactam be added to the list of taxable substances under section 4672(a) of the Internal Revenue Code (List). The petition requesting the addition of caprolactam to the List is based on weight and contains the information detailed in paragraph (b) of this document. The information is provided for public notice and comment pursuant to section 9 of Rev. Proc. 2022–26. The publication of petition information in this notice of filing is not a determination and does not constitute Treasury Department or IRS

confirmation of the accuracy of the information published.

(b) *Petition Content:*

(1) *Substance name:* Caprolactam.

(2) *Petitioner:* AdvanSix Inc., an exporter of caprolactam.

(3) *Proposed classification numbers:*

(i) *HTSUS number:* 2933.71.00.

(ii) *Schedule B number:* 2933.71.0000.

(iii) *CAS number:* 105–60–2.

(4) *Petition filing dates:*

(i) *Petition filing date for purposes of making a determination:* November 8, 2023.

(ii) *Petition filing date for purposes of section 11.02 of Rev. Proc. 2022–26, as modified by section 3 of Rev. Proc. 2023–20:* January 1, 2023.

(5) *Description from petition:* According to the petition, caprolactam, a white solid, is primarily used to manufacture nylon resins and other synthetic fibers.

Caprolactam is made from benzene, propylene, ammonia, methane, and sulfuric acid; however, sulfuric acid is cancelled from the stoichiometric material consumption equation due to no net consumption/production. Taxable chemicals constitute 46.64 percent by weight of the materials used to produce this substance.

(6) *Process identified in petition as predominant method of production of substance:* Caprolactam is produced by first oxidizing cumene to yield phenol, which is then partially reduced with hydrogen to yield cyclohexanone. Cyclohexanone is then reacted with Raschig hydroxylamine to generate cyclohexanone oxime. The cyclohexanone oxime undergoes Beckmann rearrangement in the presence of fuming sulfuric acid (oleum) to give an intermediate material known as rearrangement mass, which is subsequently hydrolyzed and then neutralized with ammonia to yield ε-caprolactam.

(7) *Stoichiometric material consumption equation, based on process identified as predominant method of production:*

C_6H_6 (benzene) + C_3H_6 (propylene) + 2.5 O_2 (oxygen) + 0.5 CH_4 (methane) + 5 NH_3 (ammonia) + 2 H_2O (water) + 2 SO_2 (sulfur dioxide) → $C_6H_{11}ON$ (ε-caprolactam) + C_3H_6O (acetone) + $2(NH_4)_2SO_4$ (ammonium sulfate) + 0.5 CO_2 (carbon dioxide)

(8) *Tax rate calculated by Petitioner, based on Petitioner's conversion factors for taxable chemicals used in production of substance:*

(i) *Tax rate:* $14.77 per ton.

(ii) *Conversion factors:* 0.69 for benzene; 0.37 for propylene; 0.75 for ammonia; 0.07 for methane.

(9) *Public docket number:* IRS–2024–0006.

Michael Beker,

Senior Counsel (Passthroughs and Special Industries), IRS Office of Chief Counsel.

[FR Doc. 2024–03589 Filed 2–21–24; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: February 28, 2024, 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 939 7399 6796, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJckcOqhpz0tE9IAHB0UIDGB3eP2JqS533Ki.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Industry Advisory Subcommittee (the ''Subcommittee'') will conduct a meeting to continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Industry Advisory Subcommittee Chair

The Industry Advisory Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Industry Advisory Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda—UCR Industry Advisory Subcommittee Chair

For Discussion and Possible Subcommittee Action

The proposed Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Minutes from the January 17, 2023, Meeting—UCR Industry Advisory Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the January 17, 2023, Industry Advisory Subcommittee meeting via teleconference will be reviewed. The UCR Industry Advisory Subcommittee will consider action to approve.

V. 2024 Priorities and Project Development for the Subcommittee—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will provide an update on current and planned initiatives, to include the development of a compliance video series intended to increase participation in the UCR focused on brokers, motor carriers, and bus operators.

VI. Industry Update on Truck Parking—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will provide an update on truck parking initiatives in the United States including the status of legislation currently under consideration in the United States Congress as well the status of grant funding from the United States Department of Transportation.

VII. Other Items—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

VIII. Adjournment—UCR Industry Advisory Subcommittee Chair

The UCR Industry Advisory Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, February 20, 2024 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2024–03752 Filed 2–20–24; 4:15 pm]

BILLING CODE 4910–YL–P

FEDERAL REGISTER

Vol. 89 Thursday,

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Part II

Department of Homeland Security

Coast Guard

33 CFR Parts 101 and 160

Cybersecurity in the Marine Transportation System; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101 and 160

[Docket No. USCG–2022–0802]

RIN 1625–AC77

Cybersecurity in the Marine Transportation System

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to update its maritime security regulations by adding regulations specifically focused on establishing minimum cybersecurity requirements for U.S.-flagged vessels, Outer Continental Shelf facilities, and U.S. facilities subject to the Maritime Transportation Security Act of 2002 regulations. This proposed rule would help to address current and emerging cybersecurity threats in the marine transportation system. We seek your comments on this proposed rule and whether we should: use and define the term *reportable cyber incident* to limit cyber incidents that trigger reporting requirements, use alternative methods of reporting such incidents, and amend the definition of *hazardous condition.*

DATES: Comments and related material must be received by the Coast Guard on or before April 22, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0802 using the Federal Decision-Making Portal at *www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments. You may also find this notice of proposed rulemaking, with its 100-word-or-less summary, in this same docket at *www.regulations.gov.*

Collection of information. Submit comments on the collection of information discussed in section VI.D of this preamble both to the Coast Guard's online docket and to the Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB) using their website, *www.reginfo.gov/public/do/PRAMain.* Comments sent to OIRA on the collection of information must reach OIRA on or before the comment due date listed on their website.

FOR FURTHER INFORMATION CONTACT: For information about this document, email *MTSCyberRule@uscg.mil* or call: Commander Brandon Link, Office of Port and Facility Compliance, 202–372–1107, or Commander Frank Strom, Office of Design and Engineering Standards, 202–372–1375.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

The Coast Guard views 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 *www.regulations.gov.* To do so, go to *www.regulations.gov,* type USCG–2022–0802 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 *www.regulations.gov,* call or email the persons 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 *www.regulations.gov* Frequently Asked Questions (FAQ) web page. That FAQ page also explains how to subscribe for email alerts that will notify you when comments are posted or if 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 *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 the Department of Homeland Security's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Public meeting. We do not plan to hold a public meeting, but we will consider doing so if we determine from public comments that a meeting would be helpful. We would issue a separate **Federal Register** notice to announce the date, time, and location of such a meeting.

II. Abbreviations

AMSC Area Maritime Security Committees
BLS Bureau of Labor Statistics
CEA Council of Economic Advisors
CFR Code of Federal Regulations
CGCSO Coast Guard Cyber Strategic Outlook
CG–CVC Coast Guard Office of Commercial Vessel Compliance
CGCYBER U.S. Coast Guard Cyber Command
CG–ENG Coast Guard Office of Design and Engineering Standards
CG–FAC Coast Guard Office of Port and Facility Compliance
CIRCIA Cyber Incident Reporting for Critical Infrastructure Act of 2022
CISA Cybersecurity and Infrastructure Security Agency
COTP Captain of the Port
CPG Cybersecurity Performance Goal
CRM Cyber risk management
CSF Cybersecurity framework
CSRC Computer Secure Resource Center
CySO Cybersecurity officer
DHS Department of Homeland Security
FR Federal Register
FSA Facility security assessment
FSP Facility security plan
HMI Human-machine interface
ICR Information collection request
IEc Industrial Economics, Incorporated
IMO International Maritime Organization
IP internet protocol
IRFA Initial Regulatory Flexibility analysis
ISM International Safety Management
IT Information technology
KEV Known exploited vulnerability
MCAAG Maritime Cybersecurity Assessment and Annex Guide

MISLE Marine Information for Safety and Law Enforcement
MODU Mobile offshore drilling unit
MSC Marine Safety Center
MSC–FAL International Maritime Organization's Marine Safety Committee and Facilitation Committee
MTS Marine transportation system
MTSA Maritime Transportation Security Act of 2002
NAICS North American Industry Classification System
NIST National Institute of Standards and Technology
NMSAC National Maritime Security Advisory Committee
NPRM Notice of proposed rulemaking
NRC National Response Center
NVIC Navigation and Vessel Inspection Circular
OCMI Officer in Charge, Marine Inspection
OCS Outer continental shelf
OEWS Occupational Employment and Wage Statistics
OMB Office of Management and Budget
OSV Offshore supply vessel
OT Operational technology
PII Personally identifiable information
QCEW Quarterly Census of Employment and Wages
RIA Regulatory impact analysis
§ Section
SBA Small Business Administration
SME Subject matter expert
SMS Safety management system
TSI Transportation security incident
U.S.C. United States Code
VSA Vessel security assessment
VSP Vessel security plan

III. Basis and Purpose

A. The Problem We Seek To Address

The maritime industry is undergoing a significant transformation that involves increased use of cyber-connected systems. While these systems improve commercial vessel and port facility operations, they also bring a new set of challenges affecting design, operations, safety, security, training, and the workforce.

Every day, malicious actors (including, but not limited to, individuals, groups, and adversary nations posing a threat) attempt unauthorized access to control system devices or networks using various communication channels. An example of a successful attempt occurred in May 2021, when the Colonial Pipeline Company suffered a cyber-attack that disrupted the supply of fuel to the east coast of the United States. These cybersecurity threats require the maritime community to effectively manage constantly changing risks to create a safer cyber environment.

The purpose of this notice of proposed rulemaking (NPRM) is to safeguard the marine transportation system (MTS) against current and emerging threats associated with cybersecurity by adding minimum cybersecurity requirements to part 101 of title 33 of the Code of Federal Regulations (CFR) to help detect, respond to, and recover from cybersecurity risks that may cause transportation security incidents (TSIs). This proposed rule would help address current and emerging cybersecurity threats to maritime security in the MTS.

Cybersecurity risks result from vulnerabilities in the operation of vital systems, which increase the likelihood of cyber-attacks on facilities, Outer Continental Shelf (OCS) facilities, and vessels. Cyber-related risks to the maritime domain are threats to the critical infrastructure that citizens and companies depend on to fulfill their daily needs. Additionally, the proposed rule is necessary because it would create a regulatory environment for cybersecurity in the maritime domain to assist facilities, OCS facilities, and vessel firms that may not have taken cybersecurity measures on their own, for various reasons. In a 2018 report by the Council of Economic Advisors (CEA), the CEA stated ''[a] firm with weak cybersecurity imposes negative externalities on its customers, employees, and other firms, tied to it through partnerships and supply chain relations. In the presence of externalities, firms would rationally underinvest in cybersecurity relative to the socially optimal level. Therefore, it often falls to regulators to devise a series of penalties and incentives to increase the level of investment to the desired level.'' [1]

In the report, the CEA also emphasized that ''[c]ontinued cooperation between the public and private sectors is the key to effectively managing cybersecurity risks. . . . The government is likewise important in incentivizing cyber protection—for example, by disseminating new cybersecurity standards, sharing best practices, conducting basic research on cybersecurity, protecting critical infrastructures, preparing future employees for the cybersecurity workforce, and enforcing the rule of law in cyberspace.'' [2]

Furthermore, the CEA acknowledged that ''[f]irms and private individuals are often outmatched by sophisticated cyber adversaries. Even large firms with substantial resources committed to cybersecurity may be helpless against attacks by sophisticated nation-states.'' [3] As an example, the CEA stated, ''firms that own critical infrastructure assets, such as parts of the nation's power grid, may generate pervasive negative spillover effects for the wider economy.'' [4]

Lastly, the CEA stated another problem that exists in the marketplace is, ''firms' reluctance to share information on cyber threats and exposures'', which ''impairs effective cybersecurity.'' [5] The CEA further stated that ''firms remain reluctant to increase their exposure to legal and public affairs risks. The lack of information on cyberattacks and data breaches suffered by other firms may cause less sophisticated small firms to conclude that cybersecurity risk is not a pressing problem. . . . [T]he lack of data may be stymying the ability of law enforcement and other actors to respond quickly and effectively and may be slowing the development of the cyber insurance market.'' [6]

This proposed rule would apply to the owners and operators of U.S.-flagged vessels subject to 33 CFR part 104 (Maritime Security: Vessels), facilities subject to 33 CFR part 105 (Maritime Security: Facilities), and OCS facilities subject to 33 CFR part 106 (Marine Security: Outer Continental Shelf (OCS) Facilities). The proposed requirements include account security measures, device security measures, data security measures, governance and training, risk management, supply chain management, resilience, network segmentation, reporting, and physical security.

This NPRM also seeks public comments specifically on defining a *reportable cyber incident* in 33 CFR 101.615 and using that term to limit reporting requirements; whether certain reports required under proposed §§ 101.620 and 101.650 should be sent to the Cybersecurity and Infrastructure Security Agency (CISA); and whether to amend the definition of *hazardous condition* in 33 CFR part 160. We will consider comments on these three issues in deciding whether to amend the regulatory text we have proposed.

The Coast Guard welcomes comments on all aspects of this rulemaking, including the proposed changes to definitions and the assumptions and estimates in section VI.A., *Regulatory Planning and Review.* Section VI.A. of this preamble addresses, for instance, developing a Cybersecurity Plan and

[1] Economic Report of the President Together with the Annual Report of the Council of Economic Advisers (Feb. 2018), *https://www.govinfo.gov/content/pkg/ERP-2018/pdf/ERP-2018.pdf* (accessed Dec. 15, 2023). Page 323–324.

[2] Id. at 324–325.

[3] Id. at 326.

[4] Id. at 326.

[5] Id. at 326.

[6] Id. at 326.

cybersecurity drill components, the affected population, device security measures, supply chain management, network segmentation, physical security, implementing and maintaining multifactor authentication, and owners and operators' existing practices on the proposed cybersecurity measures.

B. Recent Legislation, Regulations, and Policy

In the Maritime Transportation Security Act of 2002 (MTSA),[7] Congress provided a framework for the Secretary of Homeland Security (''Secretary''), acting through the Coast Guard,[8] and maritime industry to identify, assess, and prevent TSIs in the MTS. MTSA vested the Secretary with authorities for broad security assessment, planning, prevention, and response activities to address TSIs, including the authority to require and set standards for Facility Security Plans (FSPs), OCS FSPs, and Vessel Security Plans (VSPs), to review and approve such plans, and to conduct inspections and take enforcement actions.[9] The Coast Guard's implementing regulations address a range of considerations to deter TSIs to the maximum extent practicable,[10] and require, among other general and specific measures, security assessments and measures related to radio and telecommunication systems, including computer systems and networks.[11]

The Coast Guard has also issued additional guidance and policies to address potential cyber incidents in FSPs, OCS FSPs, and VSPs,[12] including a cybersecurity risk assessment model that was issued in January 2023,[13] and voluntary guidance issued to Area Maritime Security Committees (AMSC) in July 2023.[14] Congress has repeatedly reaffirmed the MTSA framework, including through amendments passed in 2016,[15] 2018,[16] and 2021.[17] In the 2018 amendments, Congress amended MTSA to specifically require VSPs and FSPs to include provisions for detecting, responding to, and recovering from cybersecurity risks that may cause TSIs.[18] The proposed regulatory amendments to 33 CFR part 101 reflect the Coast Guard's view on cybersecurity under MTSA, including, but not limited to, recent amendments to MTSA (such as Title 46 of the United States Code (U.S.C.) Section 70103). The proposed amendments provide more detailed mandatory baseline requirements for U.S.-flagged vessels and U.S. facilities subject to MTSA.

Through three administrations, presidential policy has advanced cybersecurity in the maritime domain. Executive Order 13636 of February 12, 2013 (Improving Critical Infrastructure Cybersecurity) recognized the Federal Government's efforts to secure our nation's critical infrastructure by working with the owners and operators of U.S. facilities, OCS facilities, and U.S.-flagged vessels to prepare for, prevent, mitigate, and respond to cybersecurity threats.[19]

To defend against malicious cyber-related activities, Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities) recognized malicious cyber-related activities as an ''extraordinary threat to the national security, foreign policy, and economy of the United States,'' warranting a national emergency.[20] The National Emergency with Respect to Significant Malicious Cyber-Enabled Activities has been extended as of March 30, 2023.[21]

Executive Order 14028 of May 12, 2021 (Improving the Nation's Cybersecurity) also recognized that ''the private sector must adapt to the continuously changing threat environment, ensure its products are built and operate securely, and partner with the Federal Government to foster a more secure cyberspace.'' [22]

On July 28, 2021, the President issued the ''National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems,'' [23] which required the Secretary of Homeland Security to coordinate with the Secretary of Commerce (through the Director of the National Institute of Standards and Technology (NIST)) and other agencies, as appropriate, to develop baseline Cybersecurity Performance Goals (CPGs). These baseline CPGs would further a common understanding of the baseline security practices that critical infrastructure owners and operators should follow to protect national and economic security, as well as public health and safety. CISA's release of the CPGs in October 2022 was ''intended to help establish a common set of fundamental cybersecurity practices for critical infrastructure, and especially help small- and medium-sized organizations kickstart their cybersecurity efforts.'' [24] The Coast Guard relied on CISA's CPGs as the benchmark for technical requirements in this proposed rule.

In 2021, the Coast Guard published its Cyber Strategic Outlook (CGCSO) to highlight the importance of managing cybersecurity risks in the MTS.[25] The CGCSO highlighted three lines of effort, or priorities, to improve Coast Guard readiness in cyberspace: (1) Defend and Operate the Coast Guard Enterprise Mission Platform; (2) Protect the MTS; and (3) Operate in and through Cyberspace.[26] As outlined in the

[7] Public Law 107–295, 116 Stat. 2064, November 25, 2002.

[8] The Secretary delegated this authority to the Commandant of the Coast Guard via Department of Homeland Security (DHS) Delegation 00170.1(II)(97)(b), Revision No. 01.3.

[9] *See generally, for example,* 46 U.S.C. 70103.

[10] *See* 46 U.S.C. 70103(c)(1).

[11] *See, for example,* 33 CFR 104.300(d)(11), 104.305(d)(2)(v), 105.300(d)(11), 105.305(c)(1)(v), 106.300(d)(11), 106.305(c)(1)(v), and 106.305(d)(2)(v).

[12] One of the Coast Guard's guidance documents is the Navigation and Vessel Inspection Circular (NVIC) 01–20, *Guidelines for Addressing Cyber Risks at Maritime Transportation Security Act Regulated Facilities* (85 FR 16108). This NVIC outlined Coast Guard's view on requirements for FSPs and facility security, including cybersecurity. A similar understanding with regard to VSPs was expressed in the Coast Guard's Office of Commercial Vessel Compliance's (CG–CVC) Vessel CRM Work Instruction CVC–WI–027(2), *Vessel Cyber Risk Management Work Instruction,* October 27, 2020, *https://www.dco.uscg.mil/Portals/9/CVC-WI-27%282%29.pdf,* accessed July 18, 2023.

[13] *See* Maritime Cybersecurity Assessment and Annex Guide (MCAAG) (January 2023), *https://dco.uscg.mil/Portals/9/CG-FAC/Documents/Maritime%20Cyber%20Assessment%20%20Annex%20Guide%20(MCAAG)_released%2023JAN2023.pdf,* accessed Aug. 4, 2023. The MCAAG was developed in coordination with the National Maritime Security Advisory Committee, AMSCs, and other maritime stakeholders. The guide serves as a resource for baseline cybersecurity assessments and plan development and helps stakeholders address vulnerabilities that could lead to transportation security incidents.

[14] NVIC 09–02, Change 6.

[15] Public Law 114–120, 130 Stat. 27, February 8, 2016.

[16] Public Law 115–254, 132 Stat. 3186, October 5, 2018.

[17] Public Law 116–283, 134 Stat. 4754, January 1, 2021.

[18] *See* Public Law 115–254, sec. 1805(d)(2) (codified at 46 U.S.C. 70103(c)(3)(C)).

[19] 78 FR 11739, February 19, 2013.

[20] 80 FR 18077, April 2, 2015. Executive Order 13694 was later amended by Executive Order 13757 (82 FR 1, January 3, 2017), which outlined additional measures the Federal Government must take to address the national emergency identified in Executive Order 13694.

[21] 88 FR 19209, March 30, 2023.

[22] 86 FR 26633.

[23] The White House, National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, July 28, 2021, *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/28/national-security-memorandum-on-improving-cybersecurity-for-critical-infrastructure-control-systems/,* last accessed on July 24, 2023.

[24] CISA, ''Cross-Sector Cybersecurity Performance Goals,'' *https://www.cisa.gov/cross-sector-cybersecurity-performance-goals,* accessed July 18, 2023.

[25] U.S. Coast Guard, ''Cyber Strategic Outlook,'' August 2021, *https://www.uscg.mil/Portals/0/Images/cyber/2021-Cyber-Strategic-Outlook.pdf,* accessed July 18, 2023.

[26] These lines of effort evolved from the three ''strategic priorities'' introduced in the Coast Guard's Cyber Strategy, June 2015. As cyber threats

CGCSO's second line of effort, ''Protect the MTS,'' the Coast Guard proposes to implement a risk-based regulatory, compliance, and assessment regime. We propose to establish minimum requirements for cybersecurity plans that facilitate the use of international and industry-recognized cybersecurity standards to manage cybersecurity risks by owners and operators of maritime critical infrastructure.[27] Specifically, this proposed rule would promulgate the Coast Guard's baseline cybersecurity regulations for U.S.-flagged vessels and U.S. facilities (including OCS facilities) subject to MTSA.

As noted, in January 2023, the Coast Guard released the Maritime Cybersecurity Assessment and Annex Guide (MCAAG). The MCAAG was developed through coordination with the National Maritime Security Advisory Committee, Area Maritime Security Committees, and other maritime stakeholders, consistent with the activities described in section 2(e) of the National Institute of Standards and Technology Act (15 U.S.C. 272(e)). The MCAAG provides more detailed recommendations on implementing existing MTSA regulations as they relate to computer systems and networks. For example, the Coast Guard recommended a Cyber Annex Template for stakeholders to address possible cybersecurity vulnerabilities and risks.

This NPRM is meant to expand and clarify the information required in security plans to remain consistent with 46 U.S.C. 70103(c)(3), including section 70103(c)(3)(C)(v), which requires FSPs, OCS FSPs, and VSPs to include provisions for detecting, responding to, and recovering from cybersecurity risks that may cause TSIs. Some terms we use in the MCAAG, such as *cybersecurity vulnerability,* may have a set proposed definition in this NPRM.

C. Legal Authority To Address This Problem

The Coast Guard is proposing to promulgate these regulations under 43 U.S.C. 1333(d); 46 U.S.C. 3306, 3703, 70102 through 70104, 70124; and the Department of Homeland Security (DHS) Delegation No. 00170, Revision No. 01.3.

Section 4 of the Outer Continental Shelf Lands Act of 1953, codified as amended at 43 U.S.C. 1333(d), authorizes the Secretary to promulgate regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices on the OCS. This authority was delegated to the Coast Guard by DHS Delegation No. 00170(II)(90), Revision No. 01.3.

Section 3306 of Title 46 of the United States Code authorizes the Secretary to prescribe necessary regulations for the design, construction, alteration, repair, equipping, manning and operation of vessels and prevention and mitigation of damage to the marine environment, propulsion machinery, auxiliary machinery, boilers, unfired pressure vessels, piping, electric installations, and accommodations for passengers and crew. This authority was delegated to the Coast Guard by DHS Delegation No. 00170(II)(92)(b), Revision No. 01.3.

Section 3703 of Title 46 of the United States Code authorizes the Secretary to prescribe similar regulations relating to tank vessels that carry liquid bulk dangerous cargoes, including the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of the vessels. This authority was delegated to the Coast Guard by DHS Delegation No. 00170(II)(92)(b), Revision No. 01.3.

Sections 70102 through 70104 of Title 46 of the United States Code authorize the Secretary to evaluate for compliance vessel and facility vulnerability assessments, security plans, and response plans. Section 70124 authorizes the Secretary to promulgate regulations to implement Chapter 701, including sections 70102 through 70104, dealing with vulnerability assessments for the security of vessels, facilities, and OCS facilities; VSPs, FSPs, and OCS FSPs; and response plans for vessels, facilities, and OCS facilities. These authorities were delegated to the Coast Guard by DHS Delegation No. 00170(II)(97)(a) through (c), Revision No. 01.3.

IV. Background

A. The Current State of Cybersecurity in the MTS

The maritime industry is relying increasingly on digital solutions for operational optimization, cost savings, safety improvements, and more sustainable business. However, these developments, to a large extent, rely on information technology (IT) systems and operational technology (OT) systems, which increases potential cyber vulnerabilities and risks. Cybersecurity risks result from vulnerabilities in secure and safe operation of vital systems, which increase the likelihood of cyber-attacks on U.S. facilities, OCS facilities, and U.S.-flagged vessels.

Cyber-attacks on public infrastructure have raised awareness of the need to protect systems and equipment that facilitate operations within the MTS because cyber-attacks have the potential to disable the IT and OT onboard U.S.-flagged vessels, U.S. facilities, and OCS facilities. Autonomous vessel technology, automated OT, and remotely operated machines provide further opportunities for cyber-attackers. These systems and equipment are prime targets for cyber-attacks stemming from insider threats, criminal organizations, nation state actors, and others.

Also, the MTS has become increasingly susceptible to cyber-attacks due to the growing integration of digital technologies in their operations. These types of cyber-attacks can range from altering a vessel's navigational systems to disrupting its communication with ports, which can lead to delays, accidents, or even potential groundings that could potentially disrupt vessel movements and shut down port operations, such as loading and unloading cargo. This disruption can also negatively affect the MTS by interrupting the transportation and commerce of goods, raw resources, and passengers, as well as potential military operations when needed.

An attack that compromises navigational or operational systems can pose a serious safety risk. It could result in accidents at sea, potential environmental disasters like oil spills, and loss of life. The maritime industry is not immune to ransomware attacks where cybercriminals are targeting critical systems or data. Given the critical nature of marine transportation to global trade, continued efforts are being made to improve cybersecurity measures in the sector.

Maritime stakeholders can better detect, respond to, and recover from cybersecurity risks that may cause TSIs by adopting a range of cyber risk management (CRM) measures, as described in this proposed rule. It is important that the Coast Guard work with the maritime community to address both safety and security risks to better facilitate operations and to protect

and vulnerabilities evolve, so will the Coast Guard's posture. *https://www.dco.uscg.mil/Portals/10/Cyber/Docs/CG_Cyber_Strategy.pdf?ver=nejX4g9gQdBG29cX1HwFdA%3D%3D,* accessed July 18, 2023.

[27] The Coast Guard is aware that some entities already follow industry standards related to cybersecurity. The proposed minimum requirements seek to establish a common baseline for all the regulated vessels and facilities that would not be incompatible with such standards, recognizing that in some instances these proposed minimums may increase a requirement, but in other circumstances will already be satisfied. The entity would be able to indicate within their Cyber Plan that they are following a particular standard and highlight how their compliance with that standard satisfies the Coast Guard requirements.

MTS entities from creating hazardous conditions within ports and waterways. Updating regulations to include minimum cybersecurity requirements would strengthen the security posture and increase resilience against cybersecurity threats in the MTS.

In 2017, the International Maritime Organization (IMO) took steps to address cybersecurity risks in the shipping industry by publishing the Marine Safety Committee/Facilitation Committee (MSC–FAL) Circular 3, *Guidelines on Maritime Cyber Risk Management,*[28] and MSC Resolution 428(98).[29] The IMO affirmed that an approved Safety Management System (SMS) should involve CRM to manage cybersecurity risks in accordance with the objectives and functional requirements of the International Safety Management (ISM) Code. An SMS is a structured and documented set of procedures enabling company and vessel personnel to effectively implement safety and environmental protection policies that are specific to that company or vessel.

For applicable U.S.-flagged vessels, this proposed rule would establish a baseline level of protection throughout the MTSA-regulated vessel fleet. As the flag state, the Coast Guard can ensure these proposed cybersecurity regulations are implemented appropriately by approving Cybersecurity Plans and conducting routine inspections. This proposed rule would also apply to U.S. facilities regulated by 33 CFR part 105 and OCS facilities regulated by 33 CFR part 106.

B. Current Regulations Related to Cybersecurity

The MTSA-implementing regulations in 33 CFR parts 101, 103, 104, 105, and 106 give the Coast Guard the authority to review and approve security assessments and plans that apply broadly to the various security threats facing the maritime industry. Through the Navigation and Vessel Inspection Circular (NVIC) 01–20 [30] (85 FR 16108, March 20, 2020), the Coast Guard interpreted 33 CFR parts 105 and 106 as requiring owners and operators of U.S. facilities and OCS facilities to address cybersecurity in their facility security assessments (FSAs) and OCS FSAs, as well as in their FSPs and OCS FSPs, and provided non-binding guidance on how regulated entities could address these issues.

This proposed rule would expand upon the agency's prior actions by establishing minimum performance-based cybersecurity requirements for the MTS within the MTSA regulations. Similar to the existing requirements in 33 CFR parts 104, 105 and 106, the Coast Guard would allow owners and operators the flexibility to determine the best way to implement and comply with these new requirements. The Coast Guard is proposing an implementation period of 12 to 18 months following the effective date of a final rule to allow sufficient time for the owners and operators of applicable U.S.-flagged vessels, U.S. facilities, and OCS facilities to comply with the requirements of this proposed rule.[31]

V. Discussion of Proposed Rule

This NPRM proposes to add minimum cybersecurity requirements to 33 CFR part 101. The Coast Guard invites comment on whether any of the proposed requirements would overlap, conflict, or duplicate existing regulatory requirements from other Federal agencies. The requirements would consist of the following sections:

- 101.600 Purpose
- 101.605 Applicability
- 101.610 Federalism
- 101.615 Definitions
- 101.620 Owner or Operator
- 101.625 Cybersecurity Officer
- 101.630 Cybersecurity Plan
- 101.635 Drills and Exercises
- 101.640 Records and Documentation
- 101.645 Communications
- 101.650 Cybersecurity Measures
- 101.655 Cybersecurity Compliance Dates
- 101.660 Cybersecurity Compliance Documentation
- 101.665 Noncompliance, Waivers, and Equivalents

In addition, the Coast Guard seeks comments on whether, in this rulemaking, we should: define the term *reportable cyber incident* in proposed 33 CFR 101.615 and use that term in the regulatory text to limit cyber incidents that trigger reporting requirements; require certain reports identified in §§ 101.620 and 101.650 to be sent to CISA; and amend the definition of *hazardous condition* in 33 CFR 160.202.

A section-by-section explanation of the proposed additions and changes follows:

Section 101.600—Purpose

This proposed section states that the purpose of 33 CFR part 101, subpart F, is to set minimum cybersecurity requirements for U.S.-flagged vessels, U.S. facilities, and OCS facilities to safeguard and ensure the security and resilience of the MTS. The proposed requirements would help safeguard the MTS from the evolving risks of cyber threats and align with the DHS goal of protecting critical U.S. infrastructure.

Section 101.605—Applicability

This section proposes to make subpart F apply to the owners and operators of the U.S.-flagged vessels listed in 33 CFR 104.105(a), the facilities listed in 33 CFR 105.105(a), and the OCS facilities listed in 33 CFR 106.105(a). A list of the vessels that would be subject to subpart F is as follows:

- U.S. Mobile Offshore Drilling Units (MODUs), cargo vessels, or passenger vessels subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), Chapter XI–1 or Chapter XI–2;
- Self-propelled U.S. cargo vessels greater than 100 gross register tons subject to 46 CFR chapter I, subchapter I, except commercial fishing vessels inspected under 46 CFR part 105;
- U.S. vessels subject to 46 CFR chapter I, subchapter L;
- U.S. passenger vessels subject to 46 CFR chapter I, subchapter H;
- U.S. passenger vessels certificated to carry more than 150 passengers;
- U.S. passenger vessels carrying more than 12 passengers, including at least 1 passenger-for-hire, that are engaged on an international voyage;
- U.S. barges subject to 46 CFR chapter I, subchapter D or O;
- U.S. barges carrying certain dangerous cargo in bulk or barges that are subject to 46 CFR chapter I, subchapter I, that are engaged on an international voyage;
- U.S. tankships subject to 46 CFR chapter I, subchapter D or O; and
- U.S. towing vessels greater than 8 meters (26 feet) in registered length inspected under 46 CFR subchapter M that are engaged in towing a barge or barges and subject to 33 CFR part 104, except a towing vessel that—
  - ○ Temporarily assists another vessel engaged in towing a barge or barges subject to 33 CFR part 104;
  - ○ Shifts a barge or barges subject to this part at a facility or within a fleeting facility;
  - ○ Assists sections of a tow through a lock; or
  - ○ Provides emergency assistance.

This proposed rule would not apply to any foreign-flagged vessels subject to

[28] *https://www.cdn.imo.org/localresources/en/OurWork/Facilitation/Facilitation/MSC-FAL.1-Circ.3-Rev.1%20-%20Guidelines%20On%20Maritime%20Cyber%20Risk%20Management%20(Secretariat).pdf,* accessed July 18, 2023.

[29] See the IMO resolution on CRM: Resolution MSC.428(98), Annex 10, ''Maritime Cyber Risk Management in Safety Management Systems.'' *https://wwwcdn.imo.org/localresources/en/OurWork/Security/Documents/Resolution%20MSC.428(98).pdf,* accessed July 18, 2023.

[30] See footnote 12.

[31] Existing general requirements to address cyber issues in security plans will continue to apply during this rulemaking.

33 CFR part 104. Cyber regulations for foreign-flagged vessels under domestic law may create unintended consequences with the ongoing and future diplomatic efforts to address maritime cybersecurity in the international arena. The IMO addressed cybersecurity measures for foreign-flagged vessels through MSC–FAL.1/Circ.3 and MSC Resolution 428(98). Therefore, based on IMO guidelines and recommendations, an SMS approved under the ISM Code should address foreign-flagged vessel cybersecurity.

In addition, the Coast Guard verifies how CRM is incorporated into a vessel's SMS via the process described in the October 27, 2020, CVC–WI–027(2), *Vessel Cyber Risk Management Work Instruction.*[32] This process would continue to be the Coast Guard's primary means of ensuring cybersecurity readiness on foreign-flagged vessels, which are exempt from this proposed rule.

If your facility or vessel would be subject to this proposed rule and you view a portion of it as redundant with the requirements of another Federal agency, please let us know. We seek to eliminate any unnecessary redundancies.

Section 101.610—Federalism

We discuss the purpose and contents of this proposed section in section VI.E, *Federalism,* in this preamble.

Section 101.615—Definitions

This section lists new cybersecurity related definitions the Coast Guard proposes to include in 33 CFR part 101, in addition to the maritime security definitions in 33 CFR 101.105. These definitions explain concepts relevant to cybersecurity and would help eliminate uncertainty in referencing and using these terms in 33 CFR part 101.

The Coast Guard consulted several authoritative sources for these proposed new definitions. These sources include Executive Order 14028, 6 U.S.C. 148, and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (the Act).[33]

Another source for definitions is the ''Vocabulary'' page on CISA's National Initiative for Cybersecurity Careers and Studies website,[34] which is an online Federal resource for cybersecurity training and education. The Coast Guard also reviewed NIST's Computer Security Resource Center (CSRC).[35] NIST maintains CSRC to educate the public on computer security, cybersecurity, information security, and privacy. Definitions from CISA and NIST are authoritative sources in areas related to technology and cybersecurity.

In addition, the Coast Guard proposes to define the term *cybersecurity risk* consistent with the definition at section 2200 of the Homeland Security Act of 2002 (Pub. L. 107–296), as amended, *see* 6 U.S.C. 650(7). The Coast Guard notes, however, that it does not believe paragraph (b) of subsection 2200(7), which contains an exception for actions that solely involve a ''violation of a consumer term of service or a consumer licensing agreement'' is relevant to the facilities and vessels that are the subject of this rulemaking. Nevertheless, for consistency with the definition found in the Homeland Security Act and the sake of completeness, we have elected to include the complete definition in this proposal. See also 46 U.S.C. 70101(2); Public Law 115–254, sec. 1805(b)(2).

The Coast Guard proposes to include definitions for *Cyber incident, Cyber risk, Cyber threat,* and *Cybersecurity vulnerability. Cyber incident* would relate to *Information Systems* and would be inclusive of both *Information Technology* and *Operational Technology,* all of which the Coast Guard is also proposing to define. The Coast Guard also proposes new defined terms that are applicable to maritime cybersecurity, including *Critical Information Technology or Operational Technology systems, Cyber Incident Response Plan, Cybersecurity Officer* or *CySO,* and *Cybersecurity Plan.* A CySO, for example, would be the person(s) responsible for developing, implementing, and maintaining cybersecurity portions of the VSP, FSP, or OCS FSP. The CySO would also act as a liaison with the Captain of the Port (COTP) and company, vessel, and facility security officers.

In addition, the Coast Guard welcomes comments on whether we should define and use the term *Reportable cyber incident.* The proposed definition of a *reportable cyber incident* would be based on the Cyber Incident Reporting Council's model definition in DHS's Report to Congress of September 19, 2023.[36] If adopted, the term *reportable cyber incident* would replace *cyber incident* in proposed §§ 101.620(b)(7) and 101.650(g)(1). Specifically, a reportable cyber incident would mean an incident that leads to, or, if still under investigation, could reasonably lead to any of the following:

(1) Substantial loss of confidentiality, integrity, or availability of a covered information system, network, or OT system;

(2) Disruption or significant adverse impact on the reporting entity's ability to engage in business operations or deliver goods or services, including those that have a potential for significant impact on public health or safety or may cause serious injury or death;

(3) Disclosure or unauthorized access directly or indirectly of non-public personal information of a significant number of individuals;

(4) Other potential operational disruption to critical infrastructure systems or assets; or

(5) Incidents that otherwise may lead to a TSI as defined in 33 CFR 101.105.

The Coast Guard's existing regulations in 33 CFR part 101 require regulated entities to report suspicious activity that may result in a TSI, breaches of security, and TSIs involving computer systems and networks. *See* 33 CFR 101.305. The purpose of defining a reportable cyber incident in this NPRM is to establish a threshold between the cyber incidents that must be reported and the ones that do not. We request public comment on the substance of this definition, its elements, potential burden on industry, as well as the need and effectiveness of including it in this regulation. We also invite comments on whether we should define any terms we use in the proposed rule that are not defined in proposed § 101.615.

In this NPRM, the Coast Guard is also seeking comments on two alternative potential regulatory measures for reporting cyber incidents. In the first alternative, the Coast Guard would require that reportable cyber incidents would be reported to the National Response Center (NRC) without delay to the telephone number listed in 33 CFR 101.305(a). Cyber incidents with no physical or pollution effects could also be reported directly to CISA via *report@cisa.gov* or 1–888–282–0870. All such reports would be shared between the NRC and CISA Central and satisfy the requirement to report to the Coast Guard.

In the second alternative, the Coast Guard seeks comments on whether it should require that reportable cyber incidents be reported to CISA. While this alternative would be a change from current practice, it could allow more

[32] See footnote 12.

[33] Public Law 117–263, Sec. 11224(a)(1) (2022).

[34] National Initiative for Cybersecurity Careers and Studies, *Explore Terms: A Glossary of Common Cybersecurity Words and Phrases, https://niccs.cisa.gov/cybersecurity-career-resources/glossary,* accessed September 15, 2023.

[35] CSRC, *https://csrc.nist.gov/glossary,* accessed September 15, 2023.

[36] *See* DHS Office of Strategy, Policy, and Plans, Harmonization of Cyber Incident Reporting to the Federal Government (Sept. 19, 2023), *https://www.dhs.gov/publication/harmonization-cyber-incident-reporting-federal-government,* accessed Sept. 19, 2023.

efficient use of DHS' cybersecurity resources and may advance the cybersecurity vision laid out by Congress in the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA), which will be implemented by regulations that are still under development. Information submitted to CISA would be shared with the Coast Guard, ensuring continued efficient responses.

If we were to use either alternative, to the extent that the reporting obligation imposed by this NPRM constitutes a requirement to report ''substantially similar information . . . within a substantially similar timeframe'' when compared to a rule implementing CIRCIA, covered entities may be excused from any duplicative reporting obligations under the CIRCIA rulemaking.[37] In line with that provision, we invite your comments on whether we should expressly require reporting of ransom payments in connection with ransomware attacks. We request comment on whether we should use either of these two alternatives in a final rule.

Section 101.620—Owner or Operator

This proposed section would require each owner and operator of a U.S.-flagged vessel, facility, or OCS facility to assign qualified personnel to develop a Cybersecurity Plan and ensure the Cybersecurity Plan incorporates detailed preparation, prevention, and response activities for cybersecurity threats and vulnerabilities.

Additional responsibilities of owners and operators of U.S.-flagged vessels, facilities, and OCS facilities would include:

- Designating a CySO, in writing, by name and title, and identifying how the CySO can be contacted at any time. A CySO would have to be accessible to the Coast Guard 24 hours a day, 7 days a week (see proposed § 101.620(b)(3));
- Ensuring that a Cybersecurity Assessment is conducted annually or sooner, under the circumstances described in this NPRM (see proposed §§ 101.620(b)(4) and 101.650(e)(1));
- Ensuring that a Cybersecurity Plan is developed and submitted for Coast Guard approval, either as a separate document or as an addition to an existing FSP, VSP, or OCS FSP (see proposed §§ 101.620(b)(1) and 101.630(a));
- Operating the U.S.-flagged vessel, facility, or OCS facility in accordance with the approved Cybersecurity Plan (see proposed § 101.620(b)(5)); and
- Reporting all cyber incidents, including TSIs, to the NRC and relevant authorities according to the Cybersecurity Plan (see proposed §§ 101.305 and 101.620(b)(7)).

Section 101.625—Cybersecurity Officer

The CySO may be a full-time, collateral, or contracted position. The same person may serve as the CySO for more than one vessel, facility, or OCS facility. The CySO would need to have general knowledge of a range of issues relating to cybersecurity, such as cybersecurity administration, relevant laws and regulations, current threats and trends, risk assessments, inspections, control procedures, and procedures for conducting exercises and drills. When considering assignment of the CySO role to the existing security officer, the owner or operator should consider the depth and scope of these new responsibilities in addition to existing security duties.

The most important duties a CySO would perform include ensuring development, implementation, and finalization of a Cybersecurity Plan; auditing and updating the Plan; ensuring adequate training of personnel; and ensuring the U.S.-flagged vessel, facility, or OCS facility is operating in accordance with the Plan and in continuous compliance with this subpart. The CySO would have the authority to assign cybersecurity duties to other personnel; however, the CySO would remain responsible for the performance of these duties.

Section 101.630—Cybersecurity Plan

This proposed section contains minimum requirements for the Cybersecurity Plan. The Cybersecurity Plan would be maintained consistent with the recordkeeping requirements in 33 CFR 104.235 for vessels, 33 CFR 105.225 for facilities, and 33 CFR 106.230 for OCS facilities. *See* proposed § 101.640. A Cybersecurity Plan would incorporate the results of a Cybersecurity Assessment and consider the recommended measures appropriate for the U.S.-flagged vessel, facility, or OCS facility. A Cybersecurity Plan could be combined with or complement an existing FSP, VSP, or OCS FSP. A Cybersecurity Plan could be kept in an electronic format if it can be protected from being deleted, destroyed, overwritten, accessed, or disclosed without authorization.

The format of a Cybersecurity Plan required under this proposed rule would include the following individual sections:

(1) Cybersecurity organization and identity of the CySO (see proposed § 101.625 Cybersecurity Officer);

(2) Personnel training (see proposed § 101.625(d)(8), (9) Cybersecurity Officer);

(3) Drills and exercises (see proposed § 101.635 Drills and Exercises);

(4) Records and documentation (see proposed § 101.640 Records and Documentation);

(5) Communications (see proposed § 101.645 Communications);

(6) Cybersecurity systems and equipment with associated maintenance; (see proposed § 101.650(e)(3) Cybersecurity Measures: Routine Maintenance);

(7) Cybersecurity measures for access control, including computer, IT, and OT areas (see proposed § 101.650(a) Cybersecurity Measures: Account Measures);

(8) Physical security controls for IT and OT systems (see proposed § 101.650(i) Cybersecurity Measures: Physical Security);

(9) Cybersecurity measures for monitoring (see proposed § 101.650(f) Cybersecurity Measures: Supply Chain; (h) Network Segmentation; (i) Physical Security);

(10) Audits and amendments to the Cybersecurity Plan (see proposed § 101.630(f) Cybersecurity Plan: Audits);

(11) Cybersecurity audit and inspection reports to include documentation of resolution or mitigation of all identified vulnerabilities (see proposed § 101.650(e) Cybersecurity Measures: Risk Management);

(12) Documentation of all identified unresolved vulnerabilities to include those that are intentionally unresolved due to risk acceptance by the owner or operator (see proposed § 101.650(e) Cybersecurity Measures: Risk Management);

(13) Cyber incident reporting procedures in accordance with part 101 of this subchapter (see proposed § 101.650(g) Cybersecurity Measures: Resilience); and

(14) Cybersecurity Assessment (see proposed § 101.650(e) Cybersecurity Measures: Risk Management).

Depending on operational conditions and cybersecurity risks, the owner or operator may develop a Cyber Incident Response Plan as a separate document or as an addition to the Cybersecurity Plan.

Submission and Approval of the Cybersecurity Plan

An owner or operator would submit a Cybersecurity Plan for review to the cognizant COTP or the Officer in

[37] *See* 6 U.S.C. 681b(a)(5)(B) (exception to reporting requirements for certain substantially similar reporting requirements ''where the Agency has an agreement in place that satisfies the requirements of section 681g(a) of this title'').

Charge, Marine Inspections (OCMI) for U.S. facilities and OCS facilities, or to the U.S. Coast Guard's Marine Safety Center (MSC) for U.S.-flagged vessels. *See* proposed § 101.630(d). A letter certifying that the Plan meets the requirements of this subpart must accompany the submission. Once the COTP or MSC finds that the Plan meets the cybersecurity requirements in § 101.630, they would send a letter to the owner or operator approving the Cybersecurity Plan or approving the Plan under certain conditions.

If the cognizant COTP, OCMI, or MSC requires additional time to review the Plan, they would have the authority to return a written acknowledgement to the owner or operator stating that the Coast Guard will review the Cybersecurity Plan submitted for approval, and that the U.S.-flagged vessel, facility, or OCS facility may continue to operate as long as it remains in compliance with the submitted Cybersecurity Plan. *See* proposed § 101.630(d)(1)(iv).

If the COTP, OCMI, or MSC finds that the Cybersecurity Plan does not meet the requirements in § 101.630, the Plan would be returned to the owner or operator with a letter explaining why the Plan did not meet the requirements. The owner or operator will have at least 60 days to amend the Plan and cure deficiencies outlined in the letter. Until the amendments are approved, the owner or operator must ensure temporary cybersecurity measures are implemented to the satisfaction of the Coast Guard. *See* proposed § 101.630(e)(1)(ii).

Deficiencies would have to be corrected, and the Plan would have to be resubmitted for approval within the time period specified in the letter. If the owner or operator fails to cure those deficiencies within 60 days, the Plan would be declared noncompliant with these proposed regulations and other relevant regulations in title 33 of the CFR. If the owner or operator disagrees with the deficiency determination, they would have the right to appeal or submit a petition for reconsideration or review to the respective COTP, District Commander, OCMI, or MSC per § 101.420.

Under proposed § 101.650(e)(1), a cybersecurity assessment would have to be conducted when one or both of the following situations occurs:

- There is a change in ownership of a U.S.-flagged vessel, facility, or an OCS facility; or
- There are major amendments to the Cybersecurity Plan.

Each owner or operator would determine what constitutes a ''major amendment'' as appropriate for their organization based on types of changes to their security measures and operational risks. When submitting proposed amendments to the Coast Guard, either after a cybersecurity assessment or at other times, you would not be required to submit the Cybersecurity Plan with the proposed amendment. Under § 101.630(f)(1), the CySO must ensure that an audit of the Cybersecurity Plan and its implementation is performed annually, beginning no later than 1 year from the initial date of approval. Additional audits would need to be conducted if there is a change in ownership or modifications of cybersecurity measures, but such audits may be limited to sections of the Plan affected by the modification. See proposed § 101.630(f)(2) and (3). Those conducting an internal audit must have a level of knowledge and independence specified in § 101.630(f)(4). Under § 101.630(f)(5), if the results of the audit require the Cybersecurity Plan to be amended, the CySO must submit the proposed amendments to the Coast Guard for review within 30 days of completing the audit.

Section 101.635—Drills and Exercises

Under this proposed section, cybersecurity drills and exercises would be required to test the proficiency of U.S.-flagged vessel, facility, and OCS facility personnel in assigned cybersecurity duties and in the effective implementation of the VSP, FSP, OCS FSP, and Cybersecurity Plan. Drills and exercises would also enable the CySO to identify any related cybersecurity deficiencies that need to be addressed.

Cybersecurity drills would generally test an operational response of at least one specific element of the Cybersecurity Plan, as determined by the CySO, such as access control for a critical IT or OT system, or network scanning. A drill would be required at least once every 3 months and may be held in conjunction with other drills, if appropriate.

Cybersecurity exercises are a full test of an organization's cybersecurity regime and would include substantial and active participation of cybersecurity personnel. The participants may include local, State, and Federal Government personnel. Cybersecurity exercises would generally test and evaluate the organizational capacity to manage a combination of elements in the Cybersecurity Plan, such as detecting, responding to, and mitigating a cyber incident.

The exercises would be required at least once each calendar year, with no more than 18 months between exercises. Exercises may be specific to a facility, OCS facility, or a U.S.-flagged vessel, or may serve as part of a cooperative exercise program or port exercises. The exercises for the Cybersecurity Plans could be combined with other required security exercises, if appropriate.

The proposed drill or exercise requirements specified in this section may be satisfied by implementing cybersecurity measures required by the VSP, FSP, OCS FSP, and Cybersecurity Plan after a cyber incident, as long as the vessel, facility, or OCS facility achieves and documents the drill and exercise goals for the cognizant COTP or MSC. Any corrective action must be addressed and documented as soon as possible.

Section 101.640—Records and Documentation

This proposed section would require owners and operators to follow the recordkeeping requirements in 33 CFR 104.235 for vessels, 33 CFR 105.225 for facilities, and 33 CFR 106.230 for OCS facilities. For example, records must be kept for at least 2 years and be made available to the Coast Guard upon request. The records can be kept in paper or electronic format and must be protected against unauthorized access, deletion, destruction, amendment, and disclosure. Records that each vessel, facility, or OCS facility keep would vary because each organization would maintain records specific to their operations. At a minimum, the records would have to capture the following activities: training, drills, exercises, cybersecurity threats, incidents, and audits of the Cybersecurity Plan as set forth in the cited recordkeeping requirements above and made applicable to records under this subpart per § 101.640.

Section 101.645—Communications

This proposed section would require the CySO to maintain an effective means of communication to convey changes in cybersecurity conditions to the personnel of the U.S.-flagged vessel, facility, or OCS facility. In addition, the CySO is required to maintain an effective and continuous means of communicating with their security personnel, U.S.-flagged vessels interfacing with the facility or OCS facility, the cognizant COTP, and national and local authorities with security responsibilities.

Section 101.650—Cybersecurity Measures

This section proposes specific cybersecurity measures to identify risks,

detect threats and vulnerabilities, protect critical systems, and recover from cyber incidents. Any intentional gaps in cybersecurity measures would be documented as accepted risks under proposed § 101.630(c)(12). If the owner or operator is unable to comply with the requirements of this subpart, they may seek a waiver or an equivalence determination under proposed § 101.665.

A discussion of each component of proposed § 101.650 follows.

Section 101.650 Paragraph (a): Account Security Measures

This paragraph would identify minimum account measures to protect critical IT and OT systems from unauthorized cyber access and limit the risk of a cyber incident. Access control is a foundational category and is highlighted as a ''Protect'' function of NIST's Cybersecurity Framework (CSF).[38] Existing regulations in §§ 104.265, 105.255 through 105.260, and 106.260 through 106.265 prescribe control measures to limit access to restricted areas and detect unauthorized introduction of devices capable of damaging U.S.-flagged vessels, U.S. facilities, OCS facilities, or ports. This proposed provision is derived from NIST's standards mentioned earlier for the cyber domain and establish minimum account security measures to manage credentials and secure access to critical IT and OT systems. We invite your comments on the minimal requirements proposed in § 101.650(a).

Account security measures for cybersecurity would include lockouts on repeated failed login attempts, password requirements, multifactor authentication, applying the principle of least privilege to administrator or otherwise privileged accounts, and removing credentials of personnel no longer associated with the organization. Numerous consensus standards that are generally accepted employ similar requirements.[39] Together, these provisions would mitigate the risks of brute force attacks, unauthorized access, and privilege escalation. The owner or operator would be responsible for implementing and managing these account security measures, including ensuring that user credentials are removed or revoked when a user leaves the organization. The CySO would ensure documentation of such measures in Section 7 of the Cybersecurity Plan.

[38] NIST CSF, *www.nist.gov/cyberframework/protect,* accessed July 18, 2023.

[39] *See,* for example, NIST CSF: PR.AC, CIS Controls 1, 12, 15, 16, and COBIT DSS05.04, DSS05.10, DSS06.10, and ISA 62443–2–1.

Section 101.650 Paragraph (b): Device Security Measures

This paragraph would provide specific proposed requirements to mitigate risks and vulnerabilities in critical IT and OT systems and equipment. With increased connectivity to public internet, networks on U.S.-flagged vessels, U.S. facilities, and OCS facilities have an expansive attack surface. These provisions would reduce the risks of unauthorized access, malware introduction, and service interruption. This paragraph would apply the ''Identify'' function of the NIST CSF.[40] Existing regulations in 33 CFR 104.265, 105.255 through 105.260, and 106.260 through 106.265 are similar. For example, § 105.260 limits access to areas that require a higher degree of protection.

Proposed paragraph (b) would also require owners and operators to designate critical IT and OT systems.[41] Developing and maintaining an accurate inventory and network map would reduce the risk of unknown or improperly managed assets. The Cybersecurity Plan would also govern device management. The CySO would maintain the network map and develop and maintain the list of approved hardware, software, and firmware. In addition to identifying risks, these provisions would aid in the proper lifecycle management of assets, including patching and end-of-life management. These requirements are foundational to many industry consensus standards and would reinforce Coast Guard regulations to protect communication networks.

Section 101.650 Paragraph (c): Data Security Measures

This paragraph would prescribe fundamental data security measures that stem from the ''Protect'' function of the NIST CSF. Data security measures protect personnel, financial, and operational data and are consistent with basic risk management activities of the maritime industry. The IMO recognizes the importance of risk management related to data security on U.S.-flagged vessels,[42] and the Coast Guard previously highlighted data security measures in its policy for MTSA-regulated U.S. facilities.[43]

Data security measures prevent data loss and aid in detection of malicious activity on critical IT and OT systems. The fundamental measures proposed here would establish baseline protections upon which owners and operators could build. This paragraph would require data logs to be securely captured, stored, and protected so that they are accessible only by privileged users, and would require encryption for data in transit and data at rest. CySOs would rely on generally accepted industry standards and risk management principles to determine the suitability of specific encryption algorithms for certain purposes, such as protecting critical IT and OT data with a more robust algorithm than for routine data.[44] A CySO would establish more detailed data security policies in Section 9 of the Cybersecurity Plan. Those policies would be adapted to the unique operations of the U.S.-flagged vessel, facility, or OCS facility.

Section 101.650 Paragraph (d): Cybersecurity Training for Personnel

This paragraph would specify proposed cybersecurity training requirements. Security training is a vital aspect of the MTSA. Relevant provisions in 33 CFR already require all personnel to have knowledge, through training or equivalent job experience, in the ''Recognition and detection of dangerous . . . devices.'' [45] Since 2020, the Coast Guard has interpreted this requirement to include relevant cybersecurity training.[46] While formal

[40] NIST CSF; Identify, ''NIST Cybersecurity Publication by Category,'' *Asset Management ID.AM,* updated May 3, 2021, *www.nist.gov/cyberframework/identify,* accessed July 18, 2023. NIST Special Publication 800–53, Revision 5, ''Security and Privacy Controls for Information Systems and Organizations,'' September 2020, page 107, *https://doi.org/10.6028/NIST.SP.800-53r5,* accessed August 24, 2023.

[41] To help CySOs identify which systems are critical, the Coast Guard's Office of Port and Facility Compliance (CG–FAC) has published maritime specific CSF profiles on its homepage at *www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG–5P/Inspections-Compliance-CG–5PC-/Office-of-Port-Facility-Compliance/Domestic-Ports-Division/cybersecurity/,* accessed July 18, 2023 and in pages 20 through 24 of Appendix A, Maritime Bulk Liquid Transfer Profile at *https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.dco.uscg.mil%2FPortals%2F9%2FCG-FAC%2FDocuments%2FCyber%2520Profiles%2520Overview.docx%3Fver%3D2018-01-10-143126-467&wdOrigin=BROWSELINK,* accessed July 18, 2023.

[42] MSC–FAL.1/Circ.3/Rev.1: ''Implement risk control processes and measures, and contingency planning to protect against a cyber-event and ensure continuity of shipping operations.''

[43] NVIC 01–20 at page 2: ''Each facility should also determine how, and where, its data is stored and, if it is stored offsite, whether the data has a critical link to the safety and/or security functions of the facility. If such a critical link exists, the facility should address any vulnerabilities . . . . ''

[44] *See,* for example, ISA 62443–3–3, CIS CSC 13, 14 in the EDM NIST Cybersecurity Framework Crosswalks, available at *www.cisa.gov/sites/default/files/publications/4_NIST_CSF_EDM_Crosswalk_v3_April_2020.pdf,* accessed July 18, 2023.

[45] 33 CFR 104.225(c) (Vessels), 105.215(c) (Facilities), and 106.220(c) (OCS Facilities).

[46] NVIC 01–20 ENCL(1) at page 3: ''Describe how cybersecurity is included as part of personnel

training may be appropriate, the Coast Guard is not proposing to mandate a format of training. However, the training would have to, at minimum, cover relevant provisions of the Cybersecurity Plan to include recognizing, detecting, and preventing cybersecurity threats; and reporting cyber incidents to the CySO.

The types of training would also need to be consistent with the roles and responsibilities of personnel, including access to critical IT and OT systems and operating network-connected machineries. Key cybersecurity personnel and management would need to have current knowledge of threats to deal with potential cyber-attacks and understand procedures for responding to a cyber incident. The owner, operator, or CySO would ensure all personnel designated by the CySO complete the core training within 5 days of gaining system access, but no later than 30 days after hiring, and annually thereafter, and that key personnel receive specialized training annually or more frequently as needed. Existing personnel would be required to receive training on relevant provisions of the Cybersecurity Plan within 60 days of the Plan being approved, and for all other required training within 180 days of the effective date of a final rule, and annually thereafter. (See § 101.650(d)(3)).

Section 101.650 Paragraph (e): Risk Management

This paragraph would establish three levels of Cybersecurity Assessment and risk management: (1) conducting annual Cybersecurity Assessments; (2) completing penetration testing upon renewal of a VSP, FSP, or OCS FSP; and (3) ensuring ongoing routine system maintenance. The CySO would ensure that these activities, which are listed in Sections 11 and 12 of the Cybersecurity Plan, are documented and completed.

Following a Cybersecurity Assessment, the CySO would incorporate feedback from the assessment into the Cybersecurity Plan through an amendment to the Plan. A Cybersecurity Assessment would be conducted within 1 year from the effective date of a final rule and annually thereafter. The Assessment must be conducted sooner than annually in the following circumstances:

- There is a change in ownership of a U.S.-flagged vessel, facility, or an OCS facility; or
- There are major events requiring amendments to the Cybersecurity Plan.

While Cybersecurity Assessments provide a valuable picture of potential security weaknesses, penetration tests can add additional context by demonstrating whether malicious actors could leverage those weaknesses. Penetration tests can also help prioritize resources based on what poses the most risk. Routine system maintenance requires an ongoing effort to identify vulnerabilities and would include scanning and reviewing known exploited vulnerabilities (KEVs) by documenting, tracking, and monitoring them. These proposed provisions would mirror the security system and equipment maintenance requirements in 33 CFR 104.260 for vessels, 33 CFR 105.250 for facilities, and 33 CFR 106.255 for OCS facilities, and reflect the Coast Guard's longstanding view on cybersecurity. To improve risk management across the maritime sector, CySOs would establish, subject to any applicable antitrust law limitations,[47] information-sharing procedures for their organizations, which would include procedures to receive and act on KEVs, as well as methods for sharing threat and vulnerability information.

The ''Protect'' function of the NIST CSF emphasizes the importance of strong processes and procedures for protecting information.[48] For example, organizations would have to ensure information and records (data) are managed consistently with the organization's risk strategy to protect the confidentiality, integrity, and availability of information. Risk management is key in protecting IT and OT components that may include cybersecurity vulnerabilities in their design, code, or configuration.

Owners and operators may use information-sharing services or organizations such as an Information Sharing and Analysis Center or an Information Sharing and Analysis Organization. The Coast Guard would not endorse specific information-sharing organizations, so owners and operators would be free to use information-sharing organizations to suit their needs.[49] Industry consensus standards provide generally accepted techniques that sanitize and reduce attribution to information to ensure information sharing does not compromise proprietary business information.[50] In addition, regardless of the services or organizations used, owners and operators should comply with applicable antitrust laws and should not share competitively sensitive information, such as price or cost data, that can result in unlawful price-fixing, market allocation, or other forms of competitor collusion. Use of any information-sharing services or organizations would not meet or replace reporting requirements under 33 CFR 101.305.

The Coast Guard emphasized its commitment to helping maritime industry stakeholders identify and address vulnerabilities in its *2021 Cyber Trends and Insights in the Marine Environment* report.[51] In that report, the Coast Guard highlighted additional resources that CySOs should leverage to manage cybersecurity vulnerabilities.

Section 101.650 Paragraph (f): Supply Chain

This proposed paragraph would include provisions to specify measures to manage cybersecurity risks in the supply chain. Legitimate third-party contractors and vendors may inadvertently provide a means of attack or vectors that allow malicious actors to exploit vulnerabilities within the supply chain. Section 1.1 of the NIST CSF emphasizes managing cybersecurity risks in the supply chain as part of the ''Identify'' function.[52]

Under this proposed paragraph, the owner, operator, or CySO would ensure that measures to manage cybersecurity risks in the supply chain are in place to mitigate the risks associated with external parties. These measures would include considering cybersecurity capabilities in selecting vendors,

training, policies, and procedures, and how this material will be kept current and monitored for effectiveness.''

[47] The sharing of competitively sensitive information between or among competitors raises antitrust concerns. For example, information sharing is not exempted under the Cybersecurity Information Sharing Act of 2015 if the information shared results in price fixing, market allocation, boycotting, monopolistic conduct, or other collusive conduct.

[48] NIST CSF Internal Controls, Appendix A, Table A–1, PR.IP–12, page 261, *link.springer.com/content/pdf/bbm:978-1-4842-3060-2/1.pdf,* accessed July 18, 2023.

[49] The Coast Guard encourages CySOs to explore resources through CGCYBER Maritime Cyber Readiness Branch, available at *https://www.uscg.mil/MaritimeCyber/; see also* CISA's ''Information Sharing and Awareness,'' available at *https://www.cisa.gov/information-sharing-and-awareness,* accessed July 18, 2023.

[50] *See, e.g.,* NIST Special Publication 800–150, ''Guide to Cyber Threat Information Sharing,'' Johnson et al., October 2016, *nvlpubs.nist.gov/nistpubs/specialpublications/nist.sp.800-150.pdf,* accessed July 18, 2023.

[51] ''2021 Cyber Trends and Insights in the Marine Environment,'' August 5, 2022, *https://www.dco.uscg.mil/Portals/9/2021CyberTrends InsightsMarineEnvironmentReport.pdf.*

[52] NIST CSF, Version 1.1, ''ID.SC: Supply Chain Risk Management,'' *https://csf.tools/reference/nist-cybersecurity-framework/v1-1/id/id-sc/,* accessed July 18, 2023.

establishing procedures for information sharing and notifying relevant parties, and monitoring third-party connections.

Through their contractual agreements, vendors would ensure the integrity and security of software and hardware, such as software releases and updates, notifications, and mitigations of vulnerabilities. These provisions would establish a minimum level of CRM within the supply chain. Industry standards provide additional measures.[53] The IMO also recognizes that cybersecurity risks in the supply chain, and these provisions would align with the guidelines and recommendations referenced in MSC–FAL Circ. 3/Rev.1.[54]

Section 101.650 Paragraph (g): Resilience

This paragraph proposes a few key activities to ensure that U.S.-flagged vessels, facilities, and OCS facilities can recover from major cyber incidents with minimal impact to critical operations. Provisions under response and recovery can help an organization recover from a cyber-attack and restore capabilities and services.

This proposed rule would require the owner, operator, or CySO to ensure the following response and recovery activities: report any cyber incidents to the Coast Guard; develop, implement, maintain, and exercise the Cyber Incident Response Plan; periodically validate the effectiveness of the Cybersecurity Plan; and perform backups of critical IT and OT systems. The Coast Guard would accept review of a cyber incident as meeting the periodic validation requirement in § 101.650(g).

In addition, the NIST CSF describes numerous provisions within the ''Recover'' function aimed at improving response and recovery.[55] The IMO also notes resilience.[56]

Section 101.650 Paragraph (h): Network Segmentation

This paragraph would require a CySO to ensure the network is segmented and to document those activities in the Cybersecurity Plan. Network integrity is a key provision under the ''Protect'' function of the NIST CSF.[57] Network architectures vary widely based on the operations of a vessel or facility. Separating IT and OT networks is challenging, and it becomes increasingly difficult with an increase in the various devices connected to the network. Network segmentation ensures valuable information is not shared with unauthorized users and decreases damage that can be caused by malicious actors. Nonetheless, the Coast Guard recognizes that the IT and OT interface represents a weak link. Industry standards in this area are evolving, and it is an area that NIST continues to research.[58]

Section 101.650 Paragraph (i): Physical Security

This paragraph would specify that, along with the cybersecurity provisions proposed for inclusion in this part, owners, operators, and CySOs would manage physical access to IT and OT systems. As described in the ''Protect'' function of the NIST CSF, physical security protects critical IT and OT systems by limiting access to the human-machine interface (HMI).[59] Physical security measures proposed here would supplement the existing vessel security assessment (VSA), FSA, and OCS FSA requirements in 33 CFR 104.270 for vessels, 33 CFR 105.260 for facilities, and 33 CFR 106.260 for OCS facilities. Similarly, under this proposed paragraph, the CySO would designate areas restricted to authorized personnel and secure HMIs and other hardware. Also under this proposed paragraph, the CySO would establish policies to restrict the use of unauthorized media and hardware. These proposed provisions would mirror existing Coast Guard policy outlined in NVIC 01–20.[60]

Section 101.655—Cybersecurity Compliance Dates

This proposed section would state that a Cybersecurity Plan as required by this proposed rule would be made available to the Coast Guard for review during the second annual audit of the existing, approved VSP, OCS FSP, or FSP after the effective date of a final rule, as required by 33 CFR 104.415 for vessels, 33 CFR 105.415 for facilities, and 33 CFR 106.415 for OCS facilities. The intent of this proposed implementation period is to allow adequate time for owners and operators to develop a Cybersecurity Plan.

Section 101.660—Cybersecurity Compliance Documentation

This proposed section would allow the Coast Guard to verify an approved Cybersecurity Plan for U.S.-flagged vessels, facilities, and OCS facilities. Each owner or operator would ensure that the cybersecurity portion of their Plan and penetration test results are available to the Coast Guard upon request.

Section 101.665—Noncompliance, Waivers, and Equivalents

This proposed section would provide the opportunity for waiver and equivalence determinations for owners and operators when they are unable to meet the requirements in subpart F, as outlined in 33 CFR 104.130, 104.135, 105.130, 105.135, and 106.130, to include the cybersecurity regulations proposed in this NPRM. It would also expand temporary permission provisions in 33 CFR 104.125, 105.125, and 106.120.

Section 101.670—Severability

This proposed section would reflect the Coast Guard's intent that the provisions of subpart F be considered severable from each other to the greatest extent possible. For instance, if a court of competent jurisdiction were to hold that the rule or a portion thereof may not be applied to a particular owner or operator or in a particular circumstance, the Coast Guard would intend for the court to leave the remainder of the rule in place with respect to all other covered persons and circumstances. The inclusion of a severability clause in subpart F would not be intended to imply a position on severability in other Coast Guard regulations.

Inviting Comments on Regulatory Harmonization

As noted by the Office of the National Cyber Director in an August 2023 Request for Information,[61] the National Cybersecurity Strategy[62] calls for

[53] *See,* for example, NIST Special Publication 800–161, ''Supply Chain Risk Management Practices for Federal Information Systems and Organizations,'' May 2022, *https://doi.org/10.6028/NIST.SP.800-161r1,* accessed July 18, 2023.

[54] MSC–FAL.1/Circ.3/Rev.1, 2.1.6 and 4.2; see footnote 28.

[55] NIST CSF, Version 1.1 ''RC: Recover,'' *https://csf.tools/reference/nist-cybersecurity-framework/v1-1/rc/,* accessed July 19, 2023.

[56] MSC–FAL Circ. 3/Rev. 1, 3.5.5; see footnote 28.

[57] NIST CSF, Version 1.1, ''PR.AC–5: Network integrity is protected (*e.g.,* network segregation, network segmentation).'' *csf.tools/reference/nist-cybersecurity-framework/v1-1/pr/pr-ac/pr-ac-5/,* accessed July 19, 2023.

[58] *See* NIST Special Publication 800–82r3,'' Guide to Operational Technology (OT) Security,'' draft published April 26, 2022; *doi.org/10.6028/NIST.SP.800-82r3.ipd,* accessed July 19, 2023.

[59] NIST CSF, Version 1.1, ''PR.AC–2: Physical Access to Assets is Managed and Protected.'' *csf.tools/reference/nist-cybersecurity-framework/v1-1/pr/pr-ac/pr-ac-2/,* accessed July 19, 2023.

[60] NVIC 01–20, enclosure (1), at page 4: ''Security measures for access control 33 CFR 105.255 and 106.260 Establish security measures to control access to the facility. This includes cyber systems that control physical access devices such as gates and cameras, as well as cyber systems within secure or restricted areas, such as cargo or industrial control systems. Describe the security measures for access control.'' (85 FR 16108).

[61] *See* 88 FR 55694 (Aug. 16, 2023).

[62] *See* The White House, National Cybersecurity Strategy (Mar. 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/03/National-*

establishing cybersecurity regulations to secure critical infrastructure where existing measures are insufficient, harmonizing [63] and streamlining new and existing regulations, and enabling regulated entities to afford to achieve security.

The Coast Guard emphasizes its commitment to regulatory harmonization and streamlining, and notes that this proposed rule, which is grounded in NIST's Framework for Improving Critical Infrastructure Cybersecurity, NIST's standards and best practices, and CISA's CPGs, is consistent with such priorities. The Coast Guard also acknowledges the ongoing rulemakings of other DHS components, including ongoing rulemakings on cybersecurity in surface transportation modes [64] and implementation of CIRCIA.[65] The Coast Guard notes potential differences in terminology and policy as compared to those rulemakings; although the Coast Guard views such differences as intentional and based on sector-specific distinctions, we welcome comments on opportunities to harmonize and streamline regulations where feasible and appropriate. Note that proposed § 101.665, Noncompliance, Waivers, and Equivalents, could offer stakeholders an option for requesting compliance that is harmonized with similar requirements.

Cybersecurity-Strategy-2023.pdf. (accessed Sept. 19, 2023).

[63] As used in this context, ''harmonization'' refers to a common set of updated baseline regulatory requirements that would apply across sectors. Sector regulators such as the Coast Guard may appropriately go beyond the harmonized baseline to address cybersecurity risks specific to their sectors. *See* 88 FR at 55694.

[64] *See* TSA, Fall 2023 Unified Agenda, RIN 1652–AA74: Enhancing Surface Cyber Risk Management, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1652-AA74* (accessed Jan. 19, 2024).

[65] *See* CISA, Fall 2023 Unified Agenda, RIN 1670–AA04: Cybersecurity Incident Reporting for Critical Infrastructure Act Regulations, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1670-AA04* (accessed Jan. 19, 2024).

Inviting Comments on Whether To Amend 33 CFR 160.202—Definitions

The Coast Guard invites comments on whether we should amend the definition of *hazardous condition* in 33 CFR 160.202 to help address current and emerging cybersecurity threats to the MTS. The amendment would likely add ''cyber incident (as defined in § 101.615 of this chapter),'' to other existing examples of hazardous conditions—such as collision, allision, fire, explosion, grounding, leaking, damage, and personnel injury. Although a hazardous condition as currently defined can already involve a cyber incident, this amendment would clearly link the definition of a hazardous condition to the concept of a cyber incident.

Under 33 CFR 160.216, the owner, agent, master, operator, or person in charge of a vessel must immediately notify the Coast Guard of certain hazardous conditions. A hazardous condition either on board the vessel or caused by the vessel or its operation would be reported by the vessels listed in 33 CFR 160.203. Under the existing regulations, this reporting requirement already applies to U.S. commercial service vessels and all foreign vessels that are bound for or departing from ports or places within the navigable waters of the United States.

If we amend the definition of *hazardous condition* in § 160.202, we would consider a cyber incident report under part 160 satisfied by those subject to 33 CFR part 101, subpart F, who report the incident consistent with § 101.620(b)(7). Given the variety of hazardous conditions, for response purposes, it is best that such conditions be reported to the nearest Coast Guard Sector Office or Group Office. The Coast Guard would ensure that such officials are advised of relevant cyber incidents reported by vessels subject to 33 CFR part 101, subpart F.

VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. A summary of our analyses based on these statutes or Executive orders follows.

A. Regulatory Planning and Review

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

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1) because its annual effects on the economy do not exceed $200 million in any year of the analysis. Accordingly, OMB has reviewed this proposed rule. A regulatory impact analysis (RIA) follows.

In accordance with OMB Circular A–4 (available at *www.whitehouse.gov/omb/circulars/*), we have prepared an accounting statement showing the classification of impacts associated with this proposed rule.[66]

Agency/Program Office: U.S. Coast Guard.

Rule Title: Cybersecurity in the Marine Transportation System.

RIN#: 1625–AC77.

Date: July 2023 (millions, 2022 dollars).

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[66] The version of Circular A–4 issued November 9, 2023, is not effective until March 24, 2024. Therefore, this new version does not apply to this NPRM because this proposed rule was submitted to OIRA on November 13, 2023.

Table 1: OMB Circular A-4 Accounting Statement Categorizing Impacts for the Cybersecurity in the Marine Transportation System NPRM

Category	Primary Estimate		Minimum Estimate		High Estimate		Source
Benefits							
Annualized monetized benefits ($ Mil)	-	7%		7%		7%	RA
	-	3%		3%		3%	
Annualized quantified, but unmonetized, benefits							RA
Unquantifiable, qualitative Benefits	Reduce the risk of cyber incidents through enhanced detection and correction of vulnerabilities in IT and OT systems. Improve mitigation for the impacted entity and downstream economic participants if an incident occurs.						RA
	Improve protection of MTS firm and customer data to protect business operations, build consumer trust, and promote increased commerce in the U.S. economy.						
	Improve the minimum standard for cybersecurity to protect the MTS and avoid supply chain disruptions, which is vital to the U.S. economy and U.S. national security.						
Costs							
Annualized monetized costs ($ Mil)	$80.1	7%		7%		7%	RA
	$79.4	3%		3%		3%	RA
Annualized quantified, but unmonetized, costs	None						RA
Qualitative (un-quantified) costs	The unquantifiable costs of this proposed rule would be associated with the cyber risk mitigation actions identified as a result of this NPRM. These actions may involve changes to the physical security of hardware and physical access ports, network segmentation, the data space and encryption required for data backups and data logging measures, disabling applications running executable code, any necessary future software or hardware upgrades in addition to the incompatibility between older and newer software, and correcting vulnerabilities or issues identified during the implementation of this proposed rule.						RA
Transfers							
Annualized monetized transfers: "on budget"	N/A		N/A		N/A		RA
From whom to whom?	N/A						RA
Annualized monetized transfers: "off-budget"	N/A		N/A		N/A		
From whom to whom?	N/A		N/A		N/A		
Miscellaneous Analyses/Category							
Effects on Tribal, State, and/or local, governments	None						
Effects on small businesses	We conducted an initial Regulatory Flexibility analysis (IRFA) and estimate that this proposed rule may have a significant economic impact on a substantial number of small entities.						RA/IRFA
Effects on wages	None						
Effects on growth	Not measured						

The Coast Guard proposes to update its maritime security regulations by adding minimum cybersecurity requirements to 33 CFR part 101 for U.S.-flagged vessels subject to part 104, facilities subject to part 105, and OCS

facilities subject to part 106. Specifically, this proposed rule would require owners or operators of U.S.-flagged vessels, facilities, and OCS facilities to develop an effective Cybersecurity Plan, which includes actions to prepare for, prevent, and respond to threats and vulnerabilities. One of these actions is to assign qualified personnel to implement the Cybersecurity Plan and all activities within the Plan. The Cybersecurity Plan would include: designating a CySO; conducting a Cybersecurity Assessment; developing and submitting the Plan to the Coast Guard for approval; operating a U.S.-flagged vessel, facility, and OCS facility in accordance with the Plan; implementing security measures based on new cybersecurity vulnerabilities; and reporting cyber incidents to the NRC, as defined in this preamble.

This proposed rule would further require owners and operators of U.S.-flagged vessels, U.S. facilities, and OCS facilities to perform cybersecurity drills and exercises in accordance with their VSP, FSP, and OCS FSP. Owners and operators of U.S.-flagged vessels, facilities, and OCS facilities would also be required to maintain records of cybersecurity related information in paper or electronic format.

Lastly, this proposed rule would require certain cybersecurity measures to identify risks, detect threats and vulnerabilities, protect critical systems, and to recover from cyber incidents. These measures include account security measures, device security measures, data security measures, cybersecurity training for personnel, risk management, supply chain risk measures, penetration testing, resilience measures, network segmentation, and physical security.

Baseline Summary

The Coast Guard is not codifying existing guidance in this NPRM. The requirements of this proposed rule and the costs and benefits we estimate in this RIA would be new. The Coast Guard drafted the requirements of this proposed rule based on NIST's *Framework for Improving Critical Infrastructure Cybersecurity,* NIST's standards and best practices, and CISA's CPGs.

In February 2020, the Coast Guard issued NVIC 01–20, which provided clarity and guidance for MTSA-regulated facility and OCS facility owners and operators regarding existing requirements in the MTSA for computer systems and network vulnerabilities. However, the NVIC does not contain cybersecurity requirements for facility and OCS facility owners. Furthermore, the NVIC does not address the topic of cybersecurity for vessel owners and operators.

The IMO has issued other guidance on Cybersecurity in the past 6 years. In 2017, the IMO adopted resolution MSC.428(98) to the ISM Code on ''Maritime Cyber Risk Management in Safety Management Systems (SMS).'' Generally, this resolution states that an SMS should consider CRM and encourages Administrations to appropriately address cyber risks in an SMS by a certain date, in accordance with the ISM Code. In 2022, the IMO provided further guidance on maritime CRM in MSC–FAL.1/Circ.3–Rev.2, *Guidelines on Maritime Cyber Risk Management,* in an effort to raise the awareness about cybersecurity risks.

In addition, survey data indicates that some portions of the affected population of facility and OCS facility owners and operators are already implementing cybersecurity measures consistent with select provisions of the proposed rule, including 87 percent who have implemented account security measures, 83 percent who have implemented multifactor authentication, 25 percent who have implemented annual cybersecurity training, and 68 percent who conduct penetration tests.[67] While we lack similar data on cybersecurity activities in the affected population of U.S.-flagged vessels, we acknowledge that it is likely that many owners and operators have implemented cybersecurity measures in response to private incentives and increasing cybersecurity risks over time. For the purposes of this analysis, however, we assume that owners and operators have no baseline cybersecurity activity, in the areas in which we lack data.

Estimated Costs of the Proposed Rule

We estimate the total discounted costs of this proposed rule to industry and the Federal Government to be approximately $562,740,969 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $80,121,654, using a 7-percent discount rate. See table 2.

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[67] In this analysis, the Coast Guard references a survey conducted by Jones Walker, a limited liability partnership (Jones Walker LLP). The title of the survey is ''Ports and Terminals Cybersecurity Survey,'' which they conducted in 2022. This survey helped the Coast Guard to gain an understanding of the cybersecurity measures that are currently in place at facilities and OCS facilities in the United States. We cite relevant data from the survey when calculating industry costs throughout the regulatory analysis. Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html;* accessed July 19, 2023.

Table 2: Total Estimated Costs of the Proposed Rule to Industry and Government (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facility and OCS Facility Costs	U.S.-flagged Vessel Costs	Government Costs	Total Costs	7 Percent	3 Percent
1	$33,469,773	$53,613,063	$351,638	$87,434,474	$81,714,462	$84,887,839
2	$37,053,260	$54,116,840	$16,921,067	$108,091,167	$94,411,011	$101,886,292
3	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$59,913,465	$67,168,260
4	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$55,993,893	$65,211,903
5	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$52,330,741	$63,312,527
6	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$48,907,234	$61,468,473
7	$25,788,807	$49,425,867	$4,301,574	$79,516,248	$49,518,723	$64,653,986
8	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$42,717,473	$57,939,931
9	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$39,922,872	$56,252,360
10	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$37,311,095	$54,613,942
Total	**$312,330,251**	**$439,884,727**	**$36,602,908**	**$788,817,886**	**$562,740,969**	**$677,395,513**
Annualized				**$78,881,789**	**$80,121,654**	**$79,411,419**

Note: Totals may not sum due to independent rounding.

We present a summary of the impacts of this proposed rule in table 3.

Table 3: Summary of Impacts of the Proposed Rule

Category	Summary
Applicability: Proposed new sections to 33 CFR part 101, subpart F—Cybersecurity	• Cybersecurity requirements for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities.
Affected Population	• Approximately 1,708 facility owners and operators of approximately 3,411 facilities. • Approximately 1,775 U.S.-flagged vessel owners and operators of approximately 10,286 U.S.-flagged vessels (5,473 U.S.-flagged vessels, excluding barges, where applicable).

Total Costs of the Proposed Rule (7-percent discount rate—all estimates in table)	**Costs to Industry:** Total discounted cost: $535,093,488 Annualized cost: $76,185,275 Total discounted cost to facilities and OCS facilities cost: $221,437,074 Annualized cost: $31,527,658 Total discounted cost to U.S.-flagged vessels: $313,656,415 Annualized cost: $44,657,617 **Costs to Federal Government:** Total discounted cost: $27,647,481 Annualized cost: $3,936,379 **Total Costs of Proposed Rule:** Total discounted cost: $562,740,969 Annualized cost: $80,121,654
Unquantified Costs	• Costs associated with the physical security of physical access ports and removable media. • Costs associated with network segmentation. • The cost of data encryption and acquiring data space needed to store data logs and backups. • Costs associated with disabling applications running executable code. • Costs associated with any future software or hardware upgrades needed to maintain system compatibility in the face of evolving cybersecurity threats. • Costs associated with the correction of vulnerabilities identified during the implementation of the provisions of the proposed rule.
Unquantified Benefits	• Reduce the risk of cyber incidents through enhanced detection and correction of vulnerabilities in IT and OT systems. Improve mitigation for impacted entities and downstream economic participants if an incident occurs. Improve protection of MTS firm and customer data to protect business operations, build consumer trust, and promote increased commerce in the U.S. economy. • Improve the minimum standard for cybersecurity to protect the MTS and avoid supply chain disruptions, which is vital to the U.S. economy and U.S. national security.

Affected Population

This proposed rule would affect owners and operators of U.S.-flagged vessels subject to 33 CFR part 104 (Maritime Security: Vessels), facilities subject to 33 CFR part 105 (Maritime Security: Facilities), and OCS facilities subject to 33 CFR part 106 (Marine Security: Outer Continental Shelf (OCS) Facilities). The Coast Guard estimates this proposed rule would affect approximately 10,286 vessels and 3,411 facilities (including OCS facilities).

The affected U.S.-flagged vessel population includes:

- U.S. towing vessels greater than 8 meters (26 feet) in registered length inspected under 46 CFR, subchapter M that are engaged in towing a barge or barges inspected under 46 CFR, subchapters D and O;
- U.S. tankships inspected under 46 CFR, subchapters D and O;
- U.S. barges inspected under 46 CFR, subchapters I (includes combination barges), D, and O, carrying certain dangerous cargo in bulk or barges and engaged on international voyages;
- Small U.S. passenger vessels carrying more than 12 passengers, including at least 1 passenger-for-hire, that are engaged on international voyages;
- Small U.S. passenger vessels inspected under 46 CFR, subchapter K that are certificated to carry more than 150 passengers;
- Large U.S. passenger vessels inspected under 46 CFR, subchapter H;
- Offshore supply vessels (OSVs) inspected under 46 CFR, subchapter L;
- Self-propelled U.S. cargo vessels greater than 100 gross register tons inspected under 46 CFR, subchapter I, except for commercial fishing vessels inspected under 46 CFR part 105; and
- U.S. MODUs and cargo or passenger vessels subject to SOLAS (1974), Chapter XI–1 or Chapter XI–2.

The affected facility population includes:

- Facilities subject to 33 CFR parts 126 (Handling of Dangerous Cargo at Waterfront Facilities) and 127 (Waterfront Facilities Handling Liquefied Natural Gas and Liquefied Hazardous Gas);
- Facilities that receive vessels certificated to carry more than 150 passengers, except vessels not carrying and not embarking or disembarking passengers at the facility;
- Facilities that receive vessels subject to SOLAS (1974), Chapter XI;
- Facilities that receive foreign cargo vessels greater than 100 gross register tons;
- Facilities that receive U.S. cargo vessels, greater than 100 gross register tons, inspected under 46 CFR, subchapter I, except facilities that receive only commercial fishing vessels inspected under 46 CFR part 105; and
- Barge fleeting facilities that receive barges carrying, in bulk, cargoes regulated by 46 CFR subchapter I, inspected under 46 CFR, subchapters D or O, or certain dangerous cargoes.

Table 4 presents the affected population of U.S.-flagged vessels, facilities, and OCS facilities of this proposed rule.[68] For the vessel population, the Coast Guard assumes the same number of vessels that leave and enter service. Therefore, we assume the population to be constant over the 10-year period of analysis. We also make the same assumption for facilities and OCS facilities. Additionally, we assume that changes in the ownership of vessels and facilities would be very rare and any audits that would result from a change in ownership would be accounted for by the annual audit requirements. We request public comments on these assumptions, and generally, on the affected population.

[68] This data was retrieved from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database in September 2022.

Table 4: Estimated Affected U.S. Population of the Proposed Rule

Population Group	Total Number of Vessels or Facilities
Vessels	
U.S. towing vessels greater than 8 meters (26 feet) in registered length inspected under 46 CFR subchapter M that are engaged in towing a barge or barges inspected under 46 CFR subchapters D and O.	3,921
U.S. tankships inspected under 46 CFR subchapters D and O.	88
Self-propelled U.S. cargo and miscellaneous vessels—self-propelled vessels greater than 100 gross register tons inspected under 46 CFR subchapter I, except for commercial fishing vessels inspected under 46 CFR part 105.	574
Small U.S. passenger vessels carrying more than 12 passengers, including at least 1 passenger-for-hire, that are engaged on international voyages.	50
Small U.S. passenger vessels inspected under 46 CFR subchapter K (certificated to carry more than 150 passengers).	379
Large U.S. passenger vessels inspected under 46 CFR subchapter H.	34
OSVs inspected under 46 CFR subchapter L	426
U.S. MODUs subject to SOLAS Chapter XI-1 or Chapter XI-2 that are inspected under 46 CFR subchapter I-A.	1
U.S. barges inspected under 46 CFR subchapters D, O, or I (includes combination barges) carrying certain dangerous cargo in bulk or barges engaged on international voyages.	4,813
Total U.S.-flagged vessel population	**10,286 (1,775 owners and operators)**
Facilities	
Total facilities and OCS facilities (includes MTSA-regulated facilities)	**3,411 (1,708 owners and operators)**

Cost Analysis of the Proposed Rule

This proposed rule would impose costs on the U.S. maritime industry for cybersecurity requirements that include:

- Developing a Cybersecurity Plan, which includes designating a CySO, in proposed 33 CFR 101.630;
- Performing drills and exercises in proposed 33 CFR 101.635; and
- Ensuring and implementing cybersecurity measures in proposed 33 CFR 101.650, such as account security measures, device security measures, data security measures, cybersecurity training for personnel, training for reporting an incident, risk management, supply chain management, resilience, network segmentation, and physical security.

We present the costs associated with some of the regulatory provisions in the following analysis; however, we are not able to estimate the costs fully for certain provisions because of the lack of data and the uncertainty associated with these provisions. Also, some regulatory provisions may be included in developing the Cybersecurity Plan and maintaining it on an annual basis; therefore, we may not have estimated a cost for these specific provisions in this analysis. We clarify this in the analysis where applicable and request public comment regarding these analyses.

In addition, U.S. barges inspected under 46 CFR, subchapters D, O, or I (including combination barges), carrying certain dangerous cargo in bulk or barges engaged on international voyages, represent a special case in our analysis of cybersecurity-related costs. Unlike other vessels in the affected population of this NPRM, in most cases, barges do not have IT or OT systems onboard. Many types of barges rely on the IT and OT systems onboard their associated towing vessels or the facilities where they deliver their cargo. This also means that barges are typically unmanned, making the costs associated with provisions such as cybersecurity training difficult to estimate. While we acknowledge that there are some barges with IT or OT systems onboard, for the purposes of this analysis, we calculate costs only for the affected population of barges related to developing, resubmitting, maintaining, and auditing the Cybersecurity Plan, as well as developing cybersecurity-related drill and exercise components.

We believe that the hour-burden estimates associated with the components of the Cybersecurity Plan should still be sufficient to capture the implementation of any cybersecurity measures identified as necessary by the owner or operator of a barge. In addition, we believe it should capture any burden associated with requests for waivers or equivalents for provisions that would not apply to a vessel or vessel company lacking significant IT or OT systems. The Coast Guard requests comment on our assumptions and cost estimates related to barges and their cybersecurity activities.

Cybersecurity Plan Costs

Each owner and operator of a U.S.-flagged vessel, facility, or OCS facility would be required to develop and submit a Cybersecurity Plan to the Coast Guard. The CySO would develop, implement, and verify a Cybersecurity Plan for each U.S.-flagged vessel, facility, or OCS facility. The owner or operator would submit the Plan for approval to the cognizant COTP or the OCMI for a facility or OCS facility, or to the MSC for a U.S.-flagged vessel. The contents of the Cybersecurity Plan are detailed in proposed § 101.630.

Unless otherwise stated, we used information and obtained estimates in this RIA from subject matter experts (SMEs) in the Coast Guard's offices of Design and Engineering Standards (CG–ENG), Commercial Vessel Compliance (CG–CVC), and Port and Facility Compliance (CG–FAC). We also obtained information from the U.S. Coast Guard Cyber Command (CGCYBER) and the National Maritime Security Advisory Committee (NMSAC).

The Coast Guard acknowledges that some owners and operators of medium-sized and larger facilities, OCS facilities, and U.S.-flagged vessels may have already adopted a cybersecurity posture and implemented measures to counter and prevent a cyber incident. We also acknowledge that owners and operators of smaller facilities, OCS facilities, and U.S.-flagged vessels may not have any cybersecurity measures in place. For the purpose of this analysis, we assume that all owners or operators of facilities, OCS facilities, and U.S.-flagged vessels would be required to comply with the full extent of the requirements of this proposed rule. However, we have survey data indicating that a portion of owners and operators of affected facilities and OCS facilities already have some cybersecurity measures in place.[69] We present this survey data in the applicable sections of the cost analysis. For other regulatory provisions, we do not estimate regulatory costs for industry because the Coast Guard does not have data on the extent of cybersecurity measures currently in the industry for these provisions. The Coast Guard requests owners and operators of facilities, OCS facilities, and U.S.-flagged vessels who have some or most of the required cybersecurity processes and procedures in their current operations to provide comments on the outlining processes and procedures they have implemented.

We list the regulatory provisions included in developing and maintaining a Cybersecurity Plan that we did not estimate costs for in other sections of this RIA:

- Device security measures in § 101.650(b)(1) through (4);
- Supply chain management in § 101.650(f)(1) through (3);
- Cybersecurity Assessment in § 101.650(e)(1);
- Documentation of penetration testing results and identified vulnerabilities in § 101.650(e)(2);
- Routine system maintenance measures in § 101.650(e)(3)(i) through (v); and
- Development and maintenance of a Cyber Incident Response Plan in § 101.650(g)(2).

Developing a Cybersecurity Plan has five cost components: the initial development of the Plan; annual maintenance of the Plan (including amendments); revision and resubmission of the Plan as needed; renewal of the Plan after 5 years; and the cost for annual audits. Owners and operators of U.S.-flagged vessels, facilities, and OCS facilities would be required to submit their Cybersecurity Plan to the Coast Guard during the second annual audit of the currently approved VSP, FSP, or OCS FSP following the effective date of this proposed rule; therefore, submitting a Cybersecurity Plan for approval would likely not occur until the second year of the 10-year period of analysis.

The CySO would be responsible for all aspects of developing and maintaining the Cybersecurity Plan. The Coast Guard does not have data on whether owners and operators of facilities, OCS facilities, and vessels would hire a dedicated, salaried employee to serve as a CySO. Proposed § 101.625 states that a CySO may perform other duties within an owner or operator's organization, and that a person may serve as a CySO for more than one U.S.-flagged vessel, facility, or OCS facility. For facilities and OCS facilities, this person may be the Facility Security Officer. For vessels, this person may be the Vessel Security Officer. When considering assigning the CySO role to the existing security officer, the owner or operator should consider the

[69] Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html;* accessed July 19, 2023.

depth and scope of these new responsibilities in addition to existing security duties. For the purpose of this analysis, we assume that an existing person in a facility, OCS facility, or U.S.-flagged vessel company or organization would assume the duties and responsibilities of a CySO, and that owners and operators would not have to hire an individual to fill this position. This means that any costs associated with obtaining security credentials (including a Transportation Worker Identification Card) would already be incurred prior to the implementation of this proposed rule. Additionally, in the event that the designated CySO has security responsibilities that overlap with an existing Vessel, Facility, or Company Security Officer, we assume that those individuals will work together to handle those duties.

We use the Bureau of Labor Statistics' (BLS) ''National Occupational Employment and Wage Estimates'' for the United States for May 2022. A CySO would be comparable to the occupational category of ''Information Security Analysts'' according to BLS's labor categories with an occupational code of 15–1212 and an unloaded mean hourly wage rate of $57.63.[70] In order to obtain a loaded mean hourly wage rate, we use BLS's ''Employer Costs for Employee Compensation'' database to calculate the load factor, which we applied to the unloaded mean hourly wage rate using fourth quarter data from 2022.[71] We determine the load factor for this occupational category to be about 1.46, rounded. We then multiply this load factor by the unloaded mean hourly wage rate of $57.63 to obtain a loaded mean hourly wage rate of about $84.14, rounded ($57.63 × 1.46).

Cybersecurity Plan Cost for Facilities and OCS Facilities

This proposed rule would require owners and operators of facilities and OCS facilities to create a Cybersecurity Plan for each facility within a company. For the purpose of this analysis, the cost to develop a Cybersecurity Plan is a function of the number of facilities, not the number of owners and operators, because an owner or operator may own more than one facility. Based on data obtained from the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database, we estimate this NPRM would affect about 3,411 facilities and OCS facilities (including MTSA-regulated facilities), and about 1,708 owners and operators of these facilities. MISLE data contains incomplete information on owners and operators for 748 of the 3,411 facilities and OCS facilities included in the affected population. Of the 2,663 facilities and OCS facilities with complete information for owners and operators, we found 1,334 unique owners. This means that, on average, each owner owns approximately 2 facilities (2,663 ÷ 1,334 = 2.0, rounded). We apply this rate of ownership to the remaining facilities and OCS facilities without complete ownership information to arrive at our total of 1,708 owners [1,334 + (748 ÷ 2)].

We use hour-burden estimates from Coast Guard SMEs and the currently approved OMB Information Collection Request (ICR), Control Number 1625–0077, titled, ''Security Plans for Ports, Vessels, Facilities, and Outer Continental Shelf Facilities and other Security-Related Requirements.'' The hour-burden estimates are 100 hours for developing the Cybersecurity Plan (average hour burden), 10 hours for annual maintenance of the Cybersecurity Plan (which would include amendments), 15 hours to resubmit Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans.

While the Cybersecurity Plan can be incorporated into an existing FSP for a facility or OCS facility, this does not mean that the Cybersecurity Plan is expected to be less complex to develop or maintain than an FSP. In general, the provisions outlined in this proposed rule are meant to reflect the depth and scope of the physical security provisions established by MTSA. As a result, we feel the hour-burden estimates for developing and maintaining the FSP represents a fair proxy for what is expected with respect to a Cybersecurity Plan. Nevertheless, the Coast Guard requests comment on the accuracy of these hour-burden estimates as they relate to developing a Cybersecurity Plan.

Based on estimates from the Coast Guard's FSP reviewers at local inspections offices, approximately 10 percent of Plans would need to be revised and resubmitted in the second year, which is consistent with the current resubmission rate for FSPs. Plans must be renewed after 5 years (occurring in the seventh year of the analysis period), and we estimate that 10 percent of renewals would also require revision and resubmission. We estimate the time to revise and resubmit the Cybersecurity Plan to be about half the time to develop the Plan itself, or 50 hours in the second year of submission, and 7.5 hours after 5 years (in the seventh year of the analysis period).

Because we include the annual Cybersecurity Assessment in the cost to develop Cybersecurity Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Plan or implementing related cybersecurity measures, we divide the estimated 100 hours to develop Plans equally across the first and second years of analysis. We estimate the first- and second-year (the first year of Plan submission) undiscounted cost to develop a Cybersecurity Plan for owners and operators of U.S. facilities and OCS facilities to be about $28,700,154 (3,411 Plans × 100 hours × $84.14). We estimate the second-year undiscounted cost for owners and operators to resubmit Plans for facilities or OCS facilities (or to send amendments) for corrections to be about $1,434,587 (341 Plans or amendments × 50 hours × $84.14). Therefore, we estimate the total undiscounted first- and second-year cost to facility and OCS facility owners and operators to develop, submit, and resubmit a Cybersecurity Plan to be approximately $30,134,741 ($28,700,154 + $1,434,587)).

In years 3 through 6 and years 8 through 10 of the analysis period, owners and operators of U.S. facilities and OCS facilities would be required to maintain their Cybersecurity Plans. This may include recordkeeping and

[70] Readers can access BLS's website at *https://www.bls.gov/oes/2022/may/oes151212.htm* to obtain information about the wage we used in this analysis; accessed May 5, 2023.

[71] A loaded mean hourly wage rate is what a company pays per hour to employ a person, not the hourly wage an employee receives. The loaded mean hourly wage rate includes the cost of non-wage benefits (health insurance, vacation, etc.). We calculated the load factor by accessing BLS's website at *https://www.bls.gov/* and selecting the topic ''Subjects'' from the menu on this web page. From the categories listed on this page, under the category titled ''Pay and Benefits,'' we then selected the category of ''Employment Costs.'' The next page is titled ''Employment Cost Trends;'' in the left margin, we selected the category ''ECT Databases'' at *https://www.bls.gov/ncs/ect/data.htm.* At this page, we selected the database titled ''Employer Costs for Employee Compensation'' using the ''Multi-Screen'' feature at *https://data.bls.gov/cgi-bin/dsrv?cm.* We then selected the category of ''Private Industry Workers'' at screen 1. At screen 2, we first selected the category ''Total Compensation,'' then we continued to select ''Transportation and Materials Moving Occupations'' at screen 3, then ''All Workers'' at screens 4 and 5, and then for ''Area,'' we selected ''United States'' at screen 6. At screen 7, we selected the category ''Employer Cost for Employee Compensation.'' At screen 8, we selected the category ''not seasonally adjusted.'' At screen 9, we selected the series ID, CMU2010000520000D. We used the ''Cost of Compensation'' for quarter 4 of 2022, or $33.07. We performed this process again to obtain the value for ''Wages and Salaries,'' which we selected on screen 2. On screen 9, we selected the series ID CMU2020000520000D and obtained a value of $22.64. We divided $33.07 by $22.64 and obtained a load factor of 1.46, rounded; accessed May 3, 2023.

documenting cybersecurity items at a facility or OCS facility, as well as amending the Plan. The CySO would be required to maintain each Plan for each facility or OCS facility. Maintaining the Plan does not occur in the second year (initial year of Plan submission) or in the renewal year, year 7 of the analysis period. We again obtain the hour-burden estimate for the annual maintenance of Plans from ICR 1625–0077, which is 10 hours.

In the same years of the analysis period, this proposed rule would also require owners and operators of facilities and OCS facilities to conduct annual audits. The audits would be necessary for owners and operators of facilities and OCS facilities to identify vulnerabilities (via the Cybersecurity Assessment) and to mitigate them.[72] Audits would also be necessary if there is a change in the ownership of a facility, but because the costs for audits are estimated annually, this should capture audits as a result of very rare changes in ownership each year as well. The CySO would be responsible for ensuring the audit of a Cybersecurity Plan. Based on input provided by Coast Guard SMEs who review Plans at the Coast Guard, we estimate the time to conduct an audit to be about 40 hours for each Plan. We estimate the undiscounted cost for the annual maintenance of Cybersecurity Plans for facility and OCS facility owners and operators to be approximately $2,870,015 (3,411 facility Plans × 10 hours × $84.14). We estimate the undiscounted cost for annual audits of Cybersecurity Plans to be approximately $11,480,062 (3,411 facility Plans × 40 hours × $84.14). We estimate the total undiscounted annual cost each year in years 3 through 6 and 8 through 10 for Cybersecurity Plans to be approximately $14,350,077 ($2,870,015 + $11,480,062).

Because a Cybersecurity Plan approved by the Coast Guard is valid for 5 years, in year 7 of the analysis period, owners and operators of facilities and OCS facilities would be required to renew the approval of their Plans with the Coast Guard. We use the hour-burden estimate in ICR 1625–0077for renewing the Plan, which is 15 hours. The hour-burden estimate for revision and resubmission of renewals is half of the original hour-burden for renewals, or 7.5 hours. The CySO would be responsible for resubmitting the Cybersecurity Plan to the Coast Guard for renewal, including additional resubmissions because of corrections. We estimate the undiscounted cost for renewing and resubmitting a Cybersecurity Plan due to corrections to be approximately $4,520,211 [(3,411 facility Plans × 15 hours × $84.14) + (341 resubmitted facility Plans × 7.5 hours × $84.14)].

We estimate the total discounted cost of this proposed rule for developing Cybersecurity Plans for facility and OCS facility owners and operators to be approximately $95,920,412 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $13,656,909, using a 7-percent discount rate. See table 5.

[72] The Jones Walker survey (see footnote 69) reports about 72 percent of ports and terminals conduct a risk assessment at least once a year. We did not estimate a separate cost for this item because the Coast Guard believes that a risk assessment can be a part of an annual audit. Readers can access the survey at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html;* accessed July 19, 2023.

Table 5: Estimated Cost of the Proposed Rule for Facility and OCS Facility Cybersecurity Plans (2022 Dollars, 10-year Period of Analysis, 7- and 3-percent Discount Rates)

Year	Number of Companies (a)	Number of Submissions (b)	Number of Resubmissions (c)	CySO Wage (d)	Development Hours (e)	Annual Maintenance Hours (f)	Resubmission Hours (g)	Audit Hours (h)	Total Cost = [(b × d × (e + f + h)) + (c × d × g)]	7 Percent	3 Percent
1	1708	3411	0	$84.14	50	0	0	0	$14,350,077	$13,411,287	$13,932,114
2	1708	3411	341	$84.14	50	0	50	0	$15,784,664	$13,786,937	$14,878,560
3	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$11,713,937	$13,132,353
4	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$10,947,605	$12,749,858
5	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$10,231,407	$12,378,502
6	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$9,562,062	$12,017,964
7	1708	3411	341	$84.14	15	0	7.5	0	$4,520,211	$2,814,960	$3,675,345
8	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$8,351,875	$11,328,083
9	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$7,805,491	$10,998,139
10	1708	3411	0	$84.14	0	10	0	40	$14,350,077	$7,294,851	$10,677,805
Total									**$135,105,491**	**$95,920,412**	**$115,768,723**
Annualized									**$13,510,549**	**$13,656,909**	**$13,571,626**

Note: Totals may not sum due to independent rounding.

Cybersecurity Plan Cost for U.S.-Flagged Vessels

The methodology for owners and operators of U.S.-flagged vessels to develop a Cybersecurity Plan is the same as for U.S. facilities and OCS facilities. We estimate the affected vessel population to be about 10,286. We estimate the number of owners and operators of these vessels to be about 1,775.

We use estimates provided by Coast Guard SMEs and ICR 1625–0077 for the hour-burden estimates for vessels as we did for facilities and OCS facilities. The hour-burden estimates are 80 hours for developing the Cybersecurity Plan, 8 hours for annual Plan maintenance, 12 hours to renew the Plan every 5 years, and 40 hours to conduct annual audits of Plans for vessels. Similar to facilities, 10 percent of all Cybersecurity Plans for vessels would need to be resubmitted for corrections in the second year (initial year of Plan submission), and 10 percent of Cybersecurity Plans for vessels would need to be revised and resubmitted in the seventh year of the analysis period. Based on information from Coast Guard SMEs, we estimate the time to make corrections to the Plan in the second year would be about half of the initial time to develop the Plan, or 40 hours in the second year, and 6 hours in the seventh year. We include the annual Cybersecurity Assessment in the cost to develop Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures. Therefore, we divide the estimated 80 hours to develop Plans equally across the first and second years of analysis.

The methodology to determine the cost to develop a Cybersecurity Plan for U.S.-flagged vessels is slightly different than the methodology for facilities and OCS facilities. The Coast Guard does not believe that a CySO for U.S.-flagged vessels would expend 80 hours developing a Plan for each vessel in a company's fleet. For example, if a vessel owner or operator has 10 vessels, it would take a CySO 800 hours of time to develop Plans for all 10 vessels, which is nearly 40 percent of the total hours of work in a calendar year. It is more likely that the CySO would create a master Cybersecurity Plan for all the vessels in the fleet, and then tailor each Plan according to a specific vessel, as necessary.

Because a large portion of the provisions required under this proposed rule would impact company-wide policies regarding network, account, and data security practices, as well as company-wide cybersecurity training, reporting procedures, and testing, we do not believe there will be much variation in how these provisions are implemented between specific vessels owned by the same owner or operator. Therefore, the cost to develop a Cybersecurity Plan for vessels becomes a function of the number of vessel owners and operators and not a function of the number of vessels.

When a vessel owner or operator submits a Plan to the Coast Guard for approval, the owner or operator would send the master Cybersecurity Plan, which might include a more tailored or abbreviated Plan for each vessel. For example, the owner or operator of 10 vessels would send the master Cybersecurity Plan along with the tailored Plans for each vessel in one submission to the Coast Guard for approval, instead of 10 separate documents. The Coast Guard requests comments on these assumptions related to master and tailored vessel Cybersecurity Plans.

We estimate the first- and second-year (initial year of Plan submission) undiscounted cost for owners and operators of U.S.-flagged vessels to develop a Cybersecurity Plan to be approximately $11,947,880 (1,775 Plans × 80 hours × $84.14) split over the first two years of analysis. We estimate the second-year undiscounted cost for owners and operators to resubmit vessel Plans (or send amendments) for corrections to be approximately $599,077 (178 Plans or amendments × 40 hours × $84.14). Therefore, we estimate the total undiscounted first- and second-year cost to the owners and operators of U.S.-flagged vessels to develop a Cybersecurity Plan to be approximately $12,546,957 ($11,947,880 + $599,077).

As with facilities and OCS facilities, in years 3 through 6 and years 8 through 10 of the analysis period, CySOs, on behalf of owners and operators of U.S.-flagged vessels, would be required to maintain their Cybersecurity Plans. We again obtain the hour-burden estimate for annual maintenance of Plans from ICR 1625–0077, which is 8 hours. In the same years of the analysis period, this proposed rule would also require owners and operators of U.S.-flagged vessels to conduct annual audits. The audits would be necessary for owners and operators of U.S.-flagged vessels to identify vulnerabilities through the Cybersecurity Assessment and to mitigate them. Audits would also be necessary if there is a change in the ownership of a vessel. The CySO would likely conduct an audit of the master Cybersecurity Plan, which would include each vessel, instead of conducting a separate audit for each individual vessel.

The time estimate for a CySO to conduct an audit for U.S.-flagged vessels in a fleet is the same as it is for facilities and OCS facilities, or 40 hours per Plan. We estimate the undiscounted cost for the annual maintenance of Cybersecurity Plans for the owners and operators of U.S.-flagged vessels to be about $1,194,788 (1,775 Plans × 8 hours × $84.14). We estimate the undiscounted cost for annual audits of Cybersecurity Plans to be approximately $5,973,940 (1,775 Plans × 40 hours × $84.14). We estimate the total undiscounted annual cost each year in years 3 through 6 and 8 through 10 for Cybersecurity Plans to be approximately $7,168,728 ($1,194,788 + $5,973,940).

Again, as with facilities and OCS facilities, Coast Guard approval for the Cybersecurity Plan is valid for 5 years. Therefore, in year 7 of the analysis period, owners and operators of U.S.-flagged vessels would be required to renew their Plans with the Coast Guard. We use the hour-burden estimate in ICR 1625–0077 for Plan renewal, which is 12 hours. The CySO would be responsible for resubmitting the Cybersecurity Plan to the Coast Guard for renewal. We estimate the undiscounted cost for owners and operators of U.S.-flagged vessels to renew the Plan to be approximately $1,882,044 [(1,775 Plans × 12 hours × $84.14) + (178 resubmitted vessel Plans × 6 hours × $84.14)].

We estimate the total discounted cost of this proposed rule for owners and operators of U.S.-flagged vessels to develop Cybersecurity Plans to be approximately $45,420,922 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $6,466,917, using a 7-percent discount rate. See table 6.

Table 6: Estimated Cost of the Proposed Rule for U.S.-Flagged Vessel Cybersecurity Master Plan Development (2022 Dollars, 10-year Period of Analysis, 7- and 3-percent Discount Rates)

Year	Number of Companies (a)	Number of Submissions (b)	Number of Resubmissions (c)	CySO Wage (d)	Development Hours (e)	Annual Maintenance Hours (f)	Resubmission Hours (g)	Audit Hours (h)	Total Cost = [(b × d × (e + f + h)) + (c × d × g)]	7 Percent	3 Percent
1	1775	1775	0	$84.14	40	0	0	0	$5,973,940	$5,583,121	$5,799,942
2	1775	1775	178	$84.14	40	0	40	0	$6,573,017	$5,741,128	$6,195,699
3	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$5,851,817	$6,560,402
4	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$5,468,988	$6,369,322
5	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$5,111,204	$6,183,808
6	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$4,776,826	$6,003,697
7	1775	1775	178	$84.14	12	0	6	0	$1,882,044	$1,172,042	$1,530,274
8	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$4,172,265	$5,659,060
9	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$3,899,313	$5,494,233
10	1775	1775	0	$84.14	0	8	0	40	$7,168,728	$3,644,218	$5,334,207
Total									$64,610,097	**$45,420,922**	**$55,130,644**
Annualized									$6,461,010	**$6,466,917**	**$6,462,993**

Note: Totals may not sum due to independent rounding.

Drills

In proposed § 101.635(b), this NPRM would require drills that test the proficiency of U.S.-flagged vessel, facility, and OCS facility personnel who have assigned cybersecurity duties. The drills would enable the CySO to identify any cybersecurity deficiencies that need to be addressed. The CySO would need to conduct the drills every 3 months or quarterly, (which is consistent with the MTSA regulations for drills for vessels, facilities, and OCS facilities in 33 CFR parts 104, 105 and 106, respectively), and they may be held in conjunction with other security or non-security-related drills, as appropriate. The drills would test individual elements of the Plan, including responses to cybersecurity threats and incidents.

The Coast Guard does not have data on who is currently conducting cybersecurity drills in either the population of facilities and OCS facilities or the population of U.S.-flagged vessels. Therefore, we assume that the entire population of facilities and U.S.-flagged vessels would need to develop new cybersecurity related drills to comply with the proposed requirements. However, because the affected populations are already required to conduct drills in accordance with 33 CFR parts 104, 105, and 106, and the proposed rule allows for owners and operators to hold cybersecurity drills in conjunction with other security and non-security related drills, we assume that owners and operators will hold these new drills in conjunction with existing drills and will not require additional time from participants. This means that the only new cost associated with the proposed cybersecurity drills is the development of cybersecurity components to add to existing drills. Coast Guard SMEs who are familiar with MTSA's requirements and practices for drills and exercises estimate that it would take a CySO 0.5 hours (30 minutes) to develop new cybersecurity components to add to existing drills. This time estimate is based on the expected ease with which a CySO can access widely available resources and planning materials for developing cybersecurity drills online. The Coast Guard requests the public to comment on the accuracy of our estimates related to the development of cybersecurity drill components.

The CySO would be the person who develops cybersecurity components to add to existing drills. Each CySO, on behalf of the owner or operator of a facility or OCS facility, would be required to develop the drill's components beginning in the first year of the analysis period and document procedures in the Cybersecurity Plan.

Using the number of facilities owners and operators we presented earlier—or 1,708—the CySO's loaded mean hourly wage rate, the estimated time to develop the drill's components or 0.5 hours (30 minutes), and the frequency of the drill, or every 3 months, we estimate the cost for facilities to develop cybersecurity components for drills. We estimate the undiscounted annual cost of drills for facility and OCS facility owners and operators to be approximately $287,422 (1,708 facility CySOs × 4 drills per year × 0.5 hours per drill × $84.14. We estimate the total discounted cost of drills for owners and operators of facilities and OCS facilities to be approximately $2,018,733 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $287,422, using a 7-percent discount rate. See table 7.

Table 7: Estimated Drill Costs of the Proposed Rule for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Facility Companies	CySO Wage	Drill Development Hours	Frequency of Drills	Total Cost	7 Percent	3 Percent
1	1708	$84.14	0.5	4	$287,422	$268,619	$279,050
2	1708	$84.14	0.5	4	$287,422	$251,046	$270,923
3	1708	$84.14	0.5	4	$287,422	$234,622	$263,032
4	1708	$84.14	0.5	4	$287,422	$219,273	$255,371
5	1708	$84.14	0.5	4	$287,422	$204,928	$247,933
6	1708	$84.14	0.5	4	$287,422	$191,521	$240,711
7	1708	$84.14	0.5	4	$287,422	$178,992	$233,700
8	1708	$84.14	0.5	4	$287,422	$167,282	$226,894
9	1708	$84.14	0.5	4	$287,422	$156,339	$220,285
10	1708	$84.14	0.5	4	$287,422	$146,111	$213,869
Total					$2,874,220	**$2,018,733**	**$2,451,768**
Annualized						**$287,422**	**$287,422**

Note: Totals may not sum due to independent rounding.

We use the same methodology and estimates for U.S.-flagged vessel drills. As we presented previously, there are about 1,775 CySOs, on behalf of owners and operators of U.S.-flagged vessels, who would be required to develop drills with this proposed rule. We estimate the undiscounted annual cost of drills for the owners and operators of U.S.-flagged vessels to be approximately $298,697 (1,775 vessel CySOs × 4 drills per year × 0.5 hours per drill × $84.14). We

estimate the total discounted cost of drills for U.S.-flagged vessels to be approximately $2,097,922 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $298,697, using a 7-percent discount rate. See table 8.

Table 8: Estimated Drill Costs of the Proposed Rule for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Vessel Companies	CySO Wage	Drill Development Hours	Frequency of Drills	Total Cost	7 Percent	3 Percent
1	1775	$84.14	0.5	4	$298,697	$279,156	$289,997
2	1775	$84.14	0.5	4	$298,697	$260,894	$281,551
3	1775	$84.14	0.5	4	$298,697	$243,826	$273,350
4	1775	$84.14	0.5	4	$298,697	$227,875	$265,388
5	1775	$84.14	0.5	4	$298,697	$212,967	$257,659
6	1775	$84.14	0.5	4	$298,697	$199,034	$250,154
7	1775	$84.14	0.5	4	$298,697	$186,013	$242,868
8	1775	$84.14	0.5	4	$298,697	$173,844	$235,794
9	1775	$84.14	0.5	4	$298,697	$162,471	$228,926
10	1775	$84.14	0.5	4	$298,697	$151,842	$222,259
Total					$2,986,970	**$2,097,922**	**$2,547,946**
Annualized						**$298,697**	**$298,697**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of this proposed rule for drills for the owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to be approximately $4,116,655 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $586,119, using a 7-percent discount rate. See table 9.

Table 9: Estimated Costs of the Proposed Rule for Drills (Facilities, OCS Facilities, and U.S.-Flagged Vessels) (2022 Dollars, 10-year period of Analysis, 7- and 3-percent Discount Rates)

Year	Facilities Drill Cost	Vessel Drill Cost	Total Cost	7 Percent	3 Percent
1	$287,422	$298,697	$586,119	$547,775	$569,048
2	$287,422	$298,697	$586,119	$511,939	$552,473
3	$287,422	$298,697	$586,119	$478,448	$536,382
4	$287,422	$298,697	$586,119	$447,147	$520,759
5	$287,422	$298,697	$586,119	$417,895	$505,591
6	$287,422	$298,697	$586,119	$390,556	$490,865
7	$287,422	$298,697	$586,119	$365,005	$476,568
8	$287,422	$298,697	$586,119	$341,127	$462,688
9	$287,422	$298,697	$586,119	$318,810	$449,211
10	$287,422	$298,697	$586,119	$297,953	$436,128
Total	$2,874,220	$2,986,970	$5,861,190	**$4,116,655**	**$4,999,713**
Annualized				**$586,119**	**$586,119**

Note: Totals may not sum due to independent rounding.

Exercises

In proposed § 101.635(c), this NPRM would require exercises that test the communication and notification procedures of U.S.-flagged vessels, facilities, and OCS facilities. These exercises may be vessel- or facility-specific, or part of a cooperative exercise program or comprehensive port exercises. The exercises would be a full test of the cybersecurity program with active participation by the CySO and may include Government authorities and vessels visiting a facility. The exercises would have to be conducted at least once each calendar year, with no more than 18 months between exercises. As with drills, we assume that exercises will begin in the first year of the analysis period as CySOs develop Cybersecurity Plans. We also assume that the exercises developed to satisfy § 101.635(c) would also satisfy the exercise requirements outlined in § 101.650 (g)(2) and (3), which requires the exercise of the Cybersecurity Plan and Cyber Incident Response Plan.

The Coast Guard does not have data on who is currently conducting cybersecurity exercises in either the population of facilities and OCS facilities or the population of U.S.-flagged vessels. Therefore, we assume that the entire populations would need to develop new cybersecurity-related exercises to comply with the proposed requirements. However, because the affected populations are already required to conduct exercises in accordance with 33 CFR parts 104, 105, and 106, and because this proposed rule allows for owners and operators to hold cybersecurity exercises in conjunction with other exercises, we assume that owners and operators will hold these new exercises in conjunction with existing exercises. This will not require any additional time from participants, which means that the only new cost associated with the proposed cybersecurity exercises is the development of cybersecurity components to add to existing exercises.

Coast Guard SMEs familiar with MTSA's requirements and practices for drills and exercises estimate that it would take a CySO 8 hours to develop new cybersecurity components to add to existing exercises. This time estimate is based on the expected ease with which a CySO can access widely available resources and planning materials for developing cybersecurity exercises online [73] and the proliferation of cybersecurity components already being added to AMSC exercises around the United States.[74] The Coast Guard requests comment on the accuracy of our estimates related to the development of cybersecurity exercise components.

We assume each CySO, on behalf of the owner and operator of a facility or OCS facility, would develop the exercises specified in the proposed rule. Using the 1,708 facility owners and operators we presented earlier, the CySO's loaded mean hourly wage rate, the 8-hour estimate for developing the exercise components, and one annual exercise, we estimate the cost for facilities to develop cybersecurity exercise components. We estimate the undiscounted annual cost of exercises for owners and operators of facilities and OCS facilities to be approximately $1,149,689 (1,708 facility CySOs × 8 hours per exercise × $84.14). We estimate the total discounted cost of exercises for facility owners and operators to be about $8,074,935 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $1,149,689, using a 7-percent discount rate. See table 10.

[73] For example, CISA offers free resources on cybersecurity scenarios and cybersecurity exercises on their website. See *https://www.cisa.gov/cybersecurity-training-exercises,* accessed July 19, 2023.

[74] See *https://digitaleditions.walsworthprintgroup.com/publication/?i=459304&article_id=2956672&view=articleBrowser* for just one example of AMSC cyber exercises in recent years; accessed July 19, 2023.

Table 10: Estimated Exercise Costs of the Proposed Rule for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Facility Companies	CySO Wage	Exercise Development Hours	Exercises per Year	Total Cost	7 Percent	3 Percent
1	1708	$84.14	8	1	$1,149,689	$1,074,476	$1,116,203
2	1708	$84.14	8	1	$1,149,689	$1,004,183	$1,083,692
3	1708	$84.14	8	1	$1,149,689	$938,489	$1,052,128
4	1708	$84.14	8	1	$1,149,689	$877,092	$1,021,484
5	1708	$84.14	8	1	$1,149,689	$819,712	$991,732
6	1708	$84.14	8	1	$1,149,689	$766,086	$962,846
7	1708	$84.14	8	1	$1,149,689	$715,969	$934,802
8	1708	$84.14	8	1	$1,149,689	$669,129	$907,575
9	1708	$84.14	8	1	$1,149,689	$625,355	$881,141
10	1708	$84.14	8	1	$1,149,689	$584,444	$855,477
Total					$11,496,890	**$8,074,935**	**$9,807,080**
Annualized						**$1,149,689**	**$1,149,689**

Note: Totals may not sum due to independent rounding.

We use the same methodology and estimates for vessel exercises that we use for facilities. About 1,775 CySOs, on behalf of vessel owners and operators, would be required to conduct exercises with this proposed rule. We estimate the undiscounted annual cost of exercises for the owners and operators of U.S.-flagged vessels to be approximately $1,194,788 (1,775 vessel CySOs × 8 hours per exercise × $84.14). We estimate the total discounted cost of exercises for U.S.-flagged vessels to be approximately $8,391,691 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $1,194,788, using a 7-percent discount rate. See table 11.

Table 11: Estimated Drill Costs of the Proposed Rule for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Vessel Companies	CySO Wage	Exercise Development Hours	Exercises per Year	Total Cost	7 Percent	3 Percent
1	1775	$84.14	8	1	$1,194,788	$1,116,624	$1,159,988
2	1775	$84.14	8	1	$1,194,788	$1,043,574	$1,126,202
3	1775	$84.14	8	1	$1,194,788	$975,303	$1,093,400
4	1775	$84.14	8	1	$1,194,788	$911,498	$1,061,554
5	1775	$84.14	8	1	$1,194,788	$851,867	$1,030,635
6	1775	$84.14	8	1	$1,194,788	$796,138	$1,000,616
7	1775	$84.14	8	1	$1,194,788	$744,054	$971,472
8	1775	$84.14	8	1	$1,194,788	$695,377	$943,177
9	1775	$84.14	8	1	$1,194,788	$649,886	$915,706
10	1775	$84.14	8	1	$1,194,788	$607,370	$889,034
Total					**$11,947,880**	**$8,391,691**	**$10,191,784**
Annualized						**$1,194,788**	**$1,194,788**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of this proposed rule for the owners and operators of U.S. facilities, OCS facilities, and U.S.-flagged vessels for exercises to be approximately $16,466,625 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $2,344,477, using a 7-percent discount rate. See table 12.

Table 12: Estimated Cost of the Proposed Rule for Exercises (Facilities, OCS Facilities, and U.S.-Flagged Vessels) (2022 Dollars, 10-year Period of Analysis, 7- and 3-percent Discount Rates)

Year	Facilities Exercise Cost	Vessel Exercise Cost	Total Cost	7 Percent	3 Percent
1	$1,149,689	$1,194,788	$2,344,477	$2,191,100	$2,276,191
2	$1,149,689	$1,194,788	$2,344,477	$2,047,757	$2,209,894
3	$1,149,689	$1,194,788	$2,344,477	$1,913,792	$2,145,529
4	$1,149,689	$1,194,788	$2,344,477	$1,788,590	$2,083,037
5	$1,149,689	$1,194,788	$2,344,477	$1,671,580	$2,022,366
6	$1,149,689	$1,194,788	$2,344,477	$1,562,224	$1,963,463
7	$1,149,689	$1,194,788	$2,344,477	$1,460,022	$1,906,274
8	$1,149,689	$1,194,788	$2,344,477	$1,364,507	$1,850,752
9	$1,149,689	$1,194,788	$2,344,477	$1,275,240	$1,796,846
10	$1,149,689	$1,194,788	$2,344,477	$1,191,813	$1,744,511
Total	$11,496,890	$11,947,880	$23,444,770	**$16,466,625**	**$19,998,863**
Annualized				**$2,344,477**	**$2,344,477**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of this proposed rule for the owners and operators of facilities, OCS facilities, and U.S.-flagged vessels, to conduct annual drills and exercises to be approximately $20,583,281 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $2,930,596, using a 7-percent discount rate. See table 13.

Table 13: Summary of Drill and Exercise Discounted Costs of the Proposed Rule (2022 Dollars, 10-year Discounted Costs, 7-percent Discount Rate)

	Facilities and OCS Facilities	U.S.-flagged Vessels	Total Cost
Drills	$2,018,733	$2,097,922	**$4,116,655**
Exercises	$8,074,935	$8,391,691	**$16,466,626**
Total	$10,093,668	$10,489,613	**$20,583,281**
Annualized			**$2,930,596**

Note: Totals may not sum due to independent rounding.

Cybersecurity Measure Costs

The remaining regulatory provisions with associated costs are the cybersecurity measures in proposed § 101.650. There are five cost provisions associated with cybersecurity measures: account security measures; cybersecurity training for personnel; penetration testing; resilience; and risk management.

The first provision is account security measures in proposed § 101.650(a). The owners and operators of each U.S.-flagged vessel, facility, and OCS facility would ensure that account security measures are implemented and documented. This includes general account security measures in proposed § 101.650(a)(1) through (3) and (5) through (7) and multifactor authentication for end users in proposed § 101.650(a)(4). Based on the Jones Walker ''Ports and Terminals Cybersecurity Survey,'' (see footnote 69), 87 percent of facilities currently have account security measures, and 83 percent of facilities currently use multifactor authentication software. Using the total number of 1,708 facility and OCS facility owners and operators, we multiply this number by 0.13 and 0.17, respectively, to obtain the number

of facility owners and operators who would need to implement security measures and have multifactor authentication software under this proposed rule, or about 222 and 290, respectively. The Coast Guard acknowledges that the survey data used here may lead us to underestimate the costs incurred by the population of facilities and OCS facilities, given the high rate of respondents who indicated that they have these measures in place. Accordingly, we request comments on the accuracy of these rates of implementation in the population of facilities and OCS facilities.

We obtain the hour estimates and the labor category for these security measures for implementing and managing account security from NMSAC members with extensive experience in contracting to implement similar account security measures for facilities and OCS facilities in the affected population. A Database Administrator would ensure that account security measures are implemented. Using wage data from BLS's Occupational Employment and Wage Statistics (OEWS) program as previously referenced, the unloaded mean hourly wage rate for this labor category, occupational code of 15–1242, is $49.29.[75] Using Employer Costs for Employee Compensation data from BLS, we apply the same load factor of 1.46 to the aforementioned wage rate to obtain a loaded mean hourly wage rate of approximately $71.96.

It would take a Database Administrator about 8 hours to implement the account security measures and 8 hours for account security management annually thereafter for 222 U.S. facility and OCS facility companies. We estimate the undiscounted initial-year cost to implement account security for 222 facilities and OCS facilities and the annually recurring cost of account security management to be approximately $127,801, rounded [(222 facilities × ($71.96 × 8 hours)].

The number of facility and OCS facility companies that would need multifactor authentication security is about 290. Based on estimates from CG–FAC SMEs with experience implementing multifactor authentication at other Government agencies, implementation of multifactor authentication would cost each facility anywhere from $3,000 to $15,000 in the initial year for setup and configuration. For the purposes of this analysis, we use the average of approximately $9,000 for the costs of initial setup and configuration. It would also cost each facility approximately $150 per end user for annual maintenance and support of the implemented multifactor authentication system. These costs represent the average costs for implementing and maintaining a multifactor authentication system across different organization and company sizes based on the SMEs' experience.

We use the total number of estimated employees at an affected facility company in our analysis of costs because the Coast Guard currently lacks data on (1) which systems in use at a facility or OCS facility would need multifactor authentication, and (2) whether only a subset of the total employees would require access. This is largely because owners and operators have the discretion to designate both critical IT and OT systems as well as the number of employees needing access. Therefore, for the purpose of this analysis, we assume all employees would need multifactor authentication access. The Coast Guard requests comment on the accuracy of our cost estimates for implementing and maintaining multifactor authentication, and if only select systems or certain employees would require multifactor authentication access in most cases.

We obtain the average number of facility employees from a Coast Guard contract that uses D&B Hoovers' database for company employee data (available in the docket for this rulemaking, see the Public Participation and Request for Comments section of this preamble.) The average number of employees at a facility company is 74. We estimate the undiscounted initial-year cost to implement multifactor authentication for 290 facility and OCS facility companies to be approximately $2,610,000 (290 facilities × $9,000). We estimate the undiscounted initial-year and annual cost for multifactor authentication support and maintenance at facilities and OCS facilities to be approximately $3,219,000 (290 facility companies × 74 employees × $150).

We estimate the total undiscounted initial-year cost to implement account security measures for facilities and OCS facilities to be approximately $5,956,801 ($127,801 cost to implement account security measures + $2,610,000 cost to set up and configure multifactor authentication + $3,219,000 cost for multifactor authentication support). We estimate the undiscounted annual cost in years 2 through 10 to be approximately $3,346,801 ($127,801 cost to manage account security + $3,219,000 cost to maintain and provide multifactor authentication support).

We estimate the total discounted cost to implement account security measures for (1) 222 facilities and OCS facilities that would need to implement general account security measures and (2) 290 facilities and OCS facilities that would need to implement multifactor authentication to be approximately $25,945,783 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $3,694,096, using a 7-percent discount rate. See table 14.

[75] See *https://www.bls.gov/oes/2022/may/oes151242.htm*, accessed July 12, 2023.

Table 14: Estimated Account Security Measure Costs of the Proposed Rule for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Account Security Management Costs	Multifactor Authentication Costs	Total Cost	7 Percent	3 Percent
1	$127,801	$5,829,000	$5,956,801	$5,567,104	$5,783,302
2	$127,801	$3,219,000	$3,346,801	$2,923,226	$3,154,681
3	$127,801	$3,219,000	$3,346,801	$2,731,987	$3,062,797
4	$127,801	$3,219,000	$3,346,801	$2,553,258	$2,973,589
5	$127,801	$3,219,000	$3,346,801	$2,386,223	$2,886,980
6	$127,801	$3,219,000	$3,346,801	$2,230,115	$2,802,893
7	$127,801	$3,219,000	$3,346,801	$2,084,219	$2,721,255
8	$127,801	$3,219,000	$3,346,801	$1,947,869	$2,641,996
9	$127,801	$3,219,000	$3,346,801	$1,820,438	$2,565,044
10	$127,801	$3,219,000	$3,346,801	$1,701,344	$2,490,334
Total			$36,078,010	**$25,945,783**	**$31,082,871**
Annualized			$3,607,801	**$3,694,096**	**$3,643,861**

Note: Totals may not sum due to independent rounding.

Owners and operators of U.S.-flagged vessels would need to implement the same account security measures as facilities. The population of vessels affected, where applicable, would be about 5,473, rather than 10,286, because we subtract the barge population of 4,813 from 10,286, the total number of affected vessels. Because barges are unmanned, we assume they do not have computer systems onboard and, therefore, may not require account security measure implementation.

The number of affected vessel owners and operators would be about 1,602, excluding 173 barge owners and operators that do not own or operate other affected vessels. Based on the NMSAC estimates detailed above, it would take a Database Administrator about 8 hours to implement the account security measures and 8 hours to manage account security annually thereafter on behalf of each owner and operator of a vessel. We estimate the undiscounted initial-year cost to implement and annually recurring cost to manage account security measures for owners and operators of U.S.-flagged vessels, excluding barge owners and operators, to be approximately $922,239 [(1,602 vessel owners and operators × (8 hours × $71.96)].

The number of owners and operators who would require multifactor authentication security is about 1,602, for approximately 5,473 vessels. Based on Coast Guard information, multifactor authentication systems would be implemented at the company level because networks and account security policies would be managed at the company level, and not for each individual vessel. Any security updates or multifactor authentication programs implemented at the company level could be pushed out to devices located on board vessels owned or operated by the company. We use the same cost estimate from CG–FAC that we use for facilities. It would cost the owner or operator of a vessel approximately $9,000 to implement multifactor authentication in the first year and about $150 annually for multifactor authentication support and maintenance per end user. To determine the number of employees for each vessel company, we use data from the certificate of inspection manning requirements in MISLE for each vessel subpopulation.[76] We assume 2 crews and multiply the total number of seafaring crew by 1.33 to account for shoreside staff in order to obtain an estimate of total company employees per vessel.[77] We estimate the total undiscounted initial-year cost to implement multifactor authentication for 1,602 vessel owners and operators to be approximately $14,418,000 (1,602 vessel owners and operators × $9,000).

To calculate the annual cost per end user, we multiply the number of vessels for a given vessel type by the average number of employees per vessel and the $150 annual cost of support and maintenance. For example, there are about 426 OSVs in the affected population, with an average number of 16 employees for each OSV. Therefore, the undiscounted annual cost of support and maintenance for OSV owners and operators would be approximately $1,022,400 (16 employees per each OSV (including shoreside) × $150 × 426 OSVs). We perform this calculation for each vessel type in the affected population and add the costs together to obtain the total initial-year cost and annual cost thereafter. We estimate the total undiscounted annual cost for multifactor authentication maintenance

[76] Manning requirements for U.S.-flagged vessels were established by regulation in 46 CFR part 15.

[77] To estimate the average number of mariners and shoreside employees for each company, Coast Guard conducted an internet search for publicly available employment data for the owners and operators of MTSA-regulated vessels. In total, Coast Guard was able to identify eight MTSA-regulated vessel owners and operators that publicly provided their shoreside and seafarer employment numbers. Using this data, we calculated the percentage of total employees working shoreside for each vessel. We then took an average of these percentages and applied that average to the population of MTSA vessel owners and operators. The percentage of shoreside employees ranged from 8 to 87 percent, with an average of 33 percent, which we used for each subpopulation of vessels.

and support on vessels to be about $18,938,100 (number of employees for each vessel type × $150 × number of vessels for each vessel type). See table 15. We add these costs to the previously calculated implementation costs to obtain the initial-year costs associated with multifactor authentication of $33,356,100 ($14,418,000 implementation costs + $18,938,100 annual support and maintenance costs) as seen in column 3 of table 15.

Table 15: Estimated Annual Multifactor Authentication Support and Maintenance Costs of the Proposed Rule for U.S.-flagged Vessels Companies by Vessel Type (2022 Dollars)

Vessel Type	Number of Vessels	Number of Employees Per Vessel (Includes Shoreside)	Multifactor Authentication Annual Cost Per End User	Annual Costs
MODU	1	372	$150	$55,800
Subchapter I Vessels	574	82	$150	$7,060,200
OSVs	426	16	$150	$1,022,400
Subchapter H Passenger Vessels	34	85	$150	$433,500
Subchapter K Passenger Vessels	379	35	$150	$1,989,750
Subchapter M Towing Vessels	3921	13	$150	$7,645,950
Subchapter D and Combination Subchapters O&D Tank Vessels	88	40	$150	$528,000
Subchapters K and T International Passenger Vessels	50	27	$150	$202,500
Total				**$18,938,100**

Note: Totals may not sum due to independent rounding.

We estimate the total undiscounted initial-year cost to implement account security measures in proposed § 101.650(a)(1) through (3), and (5) through (7) and multifactor authentication for end users in proposed § 101.650(a)(4) for 1,602 U.S.-flagged vessels to be approximately $34,278,339 ($922,239 cost to implement account security + $33,356,100 cost to implement and provide multifactor support costs). We estimate the total undiscounted annual cost in years 2 through 10 to be approximately $19,860,339 ($922,239 cost to manage account security + $18,938,100 cost to maintain and provide multifactor authentication).

We estimate the total discounted cost to implement all the account security measures in proposed § 101.650(a)(1) through (3), and (5) through (7) and multifactor authentication for end users in proposed § 101.650(a)(4) for 1,602 U.S.-flagged vessels to be approximately $152,965,477 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $21,778,843 using a 7-percent discount rate. See table 16.

Table 16: Estimated Account Security Measure Costs of the Proposed Rule for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Account Security Management Costs	Multifactor Authentication Costs	Total Cost	7 Percent	3 Percent
1	$922,239	$33,356,100	$34,278,339	$32,035,831	$33,279,941
2	$922,239	$18,938,100	$19,860,339	$17,346,789	$18,720,274
3	$922,239	$18,938,100	$19,860,339	$16,211,953	$18,175,024
4	$922,239	$18,938,100	$19,860,339	$15,151,358	$17,645,654
5	$922,239	$18,938,100	$19,860,339	$14,160,147	$17,131,703
6	$922,239	$18,938,100	$19,860,339	$13,233,782	$16,632,721
7	$922,239	$18,938,100	$19,860,339	$12,368,021	$16,148,273
8	$922,239	$18,938,100	$19,860,339	$11,558,898	$15,677,935
9	$922,239	$18,938,100	$19,860,339	$10,802,709	$15,221,296
10	$922,239	$18,938,100	$19,860,339	$10,095,989	$14,777,957
Total			$213,021,390	**$152,965,477**	**$183,410,778**
Annualized			$21,302,139	**$21,778,843**	**$21,501,338**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost to implement account security measures for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities, including multifactor authentication, to be approximately $178,911,259 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $25,472,938, using a 7-percent discount rate. See table 17.

Table 17: Summary of Account Security Measure Costs of the Proposed Rule for Facilities, OCS Facilities, and U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rate)

Year	Facilities and OCS Facilities Cost	U.S.-flagged Vessels Cost	Total Cost	7 Percent	3 Percent
1	$5,956,801	$34,278,339	$40,235,140	$37,602,935	$39,063,243
2	$3,346,801	$19,860,339	$23,207,140	$20,270,015	$21,874,955
3	$3,346,801	$19,860,339	$23,207,140	$18,943,939	$21,237,821
4	$3,346,801	$19,860,339	$23,207,140	$17,704,616	$20,619,243
5	$3,346,801	$19,860,339	$23,207,140	$16,546,370	$20,018,683
6	$3,346,801	$19,860,339	$23,207,140	$15,463,897	$19,435,614
7	$3,346,801	$19,860,339	$23,207,140	$14,452,240	$18,869,529
8	$3,346,801	$19,860,339	$23,207,140	$13,506,767	$18,319,931
9	$3,346,801	$19,860,339	$23,207,140	$12,623,147	$17,786,340
10	$3,346,801	$19,860,339	$23,207,140	$11,797,333	$17,268,292
Total			**$249,099,400**	**$178,911,259**	**$214,493,651**
Annualized			**$24,909,940**	**$25,472,938**	**$25,145,199**

Note: Totals may not sum due to independent rounding.

Cybersecurity Training Cost

The second cost provision under cybersecurity measures, in proposed § 101.650(d), would be training. All persons with access to IT and OT would need annual training in topics such as the relevant aspects of the owner or operator's specific cybersecurity technology and concerns, recognition of threats and incidents, and incident reporting procedures. Given the importance of having a workforce trained on onsite cybersecurity systems as soon as possible to detect and mitigate cyber incidents, cybersecurity training would be verified during annual inspections following the implementation of this proposed rule. This means we assume there will be costs related to training in the first year of analysis. The Coast Guard requests comment on the ability of affected owners and operators to develop and provide relevant cybersecurity training within the first year of implementation.

Based on information from the Jones Walker ''Ports and Terminals Cybersecurity Survey,'' (see footnote 69), about 25 percent of facilities are currently conducting cybersecurity training on an annual basis.[78] Therefore, we estimate the number of facility and OCS facility owners and operators needing to implement training to be about 1,281 (1,708 owners and operators × 0.75).

Based on information from CISA's SMEs, we assume that the CySO at a facility or OCS facility would spend 2 hours per year to develop, update, and provide cybersecurity training. SMEs at CISA also estimate that it would take 1 hour per facility employee to complete the training annually, based on existing industry-leading cyber awareness training programs. This proposed rule would also require part-time employees and contractors to complete the training. However, the Coast Guard has data only on the number of full-time employees at facilities and OCS facilities, so we use this estimate with the acknowledgement that costs may be higher for facilities than we estimate in this analysis if we take other employees into account, such as part-time employees and contractors. As before, we use the estimate of the average number of employees at facilities and OCS facilities, or 74.

To obtain the unloaded mean hourly wage rate of employees at facilities and OCS facilities, we use BLS's Quarterly Census of Employment and Wages (QCEW) data. We also use the North American Industry Classification System (NAICS) code for ''Port and Harbor Operations,'' which is 488310, to obtain the representative hourly wage for employees at facilities and OCS facilities. The BLS reports the weekly wage to be $1,653.[79] Dividing this value by the standard number of hours in a work week, or 40, we obtain the unloaded hourly wage rate of approximately $41.33. We once again apply a load factor of 1.46 to this wage to obtain a loaded mean hourly wage rate for facility employees of approximately $60.34 (($1,653 ÷ 40 hours) × 1.46)).

We estimate the undiscounted initial-year and annual cost for facility and OCS facility owners and operators to train employees on aspects of cybersecurity to be approximately $5,935,437, rounded [1,281 facility owners and operators × ((74 employees at each facility company × $60.34 × 1 hour) + (1 CySO developing training × $84.14 × 2 hours))].

We estimate the discounted cost for facility and OCS facility owners and operators to complete annual training to be approximately $41,688,025 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $5,935,437, using a 7-percent discount rate. See table 18.

Table 18: Estimated Training Costs of the Proposed Rule for Facility and OCS Facility Owners and Operators (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Total Cost	7%	3%
1	$5,935,437	$5,547,137	$5,762,560
2	$5,935,437	$5,184,241	$5,594,719
3	$5,935,437	$4,845,085	$5,431,766
4	$5,935,437	$4,528,116	$5,273,559
5	$5,935,437	$4,231,885	$5,119,960
6	$5,935,437	$3,955,032	$4,970,835
7	$5,935,437	$3,696,292	$4,826,053
8	$5,935,437	$3,454,478	$4,685,489
9	$5,935,437	$3,228,484	$4,549,018
10	$5,935,437	$3,017,275	$4,416,523
Total	$59,354,370	**$41,688,025**	**$50,630,482**
Annualized		**$5,935,437**	**$5,935,437**

Note: Totals may not sum due to independent rounding.

[78] See footnote 69 and page 48 of the survey in the docket.

[79] Readers can access this web page at *www.bls.gov/cew/*. In the menu at the top of the page, readers should use the dropdown menu under ''QCEW Data,'' and select ''Databases.'' Doing this will bring the reader to *https://www.bls.gov/cew/data.htm*. On this page, select the multi-screen tool (*https://data.bls.gov/cgi-bin/dsrv?en*). On screen 1, select ''488310 NAICS 488310 Port and harbor operations.'' On screen 2, select ''US000 U.S. TOTAL.'' Select ''5 Private,'' ''4 Average Weekly Wage,'' and ''0 All establishment sizes'' on screens 3, 4, and 5, respectively. Screen 6 shows the relevant Series ID (ENUUS000405488310). Select ''Retrieve Data.'' Please consider that 2022 data from QCEW are preliminary and may change from the estimate in the text. For the purposes of this analysis, we used Q1 2022 QCEW data. Accessed on July 13, 2023.

Employees on board U.S.-flagged vessels would also be required to complete annual cybersecurity training. The hour estimates for the CySO to develop cybersecurity training and employees to complete the training are the same as for facility estimates, 2 hours and 1 hour, respectively. The training costs for U.S.-flagged vessels are based upon the number of employees for each vessel type, similar to the cost analysis for account security measures. We chose several representative labor categories of vessel employees based on the manning requirements listed in the certificates of inspection for each vessel. From the BLS OEWS program, we use the labor categories, ''Captains, Mates, and Pilots of Water Vessels,'' with an occupational code of 53–5021, ''Sailors and Marine Oilers,'' with an occupational code of 53–5011, and ''Ship Engineers,'' with an occupational code of 53–5031.[80] The unloaded mean hourly wage rates from May 2022 for these occupations are $50.09, $25.65, and $48.55, respectively. We also use an assortment of labor categories to estimate a mean hourly wage for the industrial personnel identified in the certificate of inspection for MODUs in the affected population. According to SMEs with CG–CVC, industrial personnel aboard MODUs generally include a mixture of hotel and steward staff; laborers and riggers; specialized technicians; and mechanics, electricians, and electronic technicians for maintenance. For these groups, we find a combined unloaded weighted mean hourly wage of $25.16. For each vessel type, we weight the representative wages based on the average occupational ratios across vessels in the population. See Appendix A: Wages Across Vessel Types, for more details on how the industrial personnel and weighted mean hourly wages for each vessel type were calculated.[81] We apply the same load factor we used previously in this analysis, 1.46, to these wage rates, to obtain the loaded mean hourly wage rates shown in table 19.[82]

Table 19: Estimated Weighted Mean Hourly Wage Rates for Employees Aboard U.S.-flagged Vessels[83]

Vessel Type	Loaded Weighted Mean Hourly Wage
MODU	$39.60
Subchapter I Vessels	$46.36
OSVs	$54.92
Subchapter H Passenger Vessels	$41.85
Subchapter K Passenger Vessels	$45.52
Subchapter M Towing Vessels	$51.28
Subchapter D and Combination Subchapters O&D Tank Vessels	$55.94
Subchapters K and T International Passenger Vessels	$44.59

We estimate the undiscounted initial-year and annual cost of cybersecurity training for vessel employees to be approximately $6,166,909 (number of vessels for each affected vessel category × number of employees for each vessel type × representative mean hourly wage for vessel type × 1 hours for training). For example, using OSVs, there are about 426 OSVs, with 16 employees for each OSV. Therefore, we estimate the annual training cost for OSVs to be about $374,335 (426 OSVs × 16 employees × $54.92 × 1 hour), rounded. We perform this calculation for all for the affected vessel types in this proposed rule and add it to the estimated costs for training development. We estimate the undiscounted annual cost to develop cybersecurity training to be approximately $269,585 (1,602 vessel companies × 1 CySO per vessel company × $84.14 × 2 hours to develop training)]. This means the total undiscounted annual training cost for the affected population of U.S.-flagged vessels is $6,436,494 ($6.166,909 employee training costs + $269,585 training development costs). Table 20 displays the total employee training costs for each vessel type impacted by the proposed training requirement.

[80] See *https://www.bls.gov/oes/2022/may/oes_nat.htm#00-0000* for 2022 wage rates associated with the listed occupations. Accessed September 9, 2023.

[81] It should be noted that the wage calculations in Appendix A: Wages Across Vessel Types are conducted with occupational ratios based on employee counts without the 1.33 shoreside employee modifier applied. Applying this multiplier evenly across all the employee counts would not have an impact on the occupational ratios, and thus would not impact our estimated weighted mean hourly wages. Because we do not have a good grasp on what occupations the shoreside employees would have, we simply apply the weighted mean hourly wages to all employees in the give population of vessels.

[82] See footnote 71.

[83] See Appendix A: Wages Across Vessel Types for more information on how these wages rates were calculated.

Table 20. Estimated Training Costs of the Proposed Rule for U.S.-Flagged Vessels by Type (2022 Dollars)

Vessel Type	Number of Vessels	Number of Employees (Includes Shoreside)	Trainee Wage	Total
MODU	1	372	$39.60	$14,731
Subchapter I Vessels	574	82	$46.36	$2,182,072
OSVs	426	16	$54.92	$374,335
Subchapter H Passenger Vessels	34	85	$41.85	$120,947
Subchapter K Passenger Vessels	379	35	$45.52	$603,823
Subchapter M Towing Vessels	3921	13	$51.28	$2,613,895
Subchapter D and Combination Subchapters O&D Tank Vessels	88	40	$55.94	$196,909
Subchapters K and T International Passenger Vessels	50	27	$44.59	$60,197
Total				**$6,166,909**

Note: Totals may not sum due to independent rounding.

We estimate the discounted cost for employees aboard U.S.-flagged vessels to complete annual cybersecurity training to be approximately $45,207,239 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $6,436,494, using a 7-percent discount rate. See table 21.

Table 21: Estimated Training Costs of the Proposed Rule for U.S.-Flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Total Cost	7%	3%
1	$6,436,494	$6,015,415	$6,249,023
2	$6,436,494	$5,621,883	$6,067,013
3	$6,436,494	$5,254,096	$5,890,304
4	$6,436,494	$4,910,370	$5,718,742
5	$6,436,494	$4,589,131	$5,552,176
6	$6,436,494	$4,288,908	$5,390,462
7	$6,436,494	$4,008,325	$5,233,459
8	$6,436,494	$3,746,098	$5,081,028
9	$6,436,494	$3,501,026	$4,933,037
10	$6,436,494	$3,271,987	$4,789,356
Total	$64,364,940	**$45,207,239**	**$54,904,600**
Annualized		**$6,436,494**	**$6,436,494**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost of cybersecurity training for facilities and vessels to be approximately $86,895,266 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to

be approximately $12,371,931, using a 7-percent discount rate. See table 22.

Table 22: Summary of Training Costs of the Proposed Rule for U.S.-Flagged Vessels, Facilities, and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facilities and OCS Facilities	U.S.-Flagged Vessels	Total Cost	7%	3%
1	$5,935,437	$6,436,494	$12,371,931	$11,562,552	$12,011,583
2	$5,935,437	$6,436,494	$12,371,931	$10,806,124	$11,661,732
3	$5,935,437	$6,436,494	$12,371,931	$10,099,181	$11,322,069
4	$5,935,437	$6,436,494	$12,371,931	$9,438,487	$10,992,300
5	$5,935,437	$6,436,494	$12,371,931	$8,821,016	$10,672,136
6	$5,935,437	$6,436,494	$12,371,931	$8,243,940	$10,361,297
7	$5,935,437	$6,436,494	$12,371,931	$7,704,617	$10,059,512
8	$5,935,437	$6,436,494	$12,371,931	$7,200,576	$9,766,517
9	$5,935,437	$6,436,494	$12,371,931	$6,729,511	$9,482,055
10	$5,935,437	$6,436,494	$12,371,931	$6,289,262	$9,205,879
Total	**$59,354,370**	**$64,364,940**	**$123,719,310**	**$86,895,266**	**$105,535,080**
Annualized				**$12,371,931**	**$12,371,931**

Note: Totals may not sum due to independent rounding.

Penetration Testing

The third proposed provision under cybersecurity measures that would impose costs on industry is penetration testing, in proposed § 101.650(e)(2). The CySO for each U.S.-flagged vessel, facility, and OCS facility would ensure that a penetration test is completed in conjunction with renewing the FSP, VSP, or OCS FSP. We assume facility and vessel owners and operators in the affected population would pay a third party to conduct a penetration test to maintain safety and security within the IT and OT systems for all KEVs. The cost for penetration testing is a function of the number of vessel and facility owners and operators, because networks are typically managed at a corporate level. At the conclusion of the test, the CySO would also need to document all identified vulnerabilities in the FSA, OCS FSP, or VSA—a cost that is included in our analysis of annual Cybersecurity Plan maintenance. Further, it is expected that the CySO would also work to correct or mitigate the identified vulnerabilities. However, the methods employed and time taken to correct or mitigate these vulnerabilities represent a source of uncertainty in our analysis, and we are unable to estimate the associated costs.

Based on the Jones Walker survey (see footnote number 69), 68 percent of facilities and OCS facilities are currently conducting penetration testing. Using 1,708 affected facility owners and operators, the number of facility and OCS facility owners and operators needing to conduct penetration testing is about 547 (1,708 × 0.32). Using cost estimates for penetration testing from NMSAC members who have experience conducting and contracting with facilities and OCS facilities to conduct penetration tests, we estimate it would cost each facility owner or operator $5,000 for the initial penetration test and an additional $50 for each employee's internet Protocol (IP) address,[84] to capture the additional costs of network complexity. The number of employees for each facility is 74. Facility and OCS facility owners and operators would incur penetration testing costs in conjunction with submitting and renewing the Cybersecurity Plan, or every 5 years. This means penetration testing costs would be incurred in the second and seventh year of analysis. We estimate the undiscounted second- and seventh-year costs to facilities and OCS facilities for penetration testing to be about $4,758,900 [(547 facility owners and operators × $5,000) + (74 employees × 547 facility owners and operators × $50)]. We estimate the discounted cost for owners and operators of facilities and OCS facilities to conduct penetration testing to be about $7,120,212 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be about $979,477 using a 7-percent discount rate. See table 23.

[84] An IP address is a unique numerical identifier for each device or network that connects to the internet. Because we do not have data on the number of devices each organization uses, we use the number of employees as a proxy because each employee could have a device using the organizational network.

Table 23: Estimated Penetration Testing Costs of the Proposed Rule for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Facilities	Number of Employees per Facility	Cost of Penetration Test	Cost per IP Address	Total Cost	7%	3%
1	0	0	$0	$0	$0	$0	$0
2	547	74	$5,000	$50	$4,758,900	$4,156,608	$4,485,720
3	0	0	$0	$0	$0	$0	$0
4	0	0	$0	$0	$0	$0	$0
5	0	0	$0	$0	$0	$0	$0
6	0	0	$0	$0	$0	$0	$0
7	547	74	$5,000	$50	$4,758,900	$2,963,604	$3,869,421
8	0	0	$0	$0	$0	$0	$0
9	0	0	$0	$0	$0	$0	$0
10	0	0	$0	$0	$0	$0	$0
Total					**$9,517,800**	**$7,120,212**	**$8,355,141**
Annualized						**$1,013,758**	**$979,477**

Note: Totals may not sum due to independent rounding.

Owners and operators of U.S.-flagged vessels would also need to conduct penetration testing, similar to facilities. We do not include barges or barge-specific owners and operators, given the unmanned nature of barges and their relatively limited onboard IT and OT systems. All estimates for vessel penetration testing are the same as for facilities and OCS facilities. We estimate the undiscounted second- and seventh-year costs for owners and operators of vessels to conduct penetration testing to be approximately $14,322,700 [(1,602 vessel owners and operators × $5,000) + (number of vessels for each vessel type × number of employees for each vessel type × $50)]. See table 24 for a calculation of the costs per IP address for the various vessel populations, which can be added to the costs per owner or operator costs, or $8,010,000 (1,602 owners and operators × $5,000) in years 2 and 7.

Table 24: Estimated Penetration Testing Costs of the Proposed Rule for U.S.-Flagged Vessels by Vessel Type (2022 Dollars, Undiscounted)

Vessel Type	Number of Vessels	Number of Employees per Vessel	Cost per IP Address	Total for Population
MODU	1	372	$50	$18,600
Subchapter I Vessels	574	82	$50	$2,353,400
OSVs	426	16	$50	$340,800
Subchapter H Passenger Vessels	34	85	$50	$144,500
Subchapter K Passenger Vessels	379	35	$50	$663,250
Subchapter M Towing Vessels	3921	13	$50	$2,548,650
Subchapter D and Combination Subchapters O&D Tank Vessels	88	40	$50	$176,000
Subchapters K and T International Passenger Vessels	50	27	$50	$67,500
Total				**$6,312,700**

Note: Totals may not sum due to independent rounding.

We estimate the discounted cost for owners and operators of vessels to conduct penetration testing to be approximately $21,429,459 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $3,051,073 using a 7-percent discount rate. See table 25.

Table 25: Estimated Penetration Testing Costs of the Proposed Rule for Population of U.S.-Flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Total Cost	7%	3%
1	$0	$0	$0
2	$14,322,700	$12,510,001	$13,500,518
3	$0	$0	$0
4	$0	$0	$0
5	$0	$0	$0
6	$0	$0	$0
7	$14,322,700	$8,919,458	$11,645,666
8	$0	$0	$0
9	$0	$0	$0
10	$0	$0	$0
Total	**$28,645,400**	**$21,429,459**	**$25,146,184**
Annualized		**$3,051,073**	**$2,947,900**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost to conduct penetration testing for owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to be approximately $28,549,669 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $4,064,831 using a 7-percent discount rate. See table 26.

Table 26: Estimated Penetration Testing Costs of the Proposed Rule for Facilities, OCS Facilities, and U.S.-Flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facilities and OCS Facilities Cost	U.S.-Flagged Vessel Cost	Total Cost	7 Percent	3 Percent
1	$0	$0	$0	$0	$0
2	$4,758,900	$14,322,700	$19,081,600	$16,666,608	$17,986,238
3	$0	$0	$0	$0	$0
4	$0	$0	$0	$0	$0
5	$0	$0	$0	$0	$0
6	$0	$0	$0	$0	$0
7	$4,758,900	$14,322,700	$19,081,600	$11,883,061	$15,515,087
8	$0	$0	$0	$0	$0
9	$0	$0	$0	$0	$0
10	$0	$0	$0	$0	$0
Total	**$9,517,800**	**$28,645,400**	**$38,163,200**	**$28,549,669**	**$33,501,325**
Annualized				**$4,064,831**	**$3,927,377**

Note: Totals may not sum due to independent rounding.

Resilience

The fourth cost provision under cybersecurity measures would be resilience, in proposed § 101.650(g). Each CySO for a facility, OSC facility, and U.S.-flagged vessel would be required to report any cyber incident to the NRC, develop a Cyber Incident Response Plan, validate the effectiveness of Cybersecurity Plans through annual tabletop exercises or periodic reviews of incident response cases, and perform backups of critical IT and OT systems. Of these proposed requirements, the costs associated development of a Cyber Incident Response Plan are already captured in the overall costs to develop the Cybersecurity Plan, and any subsequent annual maintenance for the Cyber Incident Response Plan would be captured in the costs for annual maintenance of the Cybersecurity Plan. In addition, costs associated with validating and conducting exercise of Cybersecurity Plans through annual tabletop exercises or periodic reviews of incident response cases is already captured in the costs estimated for drills and exercises in proposed § 101.635.

To estimate the costs associated with cyber incident reporting, the Coast Guard uses historical cyber incident reporting data from the NRC. From 2018 to 2022, the NRC fielded and processed an average of 18 cyber incident reports from facilities and OCS facilities, and an average of 2 cyber incident reports from U.S.-flagged vessels, for a total of 20 cyber incident reports per year. While we anticipate that this number could increase or decrease following the publication of a rule focused on cybersecurity standards and procedures, we use the historical averages to estimate costs for the affected population.[85] Due to the uncertainty surrounding how these regulatory changes may impact the number of incident reports made in the future, the Coast Guard requests comment on the expected number of incident reports submitted each year.

For both the population of facilities and OCS facilities and the population of U.S.-flagged vessels, we assume that it will take 8.5 minutes (0.15 hours) of a CySO's time to report a cyber incident to the NRC. We base this estimated hour burden on the time to report suspicious maritime activity to the NRC in currently approved OMB ICR, Control Number 1625–0096 titled ''Report of Oil or Hazardous Substance Discharge and Report of Suspicious Maritime Activity.'' For the population of facilities and OCS facilities, we estimate annual undiscounted costs of $227 (18 cyber incident reports × 0.15 hours to report × $84.14 CySO wage). We estimate the discounted cost for owners and operators of facilities and OCS facilities to report cyber incidents to be about $1,592 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be about $227 using a 7-percent discount rate. See table 27.

[85] The Coast Guard believes that cyber incident reports could increase following publication of this NPRM due to greater enforcement of reporting procedures and greater awareness surrounding the need to report. However, the Coast Guard acknowledges that cyber incident reports could also decrease because greater prevention measures would be implemented because of this proposed rule. As a result, we use historical cyber incident reporting data to analyze costs moving forward.

Table 27: Estimated Cyber Incident Reporting Costs of the Proposed Rule for the Population of Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Incident Reports Per Year	CySO Wage	Hours to Report Incident	Total Cost	7%	3%
1	18	$84.14	0.15	$227	$212	$220
2	18	$84.14	0.15	$227	$198	$214
3	18	$84.14	0.15	$227	$185	$208
4	18	$84.14	0.15	$227	$173	$202
5	18	$84.14	0.15	$227	$162	$196
6	18	$84.14	0.15	$227	$151	$190
7	18	$84.14	0.15	$227	$141	$185
8	18	$84.14	0.15	$227	$132	$179
9	18	$84.14	0.15	$227	$123	$174
10	18	$84.14	0.15	$227	$115	$169
Total				**$2,270**	**$1,592**	**$1,937**
Annualized				**$227**	**$227**	**$227**

Note: Totals may not sum due to independent rounding.

For the population of U.S.-flagged vessels, we estimate annual undiscounted costs of $25 (2 cyber incident reports × 0.15 hours to report × $84.14 CySO wage). We estimate the discounted cost for owners and operators of facilities and OCS facilities to report cyber incidents to be about $250 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be about $25 using a 7-percent discount rate. See table 28.

Table 28: Estimated Cyber Incident Reporting Costs of the Proposed Rule for the Population of U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Incident Reports Per Year	CySO Wage	Hours to Report Incident	Total Cost	7%	3%
1	2	$84.14	0.15	$25	$23	$24
2	2	$84.14	0.15	$25	$22	$24
3	2	$84.14	0.15	$25	$20	$23
4	2	$84.14	0.15	$25	$19	$22
5	2	$84.14	0.15	$25	$18	$22
6	2	$84.14	0.15	$25	$17	$21
7	2	$84.14	0.15	$25	$16	$20
8	2	$84.14	0.15	$25	$15	$20
9	2	$84.14	0.15	$25	$14	$19
10	2	$84.14	0.15	$25	$13	$19
Total				**$250**	**$177**	**$214**
Annualized				**$25**	**$25**	**$25**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted cost for owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to be approximately $1,771 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $252 using a 7-percent discount rate. See table 29.

Table 29: Estimated Cyber Incident Reporting Costs of the Proposed Rule for the Population of Facilities, OCS Facilities, and U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facilities	Vessels	Total Cost	7%	3%
1	$227	$25	$252	$236	$245
2	$227	$25	$252	$220	$238
3	$227	$25	$252	$206	$231
4	$227	$25	$252	$192	$224
5	$227	$25	$252	$180	$217
6	$227	$25	$252	$168	$211
7	$227	$25	$252	$157	$205
8	$227	$25	$252	$147	$199
9	$227	$25	$252	$137	$193
10	$227	$25	$252	$128	$188
Total			**$2,520**	**$1,771**	**$2,151**
Annualized				**$252**	**$252**

Note: Totals may not sum due to independent rounding.

The Coast Guard does not have data on the IT resources that owners and operators would need to back up data, either internally or externally. Coast Guard SMEs indicate that most of the affected population is likely already performing data backups. The time burden of backing up data is minimal because they can occur in the background through automated processes, making any new costs a function of data storage space. The external storage of data would require cloud storage (storage on an external server), and the cost would be dependent upon the capacity needed; for example, 1 terabyte or 100 terabytes of space. These costs would likely be incurred on a monthly basis, although we do not know how much additional data space a given owner or operator would need, if any. Coast Guard SMEs with CG–CYBER indicate that the current market prices for cloud storage subscriptions range from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3,200 per month for 100 terabytes of data. There may also be costs associated with the encryption of data that we are not able to estimate in this analysis. The Coast Guard requests public comment on the costs associated with data backup storage and protection.

Routine System Maintenance for Risk Management

The final cost provision under cybersecurity measures would be routine system maintenance for risk management, in proposed § 101.650(e)(3)(i) through (vi). This proposed rule would require the CySO of a U.S.-flagged vessel, facility, or OCS facility to ensure patching (software updates) or implementing controls for all KEVs in critical IT and OT systems in paragraph (e)(3)(i), maintain a method to receive or act on publicly submitted vulnerabilities in paragraph (e)(3)(ii), maintain a method to share threat and vulnerability information with external stakeholders in paragraph (e)(3)(iii), ensure there are no exploitable channels exposed to internet accessible systems in paragraph (e)(3)(iv), ensure that no OT is connected to the publicly accessible internet unless explicitly required for operation in paragraph (e)(3)(v), and conduct vulnerability scans according to the Cybersecurity Plan in paragraph (e)(3)(vi).

Based on information from CGCYBER and NMSAC, we estimate costs for only the vulnerability scans in this analysis, because it is expected that CySOs will incorporate many of these provisions into the initial development and annual maintenance of the Cybersecurity Plan. Provisions that require setting up routine patching, developing methods for communicating vulnerabilities, and ensuring limited network connectivity of OT and other exploitable systems are expected to be less time-intensive efforts that will be completed following an initial Cybersecurity Assessment and documented in the Cybersecurity Plan. As a result, we include those costs in that portion of the analysis. However, if an OT system does need to be taken offline or segmented from other IT systems, the Coast Guard does not have information on how long or intensive that process would be because of the great degree of variability in OT systems within the affected population.

We discuss network segmentation and uncertainty more in later sections in this NPRM. We request public comment on the expected costs of network segmentation, particularly from those in the affected population who have completed these processes in the past.

Based on information from CGCYBER, the cost to acquire third-party software capable of vulnerability scans would be approximately $3,390 annually (which includes the software subscription cost) for each U.S.-flagged vessel, facility, and

OCS facility. We base our analysis on the cost of a prevalent vulnerability scanner or virus software for business. Vulnerability scans can occur in the background while systems are operational and represent a less intensive method of monitoring IT and OT systems for vulnerabilities, which complements more intensive penetration tests that would be required every 5 years. For this reason, we do not estimate an hour burden in addition to the annual subscription cost of securing vulnerability scanning software. We estimate the undiscounted annual cost for facility owners and operators to subscribe to and use vulnerability scanning software to be approximately $5,790,120 (1,708 facility owners and operators × $3,390). We estimate the undiscounted annual cost for vessel owners and operators to subscribe to and use vulnerability scanning software to be approximately $5,430,780 (1,602 vessel owners and operators × $3,390). Combined, we estimate the total discounted cost for owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to use vulnerability scanning software to be approximately $78,810,907 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $11,220,900, using a 7-percent discount rate. See table 30.

Table 30: Estimated Vulnerability Scanning Software Costs of the Proposed Rule for Facilities, OCS Facilities, and U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facility and OCS Facility Costs	U.S.-flagged Vessel Costs	Total Cost	7%	3%
1	$5,790,120	$5,430,780	$11,220,900	$10,486,822	$10,894,078
2	$5,790,120	$5,430,780	$11,220,900	$9,800,769	$10,576,774
3	$5,790,120	$5,430,780	$11,220,900	$9,159,597	$10,268,713
4	$5,790,120	$5,430,780	$11,220,900	$8,560,371	$9,969,624
5	$5,790,120	$5,430,780	$11,220,900	$8,000,347	$9,679,247
6	$5,790,120	$5,430,780	$11,220,900	$7,476,959	$9,397,327
7	$5,790,120	$5,430,780	$11,220,900	$6,987,813	$9,123,619
8	$5,790,120	$5,430,780	$11,220,900	$6,530,666	$8,857,882
9	$5,790,120	$5,430,780	$11,220,900	$6,103,426	$8,599,886
10	$5,790,120	$5,430,780	$11,220,900	$5,704,137	$8,349,403
Total			$112,209,000	**$78,810,907**	**$95,716,553**
Annualized			$11,220,900	**$11,220,900**	**$11,220,900**

Note: Totals may not sum due to independent rounding.

Total Costs of the Proposed Rule to Industry

We estimate the total discounted cost of this proposed rule to the affected population of facilities and OCS facilities to be approximately $221,437,074 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $31,527,658, using a 7-percent discount rate. See table 31.

Table 31: Summary of Total Discounted Costs of the Proposed Rule for Facilities and OCS Facilities (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Cyber Incident Reporting Costs	Total Costs	7%	3%
1	$14,350,077	$1,437,111	$5,956,801	$5,935,437	$0	$5,790,120	$227	$33,469,773	$31,280,162	$32,494,925
2	$15,784,664	$1,437,111	$3,346,801	$5,935,437	$4,758,900	$5,790,120	$227	$37,053,260	$32,363,752	$34,926,251
3	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$25,190,767	$28,241,064
4	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$23,542,773	$27,418,509
5	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$22,002,592	$26,619,911
6	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$20,563,170	$25,844,574
7	$4,520,211	$1,437,111	$3,346,801	$5,935,437	$4,758,900	$5,790,120	$227	$25,788,807	$16,059,973	$20,968,660
8	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$17,960,669	$24,360,990
9	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$16,785,672	$23,651,446
10	$14,350,077	$1,437,111	$3,346,801	$5,935,437	$0	$5,790,120	$227	$30,859,773	$15,687,544	$22,962,569
Total	**$135,105,491**	**$14,371,110**	**$36,078,010**	**$59,354,370**	**$9,517,800**	**$57,901,200**	**$2,270**	**$312,330,251**	**$221,437,074**	**$267,488,899**
Annualized								**$31,233,025**	**$31,527,658**	**$31,357,859**
Percent of Total	43.26%	4.60%	11.55%	19.00%	3.05%	18.54%	0.00%	100.00%	-	-

Note: Totals may not sum due to independent rounding

As seen in table 31, the primary cost drivers for the population of facilities and OCS facilities are Cybersecurity Plan-related costs (development, resubmission, maintenance, and audits) at 43.26 percent of the total costs to

industry. Cybersecurity training and vulnerability management costs come in second and third at 19 percent and 18.54 percent of the total costs, respectively. We believe some of this is due to the analysis of Cybersecurity Plan costs and vulnerability management costs, which assumes no baseline activity within the affected population because of a lack of information. Costs that appear as a higher percentage of the total costs in the population of U.S.-flagged vessels (account security and multifactor authentication, for example) have been adjusted based on current baseline activity within the population of facilities based on survey results, and thus, appear as smaller impacts to the population in general.

We estimate the total discounted cost of this proposed rule to the affected population of U.S.-flagged vessels to be approximately $313,656,415 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $44,657,617, using a 7-percent discount rate. See table 32.

Table 32: Summary of Total Costs of the Proposed Rule for U.S.-flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7-percent Discount Rate)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Cyber Incident Reporting Costs	Total Costs	7 Percent	3 Percent
1	$5,973,940	$1,493,485	$34,278,339	$6,436,494	$0	$5,430,780	$25	$53,613,063	$50,105,666	$52,051,517
2	$6,573,017	$1,493,485	$19,860,339	$6,436,494	$14,322,700	$5,430,780	$25	$54,116,840	$47,267,744	$51,010,312
3	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$32,970,150	$36,962,435
4	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$30,813,224	$35,885,859
5	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$28,797,406	$34,840,640
6	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$26,913,463	$33,825,864
7	$1,882,044	$1,493,485	$19,860,339	$6,436,494	$14,322,700	$5,430,780	$25	$49,425,867	$30,779,946	$40,187,753
8	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$23,507,261	$31,884,121
9	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$21,969,403	$30,955,458
10	$7,168,728	$1,493,485	$19,860,339	$6,436,494	$0	$5,430,780	$25	$40,389,851	$20,532,152	$30,053,842
Total	**$64,610,097**	**$14,934,850**	**$213,021,390**	**$64,364,940**	**$28,645,400**	**$54,307,800**	**$250**	**$439,884,727**	**$313,656,415**	**$377,657,801**
Annualized								**$43,988,473**	**$44,657,617**	**$44,273,015**
Percent of Total	14.69%	3.40%	48.43%	14.63%	6.51%	12.35%	0.00%	100.00%	-	-

Note: Totals may not sum due to independent rounding.

As in table 32, the primary cost drivers for the population of U.S.-flagged vessels are costs related to account security and multifactor authentication at 48.43 percent of the total costs to industry. Costs related to

the Cybersecurity Plan and cybersecurity training come in second and third at 14.69 percent and 14.63 percent of the total costs, respectively. We estimate that account security and multifactor authentication costs represent such a high portion of the overall costs related to cybersecurity because the Coast Guard was unable to estimate current baseline activity for these provisions and used conservative (upper-bound) estimates related to the costs of implementing and managing multifactor authentication. As a result, the Coast Guard requests public comment on who in the affected population of U.S.-flagged vessels has already implemented multifactor authentication and what the associated costs were.

We estimate the total discounted cost of this proposed rule to industry to be approximately $535,093,488 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $76,185,275, using a 7-percent discount rate. See table 33.

Table 33: Summary of Total Costs of the Proposed Rule to Industry (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rate)

Year	Cybersecurity Plan Costs	Drills and Exercises Costs	Account Security and Multifactor Authentication Costs	Training Costs	Penetration Testing Costs	Vulnerability Management Costs	Cyber Incident Reporting Costs	Total Costs	7 Percent	3 Percent
1	$20,324,017	$2,930,596	$40,235,140	$12,371,931	$0	$11,220,900	$252	$87,082,836	$81,385,828	$84,546,443
2	$22,357,681	$2,930,596	$23,207,140	$12,371,931	$19,081,600	$11,220,900	$252	$91,170,100	$79,631,496	$85,936,563
3	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$58,160,917	$65,203,499
4	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$54,355,997	$63,304,368
5	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$50,799,997	$61,460,552
6	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$47,476,633	$59,670,438
7	$6,402,255	$2,930,596	$23,207,140	$12,371,931	$19,081,600	$11,220,900	$252	$75,214,674	$46,839,919	$61,156,413
8	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$41,467,930	$56,245,111
9	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$38,755,075	$54,606,904
10	$21,518,805	$2,930,596	$23,207,140	$12,371,931	$0	$11,220,900	$252	$71,249,624	$36,219,696	$53,016,412
Total								**$752,214,978**	**$535,093,488**	**$645,146,703**
Annualized								**$75,221,498**	**$76,185,275**	**$75,630,875**
Percent of Total	26.55%	3.90%	33.12%	16.45%	5.07%	14.92%	0.00%	100.00%	-	-

Note: Totals may not sum due to independent rounding.

Total Costs of the Proposed Rule per Affected Owner or Operator

We estimate the average annual cost per owner or operator of a facility or OCS facility to be approximately $27,589, under the assumption that an owner or operator would need to implement each of the provisions required by this proposed rule. Each additional facility owned or operated would increase the estimated annual costs by an average of $4,396 per facility, since each facility or OCS facility will require an individual Cybersecurity Plan. Year 2 of the analysis period represents the year with the highest costs incurred per owner, with estimated costs of $37,667 for an owner or operator with one facility or OCS facility. See table 34 for a breakdown of the costs per entity for an owner or operator owning one facility or OCS facility.

Table 34: Summary of Total Costs of the Proposed Rule per Owner or Operator of a Facility or OCS Facility (2022 Dollars, 10-year Undiscounted Costs)[86]

Year	Facility Count	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Cyber Incident Reporting	Total
1	1	$4,207	$841	$576	$20,100	$4,633	$0	$3,390	$13	$33,760
2	1	$8,414	$841	$576	$11,100	$4,633	$8,700	$3,390	$13	$37,667
3	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
4	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
5	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
6	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
7	1	$1,893	$841	$576	$11,100	$4,633	$8,700	$3,390	$13	$31,146
8	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
9	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
10	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
Total										**$275,893**
Average										**$27,589**

Note: Totals may not sum due to independent rounding.

To estimate the cost for an owner or operator of a facility or OCS facility to develop, resubmit, conduct annual maintenance, and audit the Cybersecurity Plan, we use estimates provided earlier in the analysis. The

hour-burden estimates are 100 hours for developing the Cybersecurity Plan (average hour burden), 10 hours for annual maintenance of the Cybersecurity Plan (which would include amendments), 15 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans.

Based on estimates from Coast Guard FSP and OCS FSP reviewers at local inspections offices, approximately 10 percent of Cybersecurity Plans would need to be resubmitted in the second year due to revisions that would be needed to the Plans, which is consistent with the current resubmission rate for FSPs and OCS FSPs. For renewals of Plans after 5 years (occurring in the seventh year of the analysis period), Plans would need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the analysis, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases, resulting in an upper-bound (high) estimate of per-entity costs. We estimate the time for revision and resubmission to be about half the time to develop the Plan itself, or 50 hours in the second year of submission, and 7.5 hours after 5 years (in the seventh year of the analysis period). Because we include the annual Cybersecurity Assessment in costs to develop Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing relevant cybersecurity measures, we divide the estimated 100 hours to develop Plans equally across the first and second years of analysis.

Using the CySO loaded hourly CySO wage of $84.14, we estimate the Cybersecurity Plan-related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate owners would incur $8,414 in costs in year 2 of the analysis period [1 facility × $84.14 CySO wage × (50 hours to develop the Plan + 50 hours to revise and resubmit the Plan) = $8,414]. Table 35 displays the per-entity cost estimates for an owner or operator of 1 facility or OCS facility over a 10-year period of analysis. For an owner or operator of multiple facilities or OCS facilities, we estimate the total costs by multiplying the total costs in table 35 by the number of owned facilities.

Table 35: Cybersecurity Plan-Related Costs per Owner or Operator of a Facility or OCS Facility (2022 Dollars, 10-year Undiscounted Costs)

Year	Facility Count	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	1	$84.14	50	0	0	0	$4,207
2	1	$84.14	50	50	0	0	$8,414
3	1	$84.14	0	0	10	40	$4,207
4	1	$84.14	0	0	10	40	$4,207
5	1	$84.14	0	0	10	40	$4,207
6	1	$84.14	0	0	10	40	$4,207
7	1	$84.14	15	7.5	0	0	$1,893
8	1	$84.14	0	0	10	40	$4,207
9	1	$84.14	0	0	10	40	$4,207
10	1	$84.14	0	0	10	40	$4,207
Total							**$43,963**
Average							**$4,396**

Note: Totals may not sum due to independent rounding.

Similarly, we use earlier estimates for the calculation of per-entity costs for drills and exercises, account security measures, multifactor authentication, cybersecurity training, penetration testing, vulnerability management and resilience.

For drills and exercises, we assume that a CySO on behalf of each owner and operator will develop cybersecurity components to add to existing physical security drills and exercises. This development is expected to take 0.5 hours for each of the 4 annual drills and 8 hours for an annual exercise. Using the loaded hourly wage for a CySO of $84.14, we estimate annual costs of approximately $841 per facility owner or operator [$84.14 CySO wage × ((0.5 hours × 4 drills) + (8 hours × 1 exercise)) = $841], as seen in table 34.

For account security measures, we assume that a database administrator on behalf of each owner or operator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576

[86] The cost totals in table 34 represent cost estimates for owners and operators of 1 facility or OCS facility under the assumption that they will need to implement all cost-creating provisions of the proposed rule. Therefore, when multiplied over the full number of affected entities, the calculated totals will exceed those estimated for the population of facilities and OCS facilities elsewhere in the analysis. In addition, the cost estimates for items related to the Cybersecurity Plan are dependent upon the number of facilities owned and must be multiplied accordingly by the number of facilities owned. This is discussed in further detail later in the analysis of costs per owner or operator.

($71.96 database administrator wage × 8 hours = $576), as seen in table 34.

For multifactor authentication, we assume that an owner or operator of a facility or OCS facility will spend $9,000 in the initial year on average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first year costs of approximately $20,100 [$9,000 implementation cost + ($150 support and maintenance costs × 74 average facility company employees)], and subsequent year costs of $11,100 ($150 support and maintenance costs × 74 average facility company employees), as seen in table 34.

For cybersecurity training, we assume that a CySO will take 2 hours each year to develop and manage employee cybersecurity training, and employees at a facility or OCS facility will take 1 hour to complete the training each year. Using the estimated CySO wage of $84.14 and the estimated facility employee wage of $60.34, we estimate annual training costs of approximately $4,633 [($84.14 × 2 hours) + ($60.34 × 74 facility company employees × 1 hour)].

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that facility owners and operators will spend approximately $5,000 per penetration test and an additional $50 per IP address at the organization in order to capture network complexity. We use the total number of company employees as a proxy for the number of IP addresses, since the Coast Guard does not have data on IP addresses or the network complexity at a given company. As a result, we estimate second- and seventh-year costs of approximately $8,700 [$5,000 testing cost + ($50 × 74 employees)], as seen in table 34.

For vulnerability management, we assume that each facility or OCS facility will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 34.

Finally, for resilience, we assume that each facility or OCS facility owner or operator will need to make at least one cybersecurity incident report per year. While this is incongruent with historical data that shows the entire affected population of facilities and OCS facilities reports only 18 cybersecurity incidents per year, we are attempting to capture a complete estimate of what the costs of this proposed rule could be for an affected entity. As such, we estimate that a CySO will need to take 0.15 hours to report a cybersecurity incident to the NRC, leading to annual per entity costs of approximately $13 ($84.14 CySO wage × 0.15 hours), as seen in table 34.

We perform the same calculations to estimate the per-entity costs for owners and operators of U.S.-flagged vessels. However, the estimates for the population of U.S.-flagged vessels have more dependency upon the type and number of vessels owned by the company being analyzed. This is largely due to the varying numbers of employees per vessel, by vessel type. We estimate fixed, average per-entity costs of approximately $10,877 per U.S.-flagged vessel owner or operator, as seen in table 36.

To estimate the per-entity costs that are dependent upon the number and type of vessel, we use the number of employees per vessel, and in the case of cybersecurity training costs, a unique weighted hourly wage based on the

Table 36: Summary of Fixed Costs of the Proposed Rule per Owner or Operator of U.S.-flagged Vessels (2022 Dollars, 10-year Undiscounted Costs)[87]

Year	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Cyber Incident Reporting	Total
1	$3,366	$841	$576	$9,000	$168	$0	$3,390	$13	$17,354
2	$6,731	$841	$576	$0	$168	$5,000	$3,390	$13	$16,719
3	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
4	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
5	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
6	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
7	$1,515	$841	$576	$0	$168	$5,000	$3,390	$13	$11,503
8	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
9	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
10	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
Total									**$108,765**
Average									**$10,877**

Note: Totals may not sum due to independent rounding.

personnel employed on each vessel type as calculated in Appendix A: Wages Across Vessel Types. Table 37 displays the average number of employees for each vessel type, including shoreside employees, and their unique weighted mean hourly wages. Table 38 displays the per-vessel costs associated with each type of vessel.

Table 37: Summary of Employees and Wages by Vessel Type

Vessel Type	Number of Employees per Vessel (Includes Shoreside)	Weighted Mean Hourly Wage
MODU	372	$39.60
Subchapter I Vessels	82	$46.36
OSVs	16	$54.92
Subchapter H Passenger Vessels	85	$41.85
Subchapter K Passenger Vessels	35	$45.52
Subchapter M Towing Vessels	13	$51.28
Subchapter D and Combination Subchapters O&D Tank Vessels	40	$55.94
Subchapter D, O, or I Barges	0	$0.00
Subchapters K and T International Passenger Vessels	27	$44.59

[87] The cost estimates in table 36 represent the costs incurred at a company level for each U.S.-flagged vessel owner and operator, and thus must be added to the costs calculated in table 38, which are dependent on the type and number of vessels owned, to create a full picture of the estimated costs per owner or operator. When these totals are multiplied over the full number of affected entities, the calculated totals will exceed those estimated for the population of U.S.-flagged vessels elsewhere in the analysis because we assume that each owner or operator will need to implement all cost-creating provisions of the proposed rule. This is discussed in further detail in the analysis of costs per owner or operator.

Table 38: Summary of Annual Costs of the Proposed Rule per U.S.-flagged Vessels Based on Type of Vessel (2022 Dollars, Undiscounted Costs)

Vessel Type	Vessel Count	Multifactor Authentication	Cybersecurity Training	Penetration Testing (Years 2 and 7)[88]	Total
MODU	1	$55,800	$14,731	$18,600	$89,131
Subchapter I Vessels	1	$12,300	$3,802	$4,100	$20,202
OSVs	1	$2,400	$879	$800	$4,079
Subchapter H Passenger Vessels	1	$12,750	$3,557	$4,250	$20,557
Subchapter K Passenger Vessels	1	$5,250	$1,593	$1,750	$8,593
Subchapter M Towing Vessels	1	$1,950	$667	$650	$3,267
Subchapter D and Combination Subchapters O&D Tank Vessels	1	$6,000	$2,238	$2,000	$10,238
Subchapter D, O, or I Barges	1	$0	$0	$0	$0
Subchapters K and T International Passenger Vessels	1	$4,050	$1,204	$1,350	$6,604

In order to calculate the total cost per-entity in the population of U.S.-flagged vessels, we add the annual per-vessel costs from table 38 based on the number and types of vessels owned to the fixed costs estimated in table 36.

To estimate the cost for an owner or operator of a U.S.-flagged vessel to develop, resubmit, conduct annual maintenance, and audit the Cybersecurity Plan, we use estimates provided earlier in the analysis. The hour-burden estimates are 80 hours for developing the Cybersecurity Plan (average hour burden), 8 hours for annual maintenance of the Cybersecurity Plan (which would include amendments), 12 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans. Based on estimates from Coast Guard VSP reviewers at MSC, approximately 10 percent of Plans would need to be resubmitted in the second year due to revisions that would be needed to the Plans, which is consistent with the current resubmission rate for VSPs. For renewals of Plans after 5 years (occurring in the seventh year of the analysis period), Cybersecurity Plans would need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the analysis, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases resulting in an upper-bound (high) estimate of per-entity costs. We estimate the time for revision and resubmission to be about half the time to develop the Cybersecurity Plan itself, or 40 hours in the second year of submission, and 6 hours after 5 years (in the seventh year of the analysis period). Because we include the annual Cybersecurity Assessment in the cost to develop Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures, we divide the estimated 80 hours to develop Plans equally across the first and second years of analysis.

Using the CySO loaded hourly CySO wage of $84.14, we estimate the Cybersecurity Plan-related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate owners and operators would incur approximately $6,731 in costs in year 2 of the analysis period [$84.14 CySO wage × (40 hours to develop the Plan + 40 hours to revise and resubmit the Plan) = $6,731]. See table 39.

[88] When adding these costs to the fixed costs for owners and operators, only add these estimated penetration testing costs in years 2 and 7.

Table 39: Cybersecurity Plan-Related Costs per Owner or Operator of a U.S.-flagged Vessel (2022 Dollars, 10-year Undiscounted Costs)

Year	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	$84.14	40	0	0	0	$3,366
2	$84.14	40	40	0	0	$6,731
3	$84.14	0	0	8	40	$4,039
4	$84.14	0	0	8	40	$4,039
5	$84.14	0	0	8	40	$4,039
6	$84.14	0	0	8	40	$4,039
7	$84.14	12	6	0	0	$1,515
8	$84.14	0	0	8	40	$4,039
9	$84.14	0	0	8	40	$4,039
10	$84.14	0	0	8	40	$4,039
Total						**$39,885**
Average						**$3,989**

Note: Totals may not sum due to independent rounding.

Similarly, we use earlier estimates for the calculation of per-entity costs for drills and exercises, account security measures, multifactor authentication, cybersecurity training, penetration testing, vulnerability management, and resilience.

For drills and exercises, we assume that a CySO on behalf of each owner and operator will develop cybersecurity components to add to existing physical security drills and exercises. This development is expected to take 0.5 hours for each of the 4 annual drills and 8 hours for an annual exercise. Using the loaded hourly wage for a CySO of $84.14, we estimate annual costs of approximately $841 per vessel owner or operator [$84.14 CySO wage × ((0.5 hours × 4 drills) + (8 hours × 1 exercise)) = $841], as seen in table 36.

For account security measures, we assume that a database administrator on behalf of each owner or operator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 36.

For multifactor authentication, we assume that a vessel owner or operator will spend $9,000 in the initial year on average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first year fixed costs of approximately $9,000 for all owners and operators, with annual costs in years 2 through 10 dependent on the number of employees for each type of vessel. For example, we estimate the first-year costs to an owner or operator of one OSV to be approximately $11,400 [$9,000 implementation cost + ($150 support and maintenance costs × 16 average employees per OSV)], and subsequent year costs of $2,400 ($150 support and maintenance costs × 16 average employees per OSV). Fixed per-entity implementation costs of $9,000 can be found in table 36, and variable per-vessel costs can be found in table 38.

For cybersecurity training, we assume that a CySO for each vessel owner or operator will take 2 hours each year to develop and manage employee cybersecurity training, and vessel employees will take 1 hour to complete the training each year. The per employee costs associated with training vary depending on the types and number of vessels and would be based on the average number of employees per vessel and the associated weighted hourly wage. For example, using the estimated CySO wage of $84.14 and the estimated OSV employee wage of $54.91, we estimate annual training costs of approximately $1,047 [($84.14 × 2 hours) + ($54.91 × 16 average employees per OSV × 1 hour)]. Fixed per-entity costs of $168 can be found in table 36 and variable per-vessel costs can be found in table 38.

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that owners and operators of vessels will spend approximately $5,000 per penetration test and an additional $50 per IP address at the organization in order to capture network complexity. We use the average number of employees per vessel as a proxy for the number of IP addresses, since the Coast Guard does not have data on IP addresses or the network complexity at a given company. As a result, we estimate second- and seventh-year costs as follows: [$5,000 testing cost + ($50 × average number of employees per vessel)]. For example, we estimate second- and seventh-year cost of approximately $5,800 for an owner or operator of an OSV [$5,000 testing cost + ($50 × 16 average number of employees per OSV)]. Fixed per-entity costs of $5,000 can be found in table 36, and variable per-vessel costs can be found in table 38.

For vulnerability management, we assume that each U.S.-flagged vessel owner or operator will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden

associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 36.

Finally, for resilience, we assume that each U.S.-flagged vessel owner or operator will need to make at least one cybersecurity incident report per year. While this is incongruent with historical data that shows the entire affected population of vessels only reports two cybersecurity incidents per year on average, we are attempting to capture a complete estimate of what the costs of the proposed rule could be for an affected entity. As such, we estimate that a CySO will need to take 0.15 hours to report a cybersecurity incident to the NRC, leading to annual per-entity costs of approximately $13 ($84.14 CySO wage × 0.15 hours), as seen in table 34.

Unquantifiable Cost Provisions or No-Cost Provisions of This Proposed Rule

Communications

Under proposed § 101.645, this NPRM would require CySOs to have a method to effectively notify owners and operators of facilities, OCS facilities, and U.S.-flagged vessels, as well as personnel of changes in cybersecurity conditions. The proposed requirements would allow effective and continuous communication between security personnel on board U.S.-flagged vessels and at facilities and OCS facilities; U.S.-flagged vessels interfacing with a facility or an OCS facility, the cognizant COTP, and national and local authorities with security responsibilities. Based on communication requirements established in 33 CFR 105.235 for facilities, 106.240 for OCS facilities, and 104.245 for vessels, the Coast Guard assumes that owners and operators of vessels, facilities, and OCS facilities already have communication channels established for physical security notifications which could easily be used for cybersecurity notifications. As a result, we do not estimate regulatory costs for communications. The Coast Guard requests public comment on this assumption and whether this communications provision would add an additional time burden.

Device Security Measures

Under proposed § 101.650(b)(1), this NPRM would require owners and operators of U.S. facilities, OCS facilities, and U.S.-flagged vessels to develop and maintain a list of company-approved hardware, firmware, and software that may be installed on IT or OT systems. This approved list would be documented in the Cybersecurity Plan. Because this requirement would be included in the development of the Cybersecurity Plan, we estimated these costs earlier in that section of the cost analysis.

Under proposed § 101.650(b)(2), this NPRM would require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to ensure applications running executable code are disabled by default on critical IT and OT systems. Based on information from CGCYBER, the time it would take to disable such applications is likely minimal; however, we currently lack data on how prevalent these applications are within the affected population. Therefore, we are unable to estimate the regulatory costs of this proposed provision. The Coast Guard requests public comments on the device security measures under this regulatory provision.

Under proposed § 101.650(b)(3) and (4), this NPRM would require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to develop and maintain an accurate inventory of network-connected systems, the network map, and OT device configuration. Because these items would be developed and documented as a part of the Cybersecurity Plan, we previously estimated these costs in that section of the cost analysis.

Data Security Measures

Under proposed § 101.650(c), this NPRM would require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to securely capture, store, and protect data logs, as well as encrypt all data in transit and at rest. The Jones Walker survey (see footnote 69) reveals that 64 percent of U.S. facilities and OCS facilities are currently performing active data logging and retention, and 45 percent are always encrypting data for the purpose of communication.

Because data logging can be achieved with default virus-scanning tools, such as Windows Defender on Microsoft systems, the cost of storage and protection of data logs is primarily a function of the data space required to store them. Based on information from CGCYBER, cloud storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3,200 per month for 100 terabytes of data. However, the Coast Guard does not have information on the amount of data space the affected population would need to comply with this proposed rule, or if data purchases would be necessary in all cases. Therefore, we are unable to estimate regulatory costs for this proposed provision. The Coast Guard requests public comment on these estimates and any additional information on this proposed regulatory provision.

Similarly, encryption is often available in default systems, or in publicly available algorithms.[89] The Coast Guard would accept these encryption standards that came with the software or on default systems. However, there are potentially some IT and OT systems in use that do not have native encryption capabilities. In these instances, encryption would likely represent an additional cost. However, the Coast Guard does not have information on the number of systems lacking encryption capabilities. As a result, we are unable to estimate the regulatory costs for encryption above and beyond what is included in default systems, and we request public comment on the potential costs associated with this provision.

Supply Chain Management

Under proposed § 101.650(f)(1) and (2), this NPRM would include provisions to specify measures for managing supply chain risk. This would not create any additional hour burden, as owners and operators would only need to consider cybersecurity capabilities when selecting third-party vendors for IT and OT systems or services. In addition, based on information from CGCYBER, most third-party providers have existing cybersecurity capabilities and already have systems in place to notify the owners and operators of facilities, OCS facilities, and U.S.-flagged vessels of any cybersecurity vulnerabilities, incidents, or breaches that take place. Therefore, the Coast Guard does not estimate a cost for this proposed provision.

Additionally, under proposed § 101.650(f)(3), this NPRM would require owners and operators of U.S. facilities, OCS facilities, and U.S.-flagged vessel to monitor third-party remote connections and document how and where a third party connects to their networks. Based on information from CGCYBER, many IT and OT vendors provide systems with the ability to remotely access the system to

[89] For example, see the following web pages for descriptions of default encryption policies on Google and Microsoft programs and cloud-based storage systems: *https://cloud.google.com/docs/security/encryption/default-encryption* and *https://learn.microsoft.com/en-us/microsoft-365/compliance/encryption?view=o365-worldwide,* accessed July 19, 2023.

perform maintenance or trouble-shoot problems as part of a warranty or service contract. Because remote access is typically identified in warranties and service contracts, the Coast Guard assumes that industry is already aware of these types of connections and would only need to document them when developing the Cybersecurity Plan. We estimated these costs previously in the development of the Cybersecurity Plan section of this cost analysis. The Coast Guard requests public comment on the validity of this assumption and any additional information on this proposed regulatory provision.

Network Segmentation

Under proposed § 101.650(h)(1) and (2), this NPRM would require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to segment their IT and OT networks and log and monitor all connections between them. Based on information from CGCYBER, CG–CVC, and NMSAC, network segmentation can be particularly difficult in the MTS, largely due to the age of infrastructure in the affected population of facilities, OCS facilities and U.S.-flagged vessels. The older the infrastructure, the more challenging network segmentation may be. Given the amount of diversity and our uncertainty regarding the state of infrastructure across the various groups in our affected population, we are not able to estimate the regulatory costs associated with this proposed provision. The Coast Guard requests public comment on the anticipated costs of network segmentation within the affected population, especially from those who have previously segmented networks at their organizations.

Physical Security

Under proposed § 101.650(i)(1) and (2), this NPRM would require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to limit physical access to IT and OT equipment; secure, monitor, and log all personnel access; and establish procedures for granting access on a by-exception basis. The Coast Guard assumes that owners and operators have already implemented physical access limitations and systems, by which access can be granted on a by-exception basis, based on requirements established in §§ 104.265 and 104.270 for vessels, §§ 105.255 and 105.260 for facilities, and §§ 106.260 and 106.265 for OCS facilities. Therefore, we do not believe that this proposed rule would impose new regulatory costs on owners and operators of facilities, OCS facilities, and U.S.-flagged vessels for this provision. However, we understand that § 101.650(i)(2), which requires potential blocking, disabling, or removing of unused physical access ports on IT and OT infrastructure, may represent taking steps above and beyond what has been expected under established requirements. The Coast Guard currently lacks information on the prevalence of these physical access ports on systems in use in the affected population, and therefore cannot currently calculate an associated cost. We request public comment on the anticipated costs associated with physical security provisions in this proposed rule above and beyond what has already been incurred under existing regulation.

Lastly, it is likely that this proposed rule would have unquantifiable costs associated with the incompatibility between the installation of the proposed newer software and the use of older or legacy software systems on board U.S.-flagged vessels, facilities, and OCS facilities. We request comments from the public on the anticipated costs associated with this difference in software for the affected population of this proposed rule.

Sources of Uncertainty Related to Quantified Costs in the Proposed Rule

Given the large scope of this proposed rule, our analysis contains several areas of uncertainty that could lead us to overestimate or underestimate the quantified costs associated with certain provisions. In table 39, we outline the various sources of uncertainty, the expected impact on cost estimates due to the uncertainty, potential cost ranges, and a ranking of the source of uncertainty based on how much we believe it is impacting the accuracy of our estimates. A rank of 1 indicates that we believe the source of uncertainty has the potential to cause larger overestimates or underestimates than a source of uncertainty ranked 2, and so on. The Coast Guard requests public comment from members of the affected populations of facilities, OCS facilities, and U.S.-flagged vessels who could provide insight into the areas of uncertainty specified in table 40, especially those relating to potential cost estimates, hour burdens, or current baseline activities.

Table 40: Sources of Uncertainty in the Proposed Rule

Source of Uncertainty or Relevant Provision	Reason for Uncertainty	Impact on Cost Estimates	Potential Cost Range	Rank
Baseline cybersecurity activities in the U.S.-flagged vessel population	The Coast Guard was able to estimate current cybersecurity activity related to some of the proposed provisions in the population of facilities and OCS facilities based on the results of the "Ports and Terminals Cybersecurity Survey" conducted by Jones Walker. However, we lack similar information on current cybersecurity activity in the population of U.S.-flagged vessels, and instead assumed that affected vessel entities have no level of baseline activity. This has led to overestimated costs for the affected population of U.S.-flagged vessels.	Overestimate	N/A	1

Correction of vulnerabilities, performing fixes, and alleviating issues discovered in assessments, testing, or scanning	The proposed rule includes various types of provisions dealing with cybersecurity testing, assessment, and monitoring that are designed to help owners and operators identify vulnerabilities and other security issues that may be impacting an organization's IT and OT systems. While the provisions for cybersecurity measures of this proposed rule are designed to address many vulnerabilities that may be discovered, the Coast Guard has no way of calculating the costs associated with any fixes or mitigations that may be necessary above and beyond what is outlined in the proposed rule. The costs associated with mitigations and vulnerability corrections would be highly dependent on what is discovered and would vary from affected entity to affected entity, making cost estimates unreliable.	Underestimate	Not able to estimate.	2
Future cybersecurity technology upgrades	Many of the provisions for cybersecurity measures under proposed § 101.650 involve the implementation of hardware and software solutions to improve cybersecurity or monitor vulnerabilities within an organization's IT and OT systems. Because cybersecurity technology is rapidly evolving, we expect that upgrades to implemented solutions may be necessary in later years. However, the Coast Guard lacks information on how often or how costly these upgrades may be.	Underestimate	Not able to estimate.	3

§ 101.650(h)(1) and (2) - Network segmentation	Network segmentation can be particularly difficult in the MTS, largely due to the age of infrastructure in the affected population of facilities, OCS facilities and U.S.-flagged vessels. The older the infrastructure, the more challenging network segmentation may be. Given the amount of diversity and our uncertainty regarding the state of infrastructure across the various groups in our affected population, we are not able to estimate the regulatory costs associated with this proposed provision.	Underestimate	Not able to estimate.	4

§ 101.650(c) - Store data logs and encrypt data	Data logging can be achieved in the background using programs native to common computer operating systems, and therefore has a negligible cost. The primary cost would be the data space necessary to store the data logs. The Coast Guard does not currently know who in the affected population would need to purchase additional data space to store logs, if any. Similarly, the Coast Guard does not know who in the affected population would need to purchase data encryption capabilities given a lack of information on systems in use that lack encryption capabilities.	Underestimate	The costs would scale with the amount of data space purchased. Based on current market prices, cloud-based storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data.	5

§ 101.650(g)(4) - Perform and secure data backups	Backing up data can be achieved in the background using programs native to common computer operating systems, and therefore has a negligible cost. The primary cost would be the data space necessary to store the data logs. The Coast Guard does not currently know who in the affected population would need to purchase additional data space to store logs, if any. Similarly, the Coast Guard does not know who in the affected population would need to purchase data encryption capabilities or other security measures for data backups given a lack of information on systems in use that lack these capabilities.	Underestimate	The costs would scale with the amount of data space purchased. Based on current market prices, cloud-based storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data.	5
§ 101.650(i)(2) - Removable media and hardware	While the Coast Guard believes that limiting of physical access to critical IT and OT systems is likely already being done under existing regulation, requiring blocking, disabling, or removing of unused physical access ports on IT and OT infrastructure may represent efforts above and beyond requirements already in regulation. However, the Coast Guard currently lacks information on the prevalence of these physical access ports on systems in use in the affected population, and therefore cannot currently estimate an associated cost.	Underestimate	Costs could range from installing security or antitamper tape over unused USB or other access ports, installing access port locks, or taking the time to manually disable or remove ports from system hardware. Costs for antitamper tape typically range from approximately $10 to $20 per 55-yard roll. Costs for access port locks range from approximately $10 to	6

			$20 for a pack of 10 locks. Costs for manually disabling ports on system hardware would be dependent on the time taken to disable, either through a software program or physically with a medium like caulk or epoxy resin. In either case, we estimate this would take approximately 1 to 5 minutes per access port.	
§ 101.650(b)(2) - Disable applications running executable code by default on critical IT and OT systems	The Coast Guard has limited data on what applications are prevalent in the affected population that may need to have executable code disabled.	Underestimate	Potential costs are likely negligible. The time required to disable these applications is likely small and only required to be performed once. Many operating systems include this policy by default, and it could be considered a no-cost provision of the proposed rule.	7

The uncertainty surrounding these aspects of this analysis makes estimating many costs challenging. The Coast Guard has considered several alternative scenarios to demonstrate how alternative assumptions may affect

the cost estimates presented in this analysis.

First, we consider an alternative assumption regarding the baseline cybersecurity activities in the population of U.S.-flagged vessels, which we determined may have the biggest impact on our cost estimates for this proposed rule. Because the Coast Guard lacks data on current cybersecurity activities in the population of U.S.-flagged vessels, we assume that all owners and operators of U.S.-flagged vessels have no baseline cybersecurity activity to avoid potentially underestimating costs in the preceding cost analysis. However, we were able to use existing survey data to estimate baseline cybersecurity activity in the population of facilities and OCS facilities, which allowed us to more accurately estimate the cost impacts of many of the proposed provisions.

If we use the same rates of baseline activity we assume for facilities and OCS facilities for the U.S.-flagged vessels as well, we would see a reduction in undiscounted cost estimates related to account security measures, multifactor authentication implementation and management, cybersecurity training, and penetration testing. Like the rates of baseline activity cited for the population of facilities and OCS facilities, this alternative would assume that 87 percent of the U.S.-flagged vessel population are managing account security, 83 percent have implemented multifactor authentication, 25 percent are conducting cybersecurity training, and 68 percent are conducting penetration tests.[90] Using these assumptions would result in estimated annual population costs of approximately $119,891 for account security ($922,239 primary estimated cost × 0.13), $5,670,537 for multifactor authentication implementation and maintenance ($33,356,100 primary estimated cost × 0.17), $4,827,371 for cybersecurity training ($6,436,494 primary estimate cost × 0.75), and $4,583,264 for penetration testing ($14,322,700 primary estimated cost × 0.32). This would result in reduced undiscounted annual cost estimates of approximately $47,882,654 for the population of U.S.-flagged vessels. See table 41.

Table 41: Comparison of Primary and Alternative Cost Estimates for U.S.-flagged Vessel Population (2022 Dollars, Undiscounted Costs)

Source of Cost	Primary Cost Estimates	Alternative Estimates
Account Security Costs	$922,239	$119,891
Multifactor Authentication Costs	$33,356,100	$4,336,293
Cybersecurity Training Costs	$6,436,494	$836,744
Penetration Testing Costs	$14,322,700	$1,861,951
Total	**$55,037,533**	**$7,154,879**

The Coast Guard requests comment on whether these assumptions of baseline activity are more reasonable than what is currently used in this RIA, or if there are additional alternative assumptions about baseline activities in these areas or other areas not discussed that would lead to more accurate estimates.

In addition, we considered adding cost estimates for those areas of uncertainty where we were able to estimate a range of potential costs. For proposed provisions in § 101.650(c) and (g) related to storing data logs and performing data backups, we anticipate that this data storage will be set up to occur in the background, meaning systems will not need to be taken offline and no burden hours. However, this makes the associated cost a function of the data space required to store and backup data. While we do not have information on how much data space a given company would need, we can estimate industry costs based on SME estimates for a range of potential data space amounts. As described in table 40, current market prices indicate that cloud-based storage can cost from $21 to $41 per month for 1 terabyte of data, $54 to $320 per month for 10 terabytes, and up to $402 to $3200 per month for 100 terabytes of data. To estimate the annual cost of 1 additional terabyte of data, we take the average estimated monthly cost of $31 [($41 + $21) ÷ 2] and multiply it by 12 to find the average annual cost of $372 per terabyte. If each facility and OCS facility company required an additional terabyte of data space as a result of this proposed rule, we would estimate approximately $635,376 ($372 × 1,708 facility owners and operators) in additional undiscounted annual costs to industry. Similarly, if we assumed each U.S.-flagged vessel company required an additional terabyte of data space because of this proposed rule, we would estimate approximately $660,300 ($372 × 1,775 vessel owners and operators) in additional undiscounted annual costs to industry. See table 42.

[90] See footnote 69.

Table 42. Comparison of Alternative Data Space Cost Estimates for the Affected Population and Impact on Undiscounted Cost Totals (2022 Dollars, Undiscounted Costs)

Affected Population	Annual Data Space Cost Estimates	Total Data Space Cost Estimates Over 10 Years	Primary Population Cost Totals Over 10 Years	Alternative Population Cost Totals Over 10 Years
Facilities and OCS Facilities	$635,376	$6,353,760	$312,330,251	$318,684,011
U.S.-flagged Vessels	$660,300	$6,603,000	$439,884,727	$446,487,727
Total	**$1,295,676**	**$12,956,760**	**$752,214,978**	**$765,171,738**

These costs could change if we were to add additional assumptions about current baseline activities or adjusted the expected need for data space. Therefore, we request public comment on the accuracy and inclusion of these estimates.

Government Costs

There are three primary drivers of Government costs associated with this proposed rule. The first would be under proposed § 101.630(e), where owners and operators of the affected population of U.S.-flagged vessels, facilities, and OCS facilities would be required to submit a copy of their Cybersecurity Plan for review and approval to either the cognizant COTP or the OCMI for facilities or OCS facilities, or to the MSC for U.S.-flagged vessels. In addition, proposed § 101.630(f) would require owners and operators to submit Cybersecurity Plan amendments to the Coast Guard, under certain conditions, for review and approval. The second cost driver is related to the marginal increase in inspection time as a result of added Cybersecurity Plan components that will be reviewed as a part of an on-site inspection of facilities, OCS facilities, and U.S.-flagged vessels. The final cost driver would be under proposed § 101.650(g)(1), where owners and operators of the affected population of U.S.-flagged vessels, facilities, and OCS facilities would be required to report cyber incidents to the NRC. The NRC would then need to process the report and generate notifications for each incident report they receive. The Coast Guard examines these costs under the assumption that we will use the existing frameworks in place to review security plans and amendments, process incident reports, and conduct inspections. Given uncertainty surrounding Coast Guard staffing needs related to this proposed rule, we have not estimated costs associated with new hires or the establishment of a centralized office.

First, we analyze the costs to the Government associated with reviewing and approving Cybersecurity Plans and amendments. Based on Coast Guard local facility inspector estimates, it would take plan reviewers about 40 hours to review an initial Cybersecurity Plan for a facility or OCS facility, 8 hours to review a resubmission of a Plan in the initial year, and 4 hours to review an amendment in years 3 through 6 and 8 through 10 of the analysis period. It would also take about 8 hours of review for the renewal of plans in year 7 of the analysis period, and another 8 hours for any necessary resubmissions of Plan renewals. The hour-burden and frequency estimates for resubmissions and amendments are consistent with estimates for resubmissions of FSPs and OCS FSPs, as we expect the Cybersecurity Plans and amendments to be of a similar size and scope. As discussed earlier in the analysis, we estimate that resubmissions of initial Cybersecurity Plans and Plan renewals occur at a rate of 10 percent in years 2 and 7 of the analysis period. We use the number of facilities and OCS facilities that would submit Plans, which would be about 3,411.

We determine the wage of a local facility inspector using publicly available data found in Commandant Instruction 7310.1W.[91] We use an annual mean hourly wage rate of $89 for an inspector at the O–3 (Lieutenant) level, based on the occupational labor category used in ICR 1625–0077.

We estimate the undiscounted second-year (initial year of Plan review) cost for the Coast Guard to review Cybersecurity Plans for U.S. facilities and OCS facilities to be approximately $12,385,952 [(3,411 facility Plan initial submissions × $89.00 × 40 hours) + (341 facility Plan resubmissions × $89.00 × 8 hours)]. Except in year 7, when renewal of all Plans would occur, we estimate the undiscounted annual cost to the Coast Guard for the review of amendments to be approximately $1,214,316 (3,411 amendments × $89.00 × 4 hours). In year 7, we estimate the undiscounted cost to be approximately $2,671,424 [(3,411 Plans for 5-year renewal × $89.00 × 8 hours) + (341 facility Plan resubmissions × $89.00 × 8 hours)]. We estimate the discounted cost for the Coast Guard to review facility and OCS facility Cybersecurity Plans to be approximately $18,059,127 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $2,571,213, using a 7-percent discount rate. See table 43.

[91] Readers can view Commandant Instruction 7310.1W for military personnel at *media.defense.gov/2022/Aug/24/2003063079/-1/-1/0/CI_7310_1W.PDF*, accessed January 2024.

Based on Coast Guard MSC estimates, it would take about 28 hours to review an initial U.S.-flagged vessel Cybersecurity Plan, 8 hours to review a resubmission of the Cybersecurity Plan in the initial year, and 4 hours to review

Table 43: Estimated Government Costs of Proposed Rule for Facility and OCS Facility Cybersecurity Plan and Amendment Review (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rate)

Year	Reviewer Wage	Facility Cybersecurity Plan Submissions	Facility Cybersecurity Resubmissions	Cybersecurity Plan Review Hours	Resubmission Review Hours	Amendment Review Hours	Total Cost	7%	3%
1	$89.00	0	0	0	0	0	$0	$0	$0
2	$89.00	3411	341	40	8	0	$12,385,952	$10,818,370	$11,674,948
3	$89.00	3411	0	0	0	4	$1,214,316	$991,244	$1,111,271
4	$89.00	3411	0	0	0	4	$1,214,316	$926,396	$1,078,904
5	$89.00	3411	0	0	0	4	$1,214,316	$865,791	$1,047,480
6	$89.00	3411	0	0	0	4	$1,214,316	$809,150	$1,016,971
7	$89.00	3411	341	8	8	0	$2,671,424	$1,663,629	$2,172,112
8	$89.00	3411	0	0	0	4	$1,214,316	$706,743	$958,592
9	$89.00	3411	0	0	0	4	$1,214,316	$660,507	$930,672
10	$89.00	3411	0	0	0	4	$1,214,316	$617,297	$903,565
Total							**$23,557,588**	**$18,059,127**	**$20,894,515**
Annualized							**$2,355,759**	**$2,571,213**	**$2,449,475**

Note: Totals may not sum due to independent rounding.

an amendment in years 3 through 6 and 8 through 10 of the analysis period. It would also take about 8 hours of review for the renewal of Plans, and another 8 hours to review resubmitted Plan renewals in year 7 of the analysis period. The hour-burden and frequency estimates for resubmissions and amendments are consistent with estimates for resubmissions of VSPs, as we expect the Cybersecurity Plans and amendments to be of a similar size and scope. We use the number of U.S.-flagged vessel owners and operators who would submit Plans, about 1,775.

According to ICR 1625–0077, the collection of information related to VSPs, FSPs, and OCS FSPs, the MSC uses contract labor to conduct Plan and amendment reviews. The MSC provided us with its independent Government cost estimate for their existing contract for VSP reviews. The average loaded annual mean hourly wage rate for the various contracted reviewers from the independent Government cost estimate is $81.83.

We estimate the undiscounted second-year cost for the Coast Guard to review Cybersecurity Plans for U.S.-flagged vessels to be approximately $4,183,477 [(1,775 initial vessel Plan submissions × $81.83 × 28 hours) + (178 vessel Plan resubmissions × $81.83 × 8 hours)]. Except in year 7, when resubmission of all Plans would occur, we estimate the undiscounted annual cost to the Coast Guard for reviewing amendments to be approximately $580,993 (1,775 amendments × $81.83 × 4 hours). In year 7, we estimate the undiscounted cost to be approximately $1,278,512 [(1,775 Plans for 5-year renewal × $81.83 × 8 hours) + (178 facility Plan resubmissions × $81.83 × 8 hours)]. We estimate the discounted cost for the Coast Guard to review U.S.-flagged vessel Cybersecurity Plans to be approximately $7,118,596 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $1,013,528, using a 7-percent discount rate. See table 44.

Table 44: Estimated Government Costs of U.S.-Flagged Vessel Cybersecurity Plan and Amendment Review (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rate)

Year	Reviewer Wage	Vessel Cybersecurity Plan Submissions	Vessel Cybersecurity Plan Resubmissions	Cybersecurity Plan Review Hours	Resubmission Review Hours	Amendment Review Hours	Total Cost	7%	3%
1	$81.83	0	0	0	0	0	$0	$0	$0
2	$81.83	1775	178	28	8	0	$4,183,477	$3,654,011	$3,943,328
3	$81.83	1775	0	0	0	4	$580,993	$474,263	$531,691
4	$81.83	1775	0	0	0	4	$580,993	$443,237	$516,205
5	$81.83	1775	0	0	0	4	$580,993	$414,240	$501,170
6	$81.83	1775	0	0	0	4	$580,993	$387,140	$486,572
7	$81.83	1775	178	8	8	0	$1,278,512	$796,193	$1,039,547
8	$81.83	1775	0	0	0	4	$580,993	$338,143	$458,641
9	$81.83	1775	0	0	0	4	$580,993	$316,022	$445,283
10	$81.83	1775	0	0	0	4	$580,993	$295,347	$432,313
Total							**$9,528,940**	**$7,118,596**	**$8,354,750**
Annualized							**$952,894**	**$1,013,528**	**$979,432**

Note: Totals may not sum due to independent rounding.

The second source of Government costs would be the marginal increase in onsite inspection time due to the expansion of FSPs, OCS FSPs, and VSPs to include the Cybersecurity Plans and provisions proposed by this NPRM. The

proposed cybersecurity provisions would add to the expected onsite inspection times for the populations of facilities, OCS facilities, and U.S.-flagged vessels. Coast Guard SMEs within CG–FAC conferred with local inspection offices to estimate the expected marginal increase in facility and OCS facility inspection time. Local facility inspectors estimate that the additional cybersecurity provisions from this proposed rule would add an average of 1 hour to an onsite inspection, and that the inspection would typically be performed by an inspector at a rank of O–2 (Lieutenant Junior Grade). According to Commandant Instruction 7310.1W Reimbursable Standard Rates, an inspector with an O–2 rank has a fully loaded wage rate of $72.[92] Therefore, we estimate the annual undiscounted Government cost associated with the expected marginal increase in onsite inspections of facilities and OCS facilities is $245,592 (3411 facilities and OCS facilities × 1 hour inspection time × $72 facility inspector wage). We estimate the total discounted cost of increased inspection time to be approximately $1,724,936 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $245,592, using a 7-percent discount rate. See table 45.

Table 45: Estimated On-site Inspection of Facilities and OCS Facilities Costs for Government of the Proposed Rule (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Facilities	Facility Inspection Hours	Facility Inspector Wage	Total Cost	7 Percent	3 Percent
1	3411	1	$72	$245,592	$229,525	$238,439
2	3411	1	$72	$245,592	$214,510	$231,494
3	3411	1	$72	$245,592	$200,476	$224,751
4	3411	1	$72	$245,592	$187,361	$218,205
5	3411	1	$72	$245,592	$175,104	$211,850
6	3411	1	$72	$245,592	$163,648	$205,679
7	3411	1	$72	$245,592	$152,942	$199,689
8	3411	1	$72	$245,592	$142,937	$193,873
9	3411	1	$72	$245,592	$133,586	$188,226
10	3411	1	$72	$245,592	$124,847	$182,744
Total				**$2,455,920**	**$1,724,936**	**$2,094,950**
Annualized				**$245,592**	**$245,592**	**$245,592**

Note: Totals may not sum due to independent rounding.

Similarly, Coast Guard SMEs within CG–ENG estimate that the additional cybersecurity provisions from the proposed rule would add an average of 0.167 hours (10 minutes) to an on-site inspection of a U.S.-flagged vessel and that the inspection would typically be performed by an inspector at a rank of E–5 (Petty Officer Second Class). According to Commandant Instruction 7310.1W Reimbursable Standard Rates, an inspector with an E–5 rank has a fully loaded wage rate of $58. Therefore, we estimate the annual undiscounted Government cost associated with the expected marginal increase in onsite inspections of U.S.-flagged vessels is $99,630 (10,286 vessels × 0.167 hours inspection time × $58 facility inspector wage). We estimate the total discounted cost of increased inspection time to be approximately $699,761 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $99,630, using a 7-percent discount rate. See table 46.

[92] Readers can view Commandant Instruction 7310.1W for military personnel at *media.defense.gov/2022/Aug/24/2003063079/-1/-1/0/CI_7310_1W.PDF*, accessed December 2023.

Table 46: Estimated On-site Inspection of U.S.-flagged Vessels Costs for Government of the Proposed Rule (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Vessels	Vessel Inspection Hours	Vessel Inspector Wage	Total Cost	7 Percent	3 Percent
1	10286	0.167	$58	$99,630	$93,112	$96,728
2	10286	0.167	$58	$99,630	$87,021	$93,911
3	10286	0.167	$58	$99,630	$81,328	$91,176
4	10286	0.167	$58	$99,630	$76,007	$88,520
5	10286	0.167	$58	$99,630	$71,035	$85,942
6	10286	0.167	$58	$99,630	$66,388	$83,439
7	10286	0.167	$58	$99,630	$62,045	$81,008
8	10286	0.167	$58	$99,630	$57,986	$78,649
9	10286	0.167	$58	$99,630	$54,192	$76,358
10	10286	0.167	$58	$99,630	$50,647	$74,134
Total				**$996,300**	**$699,761**	**$849,865**
Annualized				**$99,630**	**$99,630**	**$99,630**

Note: Totals may not sum due to independent rounding.

The final source of Government costs from this proposed rule would be the time to process and generate notifications for each cyber incident reported to the NRC. As discussed earlier in our analysis of costs associated with cyber incident reporting, from 2018 to 2022, the NRC fielded and processed an average of 18 cyber incident reports from facilities and OCS facilities, and an average of 2 cyber incident reports from U.S.-flagged vessels, for a total of 20 cyber incident reports per year. In addition, the NRC generated an average of 31 notifications for appropriate Federal, State, local and tribal agencies per processed cyber incident over that same time period, meaning an average of 620 notifications per year (20 cyber incident reports × 31 notifications).

Based on ICR 1625–0096, Report of Oil or Hazardous Substance Discharge; and Report of Suspicious Maritime Activity, it takes the NRC approximately 0.15 hours (8.5 minutes) to receive an incident report, and 0.2 hours (12 minutes) to disseminate a verbal notification to the Federal on-scene coordinator or appropriate Federal agency. Given that cyber incidents and the reports of suspicious activity detailed in the ICR are processed in a similar fashion, we use the same hour estimates here. According to ICR 1625–0096, a contractor, equivalent to a GS–9, processes incident reports and generates relevant notifications. We use the GS–9-Step 5 hourly basic rate from the Office of Personnel Management (OPM) 2022 pay table, or $29.72.[93] To account for the value of benefits to government employees, we first calculate the share of total compensation of Federal employees accounted for by wages. The Congressional Budget Office (2017) reports total compensation to Federal employees with a bachelor's degree (consistent with a GS level of GS–7 to GS–10) as $67.00 per hour and associated wages as $39.50.[94] This implies that total compensation is approximately 1.70 times the average wage ($67.00 ÷ $39.50). Therefore, we can calculate $50.52 ($29.72 × 1.70 load factor) as the fully loaded wage rate for the NRC contractor equivalent to a GS–9, Step 5.

We estimate undiscounted annual Government costs of cyber incident report processing and notification to be $6,416 [(20 cyber incident reports × 0.15 hours to process × $50.52 contractor wage) + (620 notifications × 0.2 hours × $50.52 contractor wage)]. We estimate the total discounted cost to be approximately $45,064 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $6,416, using a 7-percent discount rate. See table 47.

[93] Please see: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/RUS_h.pdf.* We use the Rest of U.S. (RUS) rate here to maintain consistency with the rates used in ICR 1612–0096; accessed July 12, 2023.

[94] Congressional Budget Office (2017), ''Comparing the Compensation of Federal and Private-Sector Employees, 2011 to 2015,'' *https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52637-federalprivatepay.pdf,* accessed July 19, 2023.

Table 47: Estimated Government Costs of Cyber Incident Report Processing (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Number of Incidents Processed	Hours to Process	Number of Notifications Generated	Hours to Generate Notification	NRC Wage	Total Cost	7%	3%
1	20	0.15	620	0.2	$50.52	$6,416	$5,996	$6,229
2	20	0.15	620	0.2	$50.52	$6,416	$5,604	$6,048
3	20	0.15	620	0.2	$50.52	$6,416	$5,237	$5,872
4	20	0.15	620	0.2	$50.52	$6,416	$4,895	$5,701
5	20	0.15	620	0.2	$50.52	$6,416	$4,575	$5,534
6	20	0.15	620	0.2	$50.52	$6,416	$4,275	$5,373
7	20	0.15	620	0.2	$50.52	$6,416	$3,996	$5,217
8	20	0.15	620	0.2	$50.52	$6,416	$3,734	$5,065
9	20	0.15	620	0.2	$50.52	$6,416	$3,490	$4,917
10	20	0.15	620	0.2	$50.52	$6,416	$3,262	$4,774
Total						**$64,160**	**$45,064**	**$54,730**
Annualized						**$6,416**	**$6,416**	**$6,416**

Note: Totals may not sum due to independent rounding.

We estimate the total discounted Government costs of the proposed rule for the review of Cybersecurity Plans, increase in on-site inspection time, and processing cyber incident reports to be approximately $27,647,481 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $3,936,379, using a 7-percent discount rate. See table 48.

Table 48: Total Estimated Government Costs of the Proposed Rule (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facility Cyber Plan Review Costs	Vessel Cyber Plan Review Costs	Facility Inspection Costs	Vessel Inspection Costs	Incident Report Processing and Notification Costs	Total Cost	7 Percent	3 Percent
1	$0	$0	$245,592	$99,630	$6,416	$351,638	$328,634	$341,396
2	$12,385,952	$4,183,477	$245,592	$99,630	$6,416	$16,921,067	$14,779,515	$15,949,729
3	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,752,548	$1,964,761
4	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,637,896	$1,907,535
5	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,530,744	$1,851,975
6	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,430,601	$1,798,034
7	$2,671,424	$1,278,512	$245,592	$99,630	$6,416	$4,301,574	$2,678,804	$3,497,573
8	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,249,543	$1,694,820
9	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,167,797	$1,645,456
10	$1,214,316	$580,993	$245,592	$99,630	$6,416	$2,146,947	$1,091,399	$1,597,530
Total						**$36,602,908**	**$27,647,481**	**$32,248,809**
Annualized						**$3,660,291**	**$3,936,379**	**$3,780,544**

Note: Totals may not sum due to independent rounding.

Total Costs of the Proposed Rule

We estimate the total discounted costs of the proposed rule to industry and government to be approximately $562,740,969 over a 10-year period of analysis, using a 7-percent discount rate. We estimate the annualized cost to be approximately $80,121,654, using a 7-percent discount rate. See table 49.

Table 49: Total Estimated Costs of the Proposed Rule to Industry and Government (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facility and OCS Facility Costs	U.S.-flagged Vessel Costs	Government Costs	Total Costs	7 Percent	3 Percent
1	$33,469,773	$53,613,063	$351,638	$87,434,474	$81,714,462	$84,887,839
2	$37,053,260	$54,116,840	$16,921,067	$108,091,167	$94,411,011	$101,886,292
3	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$59,913,465	$67,168,260
4	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$55,993,893	$65,211,903
5	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$52,330,741	$63,312,527
6	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$48,907,234	$61,468,473
7	$25,788,807	$49,425,867	$4,301,574	$79,516,248	$49,518,723	$64,653,986
8	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$42,717,473	$57,939,931
9	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$39,922,872	$56,252,360
10	$30,859,773	$40,389,851	$2,146,947	$73,396,571	$37,311,095	$54,613,942
Total	**$312,330,251**	**$439,884,727**	**$36,602,908**	**$788,817,886**	**$562,740,969**	**$677,395,513**
Annualized				**$78,881,789**	**$80,121,654**	**$79,411,419**

Note: Totals may not sum due to independent rounding.

Benefits

Malicious cyber actors, including individuals, groups, and nation states, have rapidly increased in sophistication over the years and use techniques that make them more and more difficult to detect. Recent years have seen the rise of cybercrime as a service, where malicious cyber actors are hired to conduct cyber-attacks.[95] Some national governments have also used ransomware to advance their strategic interests, including evading sanctions.[96] The increased growth of cybercrime is a factor that has intensified in the last 20 years. Per the Federal Bureau of Investigation's cybercrime reporting unit, financial losses from reported incidents of cybercrime exceeded $10.3 billion in 2022, and $35.9 billion since 2001.[97] While there are significant private economic incentives for MTS participants to implement their own cybersecurity measures, and survey results indicate that MTS participants are more confident in their cybersecurity capabilities than in years past, the same survey indicates that there are important gaps in capabilities that leave the MTS and downstream economic participants exposed to risk.[98] In the 2018 report, the CEA stated, ''[b]ecause no single entity faces the full costs of the adverse cyber events, the Government can step in to achieve the optimal level of cybersecurity, either through direct involvement in cybersecurity or by incentivizing private firms to increase cyber protection.'' [99]

The overall benefit of this proposed rule would be the reduced risk of a cyber incident and, if an incident occurs, improved mitigation of its impact. This would benefit owners and operators and help protect the maritime industry and the United States. We expect this proposed rule would have significant but currently unquantifiable benefits for the owners and operators of facilities, OCS facilities, and U.S.-flagged vessels, as well as downstream economic participants [100] and the public at large. This proposed rule would benefit the owners and operators of facilities, OCS facilities, and U.S.-flagged vessels by having a means, through the Cybersecurity Plan, to ensure that all cybersecurity measures are in place and tested periodically, which would improve the resiliency of owners and operators to respond to a cyber incident and to maintain a current cybersecurity posture, reducing the risk

[95] See *https://cybernews.com/security/crimeware-as-a-service-model-is-sweeping-over-the-cybercrime-world/* for a description of cybercrime as a service and *https://cybersecurityventures.com/cybercrime-damage-costs-10-trillion-by-2025/* for a description of its growth in recent years. Accessed December 6, 2023.

[96] Institute for Security and Technology, ''RTF Report: Combating Ransomware: A Comprehensive Framework for Action: Key Recommendations from the Ransomware Task Force,'' *https://securityandtechnology.org/ransomwaretaskforce/report/,* accessed July 19, 2023.

[97] See the Federal Bureau of Investigation's ''2022 Internet Crime Report,'' Internet Crime Complaint Center (IC3), March 14, 2023. This report can be found at *https://www.ic3.gov/Media/PDF/AnnualReport/2022_IC3Report.pdf,* accessed December 4, 2023. For a summary of financial losses from reported incidents of cybercrime since 2001, see *https://www.statista.com/statistics/267132/total-damage-caused-by-by-cybercrime-in-the-us/,* accessed December 4, 2023.

[98] Readers can access the survey in the docket or at *https://www.joneswalker.com/en/insights/2022-Jones-Walker-LLP-Ports-and-Terminals-Cybersecurity-Survey-Report.html;* accessed July 19, 2023. See page 16 of the survey for data on industry confidence and pages 34–41 for data on cybersecurity practices.

[99] Economic Report of the President *supra* note 1 at 369.

[100] Downstream economic participants are entities or individuals involved in the later stages of the supply chain or production process, such as distributors, wholesalers, service providers, and retailers that supply and sell products directly to consumers.

of economic losses for owners and operators as well as downstream economic participants. For example, this proposed rule would require training, drills, and exercises, which would benefit owners and operators by having a workforce that is knowledgeable and trained in most aspects of cybersecurity, which reduces the risk of a cyber incident and mitigates the impact if an incident occurs. Conducting training, drills, and exercises would also enable the owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to prevent, detect, and respond to a cyber incident with improved capabilities.

In addition, cybersecurity measures in this proposed rule would require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to identify weaknesses or vulnerabilities in their IT and OT systems and to develop strategies or safeguards to identify and detect security breaches when they occur. The software and physical requirements of this proposed rule would ensure that there is the minimal level of protection for critical IT and OT systems and allow for the proper monitoring of these systems. In table 50, we list the expected benefits associated with each major regulatory provision of the proposed rule.

Table 50. Expected Actions of the Proposed Rule that Accrue Benefits

§ 101.630 Cybersecurity Plan	1. Improved incident response: A well-designed Cybersecurity Plan includes procedures for incident response and enables vessels and port facilities to address cybersecurity incidents quickly and effectively to minimize their impact and duration. 2. Employee awareness and training: A Cybersecurity Plan includes employee training and awareness programs, which ensures that staff members (1) understand their role in protecting both the vessel and port facility's digital assets to prevent cyber incidents, and (2) know how to respond to potential threats to minimize their impact and duration.
§ 101.635 Drills and Exercises	1. Increased awareness and understanding: Cybersecurity drills and exercises promote a better understanding of the risks and challenges associated with cyber threats among all stakeholders, including crew members, port facility personnel, and other relevant parties, allowing them to better prevent cyber incidents. 2. Improved preparedness: Regular drills and exercises help organizations to identify vulnerabilities in their cybersecurity posture, allowing them to develop and implement effective countermeasures to address potential threats and prevent cyber incidents. 3. Enhanced response capabilities: Drills and exercises allow staff to practice their roles and responsibilities during a potential cybersecurity incident, ensuring they can respond quickly and effectively to minimize the impact of any potential cyber-attacks. 4. Identification of gaps and weaknesses: By simulating real-world cyber-attacks, organizations can identify gaps in their security policies, procedures, and technologies, and take appropriate steps to address gaps in those areas to prevent cyber incidents. 5. Continuous improvement: Regularly conducting drills and exercises allows organizations to learn from their experiences and refine and update their Cybersecurity Plans and strategies to ensure ongoing effectiveness in preventing cyber incidents.
§ 101.645 Communications	1. Improved situational awareness: Clear communication enables stakeholders to stay informed about potential cyber threats and vulnerabilities, allowing them to respond promptly and effectively.

	2. Enhanced collaboration: Effective communication fosters collaboration between different departments, stakeholders, and external partners, such as shipping companies, port authorities, and cybersecurity experts. This collaboration is crucial for identifying and mitigating cybersecurity risks. 3. Streamlined incident response: In the event of a cyber-attack or security breach, effective communication helps ensure that all relevant parties are aware of the situation and can coordinate their response efforts, minimizing the impact of the incident.
§ 101.650 Cybersecurity Measures. (a) *Account security measures.*	1. Preventing unauthorized use: A secured account prevents malicious actors from using it as a platform to spread malware, spam, or launch other attacks, ensuring systems remain operational and free from disruption. 2. Preserving digital identity: Prevents cyber criminals from using compromised accounts to impersonate the account holder, reducing identity theft or other fraudulent activities. This promotes trust in clients and partners and maintains the positive reputation of the organization in the marketplace. 3. Personal data protection: Accounts often contain or provide access to personal and sensitive information. Securing them ensures this data remains confidential and prevents it from being stolen, altered, or deleted. Further, the organizations can promote greater consumer confidence by protecting client data from malicious actors. 4. Maintaining privacy: Securing accounts helps in safeguarding private communications, photos, videos, and other personal content from unauthorized access and prevents it from being stolen, altered, or deleted, retaining the trust of clients and partners.
§ 101.650 Cybersecurity Measures. (b) *Device security measures.*	1. Limiting spread: Secured devices can prevent malware or malicious activities from spreading to other connected devices or networks, mitigating the effects of a cyber incident. 2. Data protection: Prevent unauthorized access, theft, or damage to personally identifiable information (PII) and other sensitive data. This includes financial information, health records, intellectual property, and other confidential data. By protecting the digital assets of the organization and its clients, organizations can help prevent their customers from becoming unwitting victims of cybercrime and lessen the impacts of cyber incidents on other

	economic participants, increasing consumer trust and commerce in the U.S. economy. 3. Reduced vulnerability: Regularly updated and secured devices are less vulnerable to the newest exploits or zero-day attacks, reducing the chance of cyber-attacks and mitigating the effects of a cyber incident. 4. Limiting spread: Secured devices can prevent malware or malicious activities from spreading to other connected devices or networks, mitigating the effects of a cyber incident.
§ 101.650 Cybersecurity Measures. (c) *Data security measures.*	1. Protecting sensitive information: Both vessels and port facilities handle sensitive data, such as personal information from crew and passengers, cargo details, financial transactions, and operational data. Data security measures help protect this information from unauthorized access, ensuring privacy and compliance with regulations for data protection. This measure helps prevent sensitive data from being stolen, altered, or deleted. Thus, the organization retains the trust of clients and partners and helps protect downstream economic participants from the effects of a cyber incident. 2. Building trust and reputation: Ensuring sensitive information remains secure and maintaining reliable operations contribute to a positive reputation for shipping companies and port facilities. This can lead to increased business opportunities, better relationships with stakeholders, and improved trust of clients and partners. 3. Promoting collaboration and information sharing subject to any applicable antitrust limitations: Secure data sharing between vessels, port facilities, and other stakeholders in the maritime industry is essential for effective collaboration and coordination, which helps facilitate early warnings about cyber threats and incidents to improve response times and mitigate impacts to other actors. Also, collective data and lessons learned can be used to develop better security practices and policies, helps determine the "appropriate levels of defense investments," and facilitate the "effective functioning of the cyber insurance market."[101] Data security measures help create an environment where parties can confidently share information without compromising its confidentiality, integrity, or availability. In its 2018 report, the CEA stated, "Government-monitored information-sharing platforms for anonymous disclosures of adverse

	cyber events are designed to increase the real-time awareness of cyber vulnerabilities and facilitate timely and publicly shared security solutions." The CEA also states that "the Government can be a valuable contributor to sharing threat information."[102]
§ 101.650 Cybersecurity Measures. (d) *Cybersecurity training for personnel.*	1. Enhanced security awareness: Cybersecurity training increases awareness of potential threats, vulnerabilities, and best practices, empowering personnel to take a proactive approach to addressing potential cyber risks and preventing cyber incidents. 2. Risk reduction: Training helps reduce the risk of successful cyber-attacks by teaching personnel how to identify, mitigate, and respond to threats; thus, reducing the potential for costly disruptions to maritime operations. 3. Improved incident response: Training equips personnel with the skills necessary to effectively respond to and recover from cyber incidents, which minimizes damage and downtime. 4. Strengthened collaboration and communication: Cybersecurity training fosters a culture of shared responsibility among all stakeholders, encouraging collaboration and communication between onboard and port facility personnel, as well as with other entities in the maritime industry, which helps prevent cyber incidents. 5. Continuous improvement: Regular cybersecurity training helps to keep personnel updated on the latest threats, technologies, and best practices, ensuring that maritime cybersecurity measures remain effective at preventing cyber incidents over time. 6. Reduction in human error: Cybersecurity training helps reduce the likelihood of human errors, such as falling victim to phishing attacks or accidentally exposing sensitive information, which are some of the most common causes of security incidents. This prevents an accidental cyber incident or falling victim to cyber-attacks such as a phishing attack.
§ 101.650 Cybersecurity Measures. (e) *Risk management.*	1. Protection of critical assets: By managing cybersecurity risks, ship and port facilities can better protect essential assets such as navigation systems, communication systems, cargo handling equipment, and access control systems from cyber threats, preventing disruptions to the system and maintaining business continuity. 2. Strengthened resilience: Developing a comprehensive CRM plan enables vessels and port facilities to respond to and recover from cyber

	incidents more quickly, mitigating the impact of an attack and recovering quickly from cyber-attacks.
§ 101.650 Cybersecurity Measures. (f) *Supply chain.*	1. Reduced risk of cyber-attacks: By ensuring that hardware and software components are genuine, untampered, and up to date, a secure supply chain helps to minimize vulnerabilities that can be exploited by cyber-attackers. Organizations with a secure supply chain can assure partners and customers of the reliability and safety of their goods and services. The benefit of avoiding supply chain disruptions may be the reduction in the "spillover effects to economically linked firms" and possibly a reduction in risk to "corporate partners, employees, customers, and firms with a similar business model."[103] Multiple authentication methods "may help prevent cyber breaches across the supply chain,"[104] thereby reducing the cost of incidents when they occur. 2. Enhanced trust: A secure supply chain promotes trust among stakeholders, such as customers, partners, and regulatory agencies, by demonstrating a commitment to maintaining high cybersecurity standards. Organizations with a secure supply chain are better equipped to deal with disruptions, ensuring smooth operations and uninterrupted supply chain processes for their business partners, which maintains their Organization's share of the commerce. 3. Better risk management: A comprehensive understanding of supply chain security risks allows organizations to develop effective risk management strategies, reducing the likelihood of cyber-attacks and their potential impact.
§ 101.650 Cybersecurity Measures. (g) *Resilience.*	1. Protection of sensitive data: Cyber resilience helps protect sensitive information, such as customer data, intellectual property, and trade secrets, from being stolen or compromised by hackers. Cyber resilience is about minimizing the financial losses associated with data breaches, ransomware, and other cyber threats. In its 2018 report, the CEA stated from a case study that a data breach of PII "will likely negatively affect the firm's ability to raise new capital and make new investments" and generally may adversely affect a firm's stock price.[105] Therefore, protecting sensitive information may be beneficial in protecting a firm's market value.

	2. Business continuity: A cyber-resilient organization can maintain or quickly resume operations in the event of a cyber-attack, minimizing downtime and ensuring that essential services remain available to customers and stakeholders. 3. Reputation and trust: A strong cyber resilience posture can enhance an organization's reputation and foster trust with customers, partners, and stakeholders, as it demonstrates a commitment to protecting their data and interests.
§ 101.650 Cybersecurity Measures. (h) *Network segmentation.*	1. Enhanced security: By segregating the network into separate segments, each with its own access controls, network segmentation helps to minimize the risk of unauthorized access to critical systems and sensitive data. This reduces the potential for cyber-attacks, data breaches, and other security incidents. It also reduces disruptions to operations and the impact of the cyber incident, and, thereby, economic losses to firms. 2. Easier monitoring and management: Segmented networks can be more easily monitored and managed. Administrators can more effectively track network traffic and troubleshoot issues, as well as apply and enforce security policies on a per-segment basis, preventing cyber incidents. 3. Isolating issues: If a security breach or a technical problem occurs within one network segment, it can be more easily contained, preventing the issue from spreading throughout the entire network. This can minimize the impact on operations and reduce the time and resources required to address the issue.
§ 101.650 Cybersecurity Measures. (i) *Physical security.*	1. Prevention of unauthorized access: Physical security measures can prevent unauthorized individuals from accessing sensitive areas or equipment, such as data centers, server rooms, or computer systems, where critical information is stored. Direct access to critical assets like servers, computers, and storage devices can cause immediate and significant damage. For example, destruction of physical assets can be a greater financial burden and more difficult to recover from after an attack, and the loss or destruction of PII, loss of financial data, and online services being down during the attack may result in lost revenues. 2. Protection of hardware: Implementing physical security measures can protect valuable hardware and equipment from theft, tampering, or damage. This includes devices like servers, workstations, routers, switches, and storage devices. Physical security represents a first line of defense against an internal attack. Direct access would enable the attackers to bypass digital security measures like firewalls or

	encryption, directly impacting core systems and data. Protecting hardware may help prevent against the loss or destruction of PII, loss of financial data, lost revenue, and so on. 3. Deterrent to attackers: Visible physical security measures can deter potential attackers and make it more difficult for them to execute a cyber-attack. This can include security cameras, access control systems, or security personnel. Physical damage to infrastructure can take longer to recover from, be more costly, and is potentially irreversible. 4. Minimize the risk of insider threats: Physical security measures can help detect and prevent insider threats, such as employees or contractors attempting to access sensitive information or systems without authorization. Unlike digital breaches that often leave digital traces, physical breaches that are carried out by employees or contractors may go unnoticed until significant damage has occurred. Insider attacks can lead to loss of trust among customers, business partners, and stakeholders which could reduce the flow of commerce.

Cyber Incidents and Risks Addressed by the Proposed Rule

In May 2021, the Colonial Pipeline Company suffered a cyber-attack that disrupted the supply of fuel to the east coast of the United States. Colonial Pipeline Company was forced to shut down operations for 6 days, which created gasoline and fuel shortages. In addition to the direct financial losses incurred by Colonial Pipeline Company, the shutdown and subsequent shortages negatively impacted consumers, creating a 4 cents-per-gallon increase in average gasoline prices in the impacted areas, with price increases lingering even after the pipeline returned to operation.[106] Further, fuel shortages caused some fuel stations to temporarily close due to shortened supply, and some airlines in the impacted area were forced to scramble for additional fuel sources and added additional stops along select long-haul flights.[107] This was a ransomware cyber-attack that, based on public reports, was a result of the attackers using a legacy Virtual Private Network and Colonial Pipeline not having a two-factor authentication method, more commonly known as multifactor authentication, in place on its computer systems.[108] Therefore, it was possible for computer hackers to access Colonial Pipeline's computer systems with only a password. This proposed rule would likely prevent an attack similar to the Colonial Pipeline attack from occurring by requiring owners and operators of vessels, facilities, and OCS facilities to implement account security measures and multifactor authentication on their computer systems. An example of multifactor authentication would be requiring a five- or six-digit passcode after a password has been entered by company personnel. Multifactor authentication is part of account security measures in the proposed § 101.650.

The encryption of data in the proposed § 101.650 under data security measures may have relegated stolen data to being useless in the event of a cyber-attack. Furthermore, Colonial Pipeline would likely have benefitted from a penetration test, which they had not conducted, to ensure the safety and security of its critical systems. The proposed requirement of a penetration test would simulate real-world cyber-attacks that would help companies identify the risks to their computer systems and prepare the necessary measures to lessen the severity of a cyber-attack.

Additionally, under proposed § 101.650 for device security measures, documenting and identifying the network map and OT device configuration information, Colonial Pipeline may have been able to detect exactly where the connections to the affected systems were and may have been able to isolate the problem without having to shut down all pipeline operations, as it did temporarily, which greatly affected its fuel supply operations.

[101] Economic Report of the President *supra* note 1 at 370.

[102] Economic Report of the President *supra* note 1 at 370 and 327.

[103] Economic Report of the President *supra* note 1 at 362.

[104] Economic Report of the President *supra* note 1 at 382–383.

[105] Economic Report of the President *supra* note 1 at 342.

[106] Tsvetanov, T., & Slaria, S. (2021). The effect of the colonial pipeline shutdown on gasoline prices. Economics Letters, 209. *https://doi.org/10.1016/j.econlet.2021.110122.* Accessed December 14, 2023.

[107] Josephs, L. (2021). *Pipeline outage forces American Airlines to add stops to some long-haul flights, southwest flies in Fuel.* CNBC. *https://www.cnbc.com/2021/05/10/colonial-pipeline-shutdown-forces-airlines-to-consider-other-ways-to-get-fuel.html,* accessed January 18, 2024.

[108] U.S. Senate, Joseph Blount, Jr. Committee on Homeland Security & Governmental Affairs. ''Hearing Before the United States Senate Committee on Homeland Security and Governmental Affairs—Threats to Critical Infrastructure: Examining the Colonial Pipeline Cyber Attack.'' June 8, 2021. Washington, DC and via video conference. Text can be downloaded at *https://www.hsgac.senate.gov/hearings/threats-to-critical-infrastructure-examining-the-colonial-pipeline-cyber-attack/,* accessed June 28, 2023.

Lastly, Colonial Pipeline did not have a Cybersecurity Plan in place but did have an emergency response plan. With proposed §§ 101.630, Cybersecurity Plan, and 101.635, Drills and Exercises, a Cybersecurity Plan could have benefitted Colonial Pipeline because it includes periodic training and exercises that increase the awareness of potential cyber threats and vulnerabilities throughout the organization. A Cybersecurity Plan also creates best practices so company personnel have the knowledge and skills to identify, mitigate, and respond to cyber threats when they occur. Creating the Cybersecurity Plan would allow the CySO to ensure all aspects of the Plan have been implemented at a CySO's respective company. Improved awareness of potential cybersecurity vulnerabilities and the steps taken to correct them could have helped Colonial Pipeline identify its password weakness issue before it was exploited.

In another cyber-attack that occurred in 2017 against the global shipping company Maersk, computer hackers, based on public reports, exploited Maersk's computer systems because of vulnerabilities in Microsoft's Windows operating system. The malware was disguised as ransomware, which created more damage to Maersk's computer systems. In 2016, one year prior to the attack, IT professionals at Maersk highlighted imperfect patching policies, the use of outdated operating systems, and a lack of network segmentation as the largest holes in the company's cybersecurity. While there were plans to implement measures to address these concerns, they were not undertaken, leaving Maersk exposed and underprepared for the attack it faced in 2017. The effects of this attack were far-reaching. Beyond the direct financial losses incurred by Maersk (estimated at nearly $300 million), shipping delays and supply chain disruptions caused additional downstream economic losses that are much more difficult to quantify as shipments went unfulfilled for businesses and consumers, and trucks were forced to sit and wait at ports.[109] Under proposed § 101.650, cybersecurity measures such as patching would likely prevent a similar attack from occurring and help prevent such losses. Patching vessel, facility, and OCS facility computer systems would ensure they are not vulnerable to a cyber-attack because the latest software updates would be installed on these systems with periodic software patches.

Additionally, penetration testing may have identified the vulnerabilities in Maersk's computer systems. Regular cybersecurity drills and exercises may have enabled Maersk's employees to quickly identify the cyber threat and may have reduced the impact and longevity of the cyber-attack. Further, network segmentation as proposed in § 101.650(h) could have helped stop the spread of malware to all its computer systems, which ultimately crippled its operations. By separating networks, Maersk could have better isolated the attack and kept larger portions of its business open, meaning fewer financial losses and downstream economic impacts to other companies and consumers.

Resilience played a significant role in Maersk's ability to recover from the cyber-attack quickly. Company personnel worked constantly to recover the affected data and eventually restored the data after 2 weeks.[110] Proposed § 101.650 contains provisions for resilience, which owners and operators such as Maersk must possess to recover from a cyber-attack. However, with proper backups of critical IT and OT systems, Maersk may have been able to recover more quickly from the attack.

The Coast Guard emphasizes that this proposed rule might also have quantifiable benefits from reducing or preventing lost productivity from a cyber incident and possibly lost revenues from the time that critical IT and OT systems are inoperable as a result of a cyber incident, if one occurs. Such benefits would accrue to owners and operators of vessels and facilities, as well as to downstream participants in related commerce, and to the public at large. For instance, short-term disruptions to the MTS could result in increases to commodity prices, while prolonged disruptions could lead to widespread supply chain shortages. Short- and long-term disruptions and delays may affect other domestic critical infrastructure and industries, such as our national defense system, that depend on materials transported via the MTS.

The societal impacts from a cyber security incident such as the attack that occurred against Maersk are difficult to quantify. They may include the effects of delays in cargo being delivered, which could result in the loss of some or all of the cargo, especially if the cargo is comprised of perishable items such as food or raw goods, such as certain types of oil that would be later used in the supply chain to manufacture final goods such as food items. Delays themselves may result in the unfulfillment of shipping orders to customers as vessels wait offshore to enter a port, which would have the downstream effect of customers not receiving goods because delivery trucks would sit idle at ports until OT and IT systems either at the port or onboard vessels once again become operational after the attack. Other societal impacts could include, but are not limited to, delays in shipments of medical supplies that may be carried onboard vessels that would not be delivered on time to individuals and medical institutions who rely on these supplies for their healthcare needs and service, respectively. Therefore, it should be noted that a cyber-attack may have considerable economic impacts on multiple industries in the United States such as, but not limited to, healthcare, food, transportation, utilities, defense, and retail. It should also be noted that the Coast Guard is not able to estimate, quantify, or predict the societal harm of shipping delays from a cyber-attack on the MTS or the economic impact it could cause because it would be dependent on many variables such as: the type of attack, the severity of the attack, the length of the attack, the response by the affected parties to the attack, and other variables.

The benefits of this NPRM could be particularly salient in the case of a coordinated attack by a malicious actor seeking to disrupt critical infrastructure for broader purposes. For instance, in a circumstance where the rule's provisions prevented a terrorist or nation-state actor [111] from using a cyber-

[109] Andy Greenberg, ''The Untold Story of NotPetya, the Most Devastating Cyberattack in History''; *WIRED;* August 22, 2018; *https://www.wired.com/story/notpetya-cyberattack-ukraine-russia-code-crashed-the-world/,* accessed June 28, 2023.

[110] News reports suggest this recovery time was luck and not due to existing cybersecurity practices. ''Maersk staffers finally found one pristine backup in their Ghana office. By a stroke of luck, a blackout had knocked the server offline prior to the NotPetya attack, disconnecting it from the network. It contained a single clean copy of the company's domain controller data, and its discovery was a source of great relief to the recovery team.'' See Daniel E. Capano, ''Throwback Attack: How NotPetya accidentally took down global shipping giant Maersk,'' September 30, 2021, *https://www.industrialcybersecuritypulse.com/threats-vulnerabilities/throwback-attack-how-notpetya-accidentally-took-down-global-shipping-giant-maersk/,* accessed July 25, 2023.

[111] For instance, the Office of the Director of National Intelligence recently reported on the cyber espionage and attack threats from multiple nation-states with respect to U.S. critical infrastructure. *See* Office of the Director of National Intelligence, Annual Threat Assessment of the U.S. Intelligence Community at 10, 15, 19 (Feb. 6, 2023), available at *https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf* (last visited July 31, 2023) (describing cyber threats associated with China, Russia, and Iran). A recent multi-national cybersecurity advisory noted that ''Russian state-sponsored cyber actors have demonstrated capabilities to compromise IT networks; develop mechanisms to maintain long-

Continued

attack in connection with a broader scheme that threatened human life, a strategic waterway, or a major port, the avoided economic and social costs may be substantial.

With respect to the latter, as noted by Cass R. Sunstein in *Laws of Fear: Beyond the Precautionary Principle (The Seeley Lectures, Series Number 6),* ''fear is a real social cost, and it is likely to lead to other social costs.'' [112] In addition, Ackerman and Heinzerling state ''terrorism 'works' through the fear and demoralization caused by uncontrollable uncertainty.'' As devastating as the direct impacts of a successful cyber-attack can be on the U.S. marine transportation system and supply chain, avoiding the impacts of the more difficult to measure indirect effects of fear and demoralization in connection with a coordinated attack would also entail substantial benefits. However, the Coast Guard is not able to quantify these potential benefits because they would depend on the incident, the duration of the incident, and how various private and public actors would respond to the incident.

Through the provisions of this proposed rule, benefits from implementing and enhancing a cybersecurity program may likely increase over time. By requiring that a range of cybersecurity measures be implemented, such as account security measures, vulnerability scanning, and automated backups, an organization can drastically reduce the downtime it takes to remedy a breach. Education and training can also help guide employees to identify potential email phishing scams, suspect links, and other criminal efforts, which will likely increase protection against external and internal threats before they occur. Further, because so many of the proposed provisions include periodic updates and modifications following tests or assessments, we believe that cybersecurity programs will continue to improve each time they are tested and reexamined by the implementing entity.

This NPRM proposes to address the challenges facing businesses today by requiring the implementation of safeguards to cybersecurity on the MTS. In adopting these measures, owners and operators of U.S.-flagged vessels, facilities, and OCS facilities can take preemptive action before malicious actors and the threats they pose take advantage of vulnerabilities in their critical IT and OT systems.

Breakeven Analysis

While the Coast Guard is able to describe the qualitative benefits that this proposed rule may have for owners and operators of U.S.-flagged vessels, facilities, and OCS facilities, and others who would be affected by a cyber-attack, the Coast Guard is not able to quantify and monetize benefits. One reason is that it is challenging to project the number of cyber-attacks that would occur over a relevant period without this proposed rule; another reason is that it is challenging to quantify the magnitude of the harm from such attacks. It is further challenging to quantify the marginal impact of this rulemaking, both because the Coast Guard cannot quantify the effectiveness of the provisions included in the proposals (how many attacks would be prevented or how much damage would be mitigated) and because the Coast Guard has uncertainty around the appropriate baseline to consider regarding what cybersecurity actions are being taken for reasons beyond this rulemaking. Without such projections and quantification, it is not possible to monetize the benefits of the proposed rule in terms of harms averted. As an alternative, we present a breakeven analysis for this proposed rule.

Thus, this breakeven analysis only considers the $80 million in costs (at a 7 percent discount rate) that Coast Guard was able to quantify. The Coast Guard notes that, based on available data, there are likely additional costs the Coast Guard is not able to monetize. Furthermore, the downstream costs and impacts resulting from a cyber-attack on an individual firm are challenging to quantify given the overlapping and intersecting nature of the supply chain. However, research examining the overall impacts of the NotPetya cyber-attack (one of the largest cyber-attacks in history), estimates societal impacts and downstream costs nearly four times greater than the direct impact on the firm suffering the initial attack.[113] The Coast Guard requests comment on this finding and its relevance to the impact of cyber-attacks in the maritime transportation system specifically. To the extent that the costs of this proposed rule are higher than the Coast Guard's monetized estimate, the amount of costs this proposed rule must prevent would also need to increase to justify this proposed rule. The proposed rule would set the minimum requirements for companies to address their cybersecurity posture and provides the flexibility for these companies to take the necessary action to protect themselves from a cyber-attack.

OMB's Circular A–4 (September 17, 2003) states that, in the case of ''non-quantified factors,'' agencies may consider the use of a threshold (''breakeven'') analysis.[114] A breakeven analysis provides calculations to show how small or large the value of the non-quantified benefits could be before the proposed rule would yield zero net benefits. For this proposed rule, we calculate breakeven results from one example, using the estimated cost of a real-world cyber-attack on a regulated entity. Global shipper Maersk reported that it suffered an estimated $300 million in business costs and income losses due to a cyber-attack.[115] The actual losses were likely much larger than the $300 million in business impacts to Maersk due to impacts on Maersk's customers.

Over the past decade, there have been numerous cyber-attacks—not just on the international and domestic maritime sector, but on other sectors of the U.S. and global economies.[116] In a paper published by Akpan, Bendiab, Shiaelis, Karamperidis, and Michaloliakos (2022), the authors state that the maritime sector has shown a 900-percent increase in cybersecurity breaches as it enters the digital era.[117] The paper adds that many automated systems on vessels, by their nature, are vulnerable to a cyber-attack, and

term, persistent access to IT networks; exfiltrate sensitive data from IT and [OT] networks; and disrupt critical [ICS/OT] functions by deploying destructive malware.'' *See* Joint Cybersecurity Advisory, Russian State Sponsored and Criminal Cyber Threat to Critical Infrastructure, Alert AA22–110A (April 20, 2022), available at: *https://www.cisa.gov/uscert/ncas/alerts/aa22-110a* (accessed December 14, 2023).

[112] Cass R. Sunstein, *Laws of Fear,* at 127; Cambridge University Press (2005).

[113] For example, analysis of the NotPetya attack revealed overall estimates of impacts on customers four times greater than those on the firms directly impacted by the attack. For more details, please see: Matteo Crosignani et al, ''Pirates without Borders: The Propagation of Cyberattacks through Firms' Supply Chains,'' Federal Reserve Bank of New York Staff Reports, No. 937 (July 2020, revised July 2021), *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr937.pdf,* accessed July 7, 2023.

[114] Readers can access OMB Circular A–4 dated September 17, 2003, at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf,* accessed July 20, 2023.

[115] Greenberg, *supra* note 109.

[116] NIST provides a definition for the term ''cyber-attack.'' Readers can access this definition at *https://csrc.nist.gov/glossary/term/cyber_attack;* accessed July 20, 2023.

[117] Frank Akpan, Gueltoum Bendiab, Stavros Shiaeles, Stavros Karamperidis, and Michalis Michaloliakos; ''Cybersecurity Challenges in the Maritime Sector''; *Network;* March 7, 2022; page 123; *https://www.mdpi.com/2673-8732/2/1/9/pdf?version=1646653034;* accessed May 2023. MDPI has open access to journals and published papers. Additionally, NIST provides a definition of the term *breach,* although not specifically related to cybersecurity at, *https://csrc.nist.gov/glossary/term/breach,* accessed July 2023.

include navigation systems such as Electronic Chart Display and Information Systems, Global Positioning Systems, and Global Navigation Satellite Systems. Other affected systems include radar systems; Automatic Identification Systems; communication systems; and systems that control the main engine, generators, among others (Akpan et al., 2022).[118] Furthermore, the paper presents the vulnerabilities and consequences of cyber-attacks to ships' systems ranging from hijacking ships, destroying and stealing data, damaging equipment, disrupting vessel operations, uploading malware to computer systems, losing lives and cargo, and more (Akpan et al., 2022).[119]

In a paper by Jones (2016), the author noted that outdated systems are vulnerable to cyber-attacks.[120] The paper refers to a study that states 37 percent of servers running Microsoft failed to download the correct patch and left systems vulnerable to a cyber-attack. Additionally, Jones states that ''many ships were built before cyber security was a major concern'' and goes on to state that many newer software systems are not compatible with older software systems.

Akpan, et al. (2022) also list a few cyber-attacks that have occurred in the maritime transportation sector in the past few years. Allianz Global Corporate and Specialty (AGCS) reports that there was a record 623 million ransomware attacks in 2021.[121] In a paper published by Meland, Bernsmed, Wille, Rodseth, and Nesheim (2021), the authors state that 46 successful [122] cyber-attacks with a significant impact on the maritime industry have occurred worldwide between 2010 and 2020, or an average of 4.2 attacks a year.[123] Of the 46 attacks, the most notable cyber-attack stated by the authors of this paper, and earlier in the Benefits discussion of this preamble, occurred in 2017 against the shipping company Maersk. Maersk estimated their economic loss to be nearly $300 million in the form of costs and reduced income to a specific firm as the result of the incident (Meland et al., 2021). Based on other reports, the economic damage that resulted from this incident may have been considerably more because of the downstream impacts that this incident may have had on customers and other companies who rely on the shipping industry for their businesses.[124]

Monetizing the impact of the cyber-attack on Maersk allows the Coast Guard to create a breakeven point as it relates to a specific company (risk reduction percentage and the number of years the proposed rule would have to prevent one incident annually) for this proposed rule using the estimated costs of a cyber-attack that occurred against a shipping company. The breakeven point would be higher if effects on third parties were considered.

Although this cyber-attack did not occur against a U.S. company, and represents one attack against a single company, it impacted a large shipping company and affected almost one-fifth of global shipping operations, according to Meland, et al. (2021). The Coast Guard is using this incident as an example while understanding that the economic impact of a cyber-attack can vary greatly, depending upon the severity of a cyber-attack and the surrounding conditions. We acknowledge that the Maersk incident we use in this breakeven analysis may not be representative of other cyber-attacks that occur in the future in the maritime sector. Meland, et al. (2021), also state that a majority of cyber-attacks in the maritime industry were not reported.

Using this example of a cyber-attack with our explanation in the benefits section of the RIA of how we believe this proposed rule may prevent such an attack, we can estimate a breakeven point. We take the estimated annualized [125] cost of this proposed rule using a 7-percent discount rate ($80.1 million)—which may be an underestimation of the actual costs that this proposed rule may impose on industry—and divide by the avoided loss from the Maersk attack ($300 million)—a loss that this proposed rule may prevent noting that the reported business loss of the Maersk attack may be an underestimate of the actual impact of the attack on social welfare.[126] From there, we obtain an annual risk-reduction value to the affected firm of approximately 0.267, or about 27 percent ($80.1 million ÷ $300 million), which is the minimum annual risk-reduction percentage that would need to occur to justify this proposed rule to the affected firm. If we state this another way, this proposed rule would need to reduce the risk or the likelihood of one or more successful cyber-attacks, similar to this attack, by approximately 27 percent annually for the benefits to justify the estimated costs to the affected firm. To be clear, the Coast Guard does not have an estimate for how much this proposed rule would actually reduce the risk of successful cyber-attacks on the MTS.

The Coast Guard estimates the number of years the proposed rule would have to prevent a cyber-attack to break even, though the Coast Guard cautions that it does not know the degree to which the proposed rule would prevent cyber-attacks. For an

[118] Akpan et al., *supra* note 117, at 129–30.

[119] Id.

[120] Kevin Jones, ''Threats and Impacts in Maritime Cyber Security,'' April 15, 2016, pages 7 and 8, *https://pearl.plymouth.ac.uk/handle/10026.1/4387?show=full;* accessed May 22, 2023.

[121] AGCS is a global insurance company. Readers can access this report at *https://www.agcs.allianz.com/news-and-insights/news/cyber-risk-trends-2022-press.html.* The Coast Guard accessed this report in May 2023. AGCS's website is, *https://www.agcs.allianz.com.*

[122] The analysis did not include mere attempts to attack, unsuccessful attacks, or attacks categorized as ''white hat'' attacks, which are attempts to infiltrate cybersecurity systems to identify vulnerabilities in software, hardware, or networks. Definition of ''white hat hacking'' at *https://www.fortinet.com/resources/cyberglossary/whitehat-security,* accessed July 20, 2023.

[123] The title of this paper is ''A Retrospective Analysis of Maritime Cyber Security Incidents.'' Readers can access this paper at *https://www.semanticscholar.org/paper/A-Retrospective-Analysis-of-Maritime-Cyber-Security-Meland-Bernsmed/6caba4635f991dd1d99ed98cf640812f8cae16ba* (pages 519 and 523). The Coast Guard accessed this pdf link in May 2023. Readers may need to create an account to view this paper, other papers, and research literature. The paper is also available at, *https://www.transnav.eu.* The authors of the study noted that shipping is a very diverse sector and that their source materials tend to focus on larger ships and operations. The authors stated that it is highly unlikely that this study has captured all the different cyber incidents over the sector. Additionally, the authors did not define what a ''significant impact'' entails; nevertheless, in some cyber-attacks they cited, they provided the effect of an attack in their description of the incident.

[124] This figure does not include indirect effects on third parties, such as logistics firms and others who may have experienced losses because of this incident. See, for example, Matteo Crosignani et al, ''Pirates without Borders: The Propagation of Cyberattacks through Firms' Supply Chains,'' Federal Reserve Bank of New York Staff Reports, No. 937 (July 2020, revised July 2021), *https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr937.pdf,* accessed July 7, 2023 (analyzing a sample of customers indirectly affected by the NotPetya attack, and concluding that ''the customers of these directly hit firms [of the NotPetya attack] recorded significantly lower profits relative to similar but unaffected firms,'' with one measure of effects on customers being four times higher, in the aggregate, than effects on firms directly affected by the attack); Andy Greenberg, *Wired Magazine,* ''The Untold Story of NotPetya, the Most Devastating Cyberattack in History'' (August 22, 2018), *https://www.wired.com/story/notpetya-cyberattack-ukraine-russia-code-crashed-the-world/,* accessed July 7, 2023 (describing indirect costs to logistics firms and other costs associated with a large-scale disruption to the global supply chain).

[125] We use annualized costs because we assume this proposed rule would result in constant reduced probability in every year following this proposed rule's implementation. Stated differently, we assume the risk reduction to be constant each year.

[126] The loss estimate used for the Maersk attack also represents a potential underestimation as it does not include indirect effects on third parties, such as logistics firms and others who may have experienced losses because of this incident. See footnote 113.

incident similar to the Maersk cyber-attack, we estimate this proposed rule would have to prevent at least one attack of this type (with the same avoided losses) approximately every 3.75 years ($300 million ÷ $80.1 million) to break even. Additionally, the losses from similar cyber-attacks may be lower given that this proposed rule may have the intended effect of mitigating the size of losses from these types of attacks. Readers should also note that the losses estimated from this incident were reported by Maersk and not from an independent source. Table 51 summarizes the breakeven results of this NPRM.

Table 51. Summary of Breakeven Results of Proposed Rule

Breakeven Example	Annualized Cost of Proposed Rule (7% discount rate)	Avoided Losses	Required Risk Reduction	Required Frequency of Averted Cyber-attacks
Calculations	*a*	*b*	$c = a \div b$	$d = b \div a$
Maersk Attack	$80.1 million	$300 million (single-event loss)	0.267	One every 3.75 years

Analysis of Alternatives

Cybersecurity has become a critical issue across all sectors. The maritime industry, a pivotal component of the global supply chain, is no exception. With an increasing amount of sensitive data being stored and processed online, regulations are needed to protect this data from unauthorized access and breaches. As cyber threats grow more sophisticated and pervasive, it has become increasingly apparent that clear and actionable cybersecurity regulations are needed for the maritime industry. Furthermore, cybersecurity is not just a matter of individual or business concerns, it is also a national security issue. Robust regulations help protect critical infrastructure and government services from cyber-attacks that could threaten national stability. For instance, unauthorized access to a ship's navigation system could lead to disastrous consequences, including collisions or groundings, which can put people at risk and lead to economic losses for the affected entities and the U.S. economy. To prevent incidents like this, the Coast Guard has included several proposed regulatory provisions that identify potential network and system vulnerabilities. Of these provisions, penetration testing is one of the more intensive and costly, but would provide important benefits, including demonstrating where and how malicious actors could exploit system weaknesses, so that organizations can better prioritize cybersecurity upgrades and improvements based on risk.

Given the relatively high costs associated with penetration testing, and the significant vulnerability risks associated with not performing these tests, the Coast Guard contemplated four alternatives: (1) maintain the status quo; (2) require annual penetration testing and submission of results to the Coast Guard; (3) allow penetration testing at the discretion of the owner or operator; or (4) require penetration testing every 5 years in conjunction with the submission and approval of Cybersecurity Plans (the preferred alternative).

(1) Status Quo

Currently. the Coast Guard does not require owners and operators of facilities, OCS facilities, and U.S.-flagged vessels to conduct penetration tests as a part of their security plans. Despite this, survey data indicates that some MTS entities are already conducting penetration tests for their organizations as they face an evolving cyber threat landscape. While we expect the adoption of penetration testing policies to grow over time, 32 percent of facility and OCS facility owners and operators (see footnote number 69) and an unknown number of U.S.-flagged vessel owners and operators have yet to add this test to their suite of cybersecurity measures.

Maintaining the status quo by not requiring any penetration testing would reduce the costs for affected owners and operators of the proposed rule by $28,549,669, with an annualized cost reduction of $4,064,831 over a 10-year period of analysis, discounted at 7 percent, when compared to the preferred alternative. However, not requiring penetration testing would leave a significant gap in the vulnerability detection capability of a large portion of the MTS, exposing MTS stakeholders and the wider U.S. economy to greater risk. Without periodic penetration tests to determine weaknesses in critical IT and OT systems, the affected population puts itself at greater risk of cyber incidents, which can endanger employees, consumers, and the supply chain. As a result, the Coast Guard rejected the status quo alternative and has proposed requiring penetration tests every 5 years, aligned with the renewal of a Cybersecurity Plan, as discussed in alternative (4), below.

(2) Annual Penetration Testing

Penetration testing represents a crucial element of a comprehensive cybersecurity strategy. It involves proactively testing computer systems, networks, and software applications to identify vulnerabilities that might be exploited by attackers. Because penetration testing provides a much more in-depth review of the vulnerabilities and weaknesses of IT and OT systems, the Coast Guard considered an alternative that would require it on an annual basis. Through annual penetration testing, an organization would be better equipped to identify weaknesses within their systems and prepare for real cyber threats. However, the costs and resources needed for penetration testing can be significant. As such, annual testing might impose an undue burden on the affected organizations.

Based on Coast Guard estimates, penetration testing would cost approximately $5,000 per test, plus an additional $50 per IP address at the organization to capture network complexity. By increasing the frequency of these tests, the costs to facilities, OCS facilities, and U.S. flagged vessels would increase significantly. Under the preferred alternative, which requires penetration testing every 5 years in conjunction with the submission and renewal of a Cybersecurity Plan, the

Coast Guard estimates total costs of penetration testing to industry of $28,549,669 and annualized costs of $4,064,831 over a 10-year period of analysis, discounted at 7 percent (see the *Penetration Testing* section of the RIA for more details on the calculations underlying this estimate). Requiring annual penetration testing would increase industry costs for penetration testing by over 300 percent, to approximately $134,021,173 total and $19,081,600 annualized over a 10-year period of analysis, discounted at 7 percent. This alternative would result in an 18.7 percent increase in the total cost of the rule, bringing the total cost to industry and the government to approximately $668,212,472 total and $95,138,423, annualized, over a 10-year period of analysis, discounted at 7 percent. The Coast Guard believes these increased costs are prohibitive and ultimately decided to reject this alternative. See table 52 for the costs associated with annual penetration testing over a 10-year period of analysis.

Using the estimated annualized cost of this alternative of approximately $95.1 million, and using the Maersk cyber-attack, we estimate the number of years this alternative would have to break even and to prevent at least one or more attacks of this type annually (with the same avoided losses) to be approximately 3.15 years ($300 million ÷ $95.1 million), compared with 3.75 years with the chosen alternative.

Table 52: Estimated Penetration Testing Costs of the Proposed Alternative for Facilities, OCS Facilities, and U.S.-Flagged Vessels (2022 Dollars, 10-year Discounted Costs, 7- and 3-percent Discount Rates)

Year	Facilities and OCS Facilities Cost	U.S.-Flagged Vessel Cost	Total Cost	7 Percent	3 Percent
1	$4,758,900	$14,322,700	$19,081,600	$17,833,271	$18,525,825
2	$4,758,900	$14,322,700	$19,081,600	$16,666,608	$17,986,238
3	$4,758,900	$14,322,700	$19,081,600	$15,576,270	$17,462,367
4	$4,758,900	$14,322,700	$19,081,600	$14,557,261	$16,953,754
5	$4,758,900	$14,322,700	$19,081,600	$13,604,917	$16,459,956
6	$4,758,900	$14,322,700	$19,081,600	$12,714,876	$15,980,540
7	$4,758,900	$14,322,700	$19,081,600	$11,883,061	$15,515,087
8	$4,758,900	$14,322,700	$19,081,600	$11,105,665	$15,063,191
9	$4,758,900	$14,322,700	$19,081,600	$10,379,126	$14,624,458
10	$4,758,900	$14,322,700	$19,081,600	$9,700,118	$14,198,502
Total	**$47,589,000**	**$143,227,000**	**$190,816,000**	**$134,021,173**	**$162,769,918**
Annualized				**$19,081,600**	**$19,081,600**

Note: Totals may not sum due to independent rounding.

(3) Penetration Testing at the Discretion of an Owner or Operator

Given the cost of penetration testing, particularly for small businesses with limited resources, the Coast Guard considered an alternative that would make penetration an optional provision. This would allow those in the affected population to choose to prioritize different cybersecurity measures. The decision to undertake penetration testing could be made as a result of thorough risk assessments for each organization, considering its operational environments, risk profile, and pertinent threats.

Under this alternative, an owner or operator, or a CySO on their behalf, could determine when a penetration test is warranted, if at all. Because the testing would be optional, we assume that fewer owners and operators would conduct penetration testing in a given year, however, we have no way of knowing how many this would be. If none of the affected owners or operators elected to conduct penetration testing, this could hypothetically reduce costs for owners and operators for penetration testing down to zero, meaning a cost reduction of $28,549,669 and an annualized cost reduction of $4,064,831 over a 10-year period of analysis, discounted at 7 percent when compared to the preferred alternative.

However, the value of penetration testing for most organizations cannot be overstated. When integrated into a comprehensive cybersecurity strategy, penetration testing can be very effective in identifying vulnerabilities. By fostering a proactive rather than reactive approach in cybersecurity, penetration testing enables organizations to stay ahead of potential threats and better understand how malicious actors could exploit weaknesses in IT and OT systems. This is particularly crucial given the quickly evolving landscape of cyber threats. In addition, because the costs of a potential cyber incident could be high, with potential downstream economic impacts, the Coast Guard must prioritize some level of oversight on provisions that could lessen the risk of a cyber incident. Therefore, we rejected this alternative, despite the potential cost savings. It should be noted, however, that according to proposed § 101.665, owners and operators of facilities, OCS facilities, and U.S.-flagged vessels can seek a waiver or an equivalence determination if they are unable to meet the proposed requirements, penetration testing included.

With this alternative, the estimated annualized cost decreases to approximately $76.1 million compared

with the chosen alternative. Using the Maersk cyber-attack, we estimate the number of years for this alternative to breakeven and to prevent at least one or more attacks of this type annually (with the same avoided losses) to be approximately 3.9 years ($300 million ÷ $76.1 million), compared with 3.75 years with the chosen alternative.

(4) Penetration Testing in Conjunction With Cybersecurity Plan Submission (Preferred Alternative)

In an effort to best balance the cost of annual penetration testing with the risk of leaving the MTS vulnerable to cyber incidents with even more costly impacts, the Coast Guard considered requiring penetration tests every 5 years, aligned with the renewal of a Cybersecurity Plan. This is the preferred alternative because penetration testing would supplement other cybersecurity measures in the proposed regulations such as vulnerability scanning, annual Cybersecurity Assessments and audits, quarterly drills, and annual exercises, which may limit the necessity of annual penetration testing. However, making penetration testing an optional requirement for organizations could inadvertently leave them more exposed to cyber-attacks and limit the Coast Guard's understanding of the MTS' cybersecurity readiness. Under the preferred alternative, owners and operators are still free to conduct more frequent tests at their discretion if they would like to increase their awareness of vulnerabilities. Alternatively, they could apply for waivers or exemptions if they feel like they cannot meet the proposed requirements related to penetration testing. Please see the ''Breakeven Analysis'' section of this RIA for the breakeven estimates of this chosen alternative.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Coast Guard has prepared this Initial Regulatory Flexibility Analysis (IRFA) that examines the impacts of this proposed rule on small entities.

Per the RFA, a small entity may be a small independent business, defined as one independently owned and operated, organized for profit, and not dominant in its field under the Small Business Act (5 U.S.C. 632); a small not-for-profit organization, defined as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field; or a small governmental jurisdiction, defined as a locality with fewer than 50,000 people.

Section 603(b) of the RFA prescribes the content of the IRFA, which addresses the following:

(1) A description of the reasons why action by the agency is being considered;

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule;

(3) A description of and, where feasible, an estimate of the number of small entities to which this proposed rule will apply;

(4) A description of the projected reporting, recordkeeping, and other compliance requirements to comply with the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(5) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with this proposed rule; and

(6) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

1. Description of the reasons why action by the agency is being considered.

This proposed rule helps address current and emerging cybersecurity threats to maritime security in the MTS. Cybersecurity risks result from vulnerabilities in the operation of vital systems, which increase the likelihood of cyber-attacks on facilities, OCS facilities, and vessels. Cyber-related risks to the maritime domain are threats to the critical infrastructure that citizens and companies depend on to fulfill their daily needs.

Cyber-attacks on public infrastructure have raised awareness of the need to protect systems and equipment that facilitate operations within the MTS because cyber-attacks have the potential to disable the IT and OT of vessels, facilities, and OCS facilities. Autonomous vessel technology, automated OT, and remotely accessible machines provide additional opportunities for cyber-attackers. These systems and equipment are prime targets for cyber-attacks that could potentially disrupt vessel movements and shut down port operations, such as loading and unloading cargoes. Section III.A., *The Problem We Seek to Address,* and Section IV.A, *The Current State of Cybersecurity in the MTS* in this NPRM provide more details.

2. A succinct statement of the objective of, and legal basis for, the proposed rule.

The objective of this proposed rule is to establish minimum performance-based cybersecurity requirements for U.S.-flagged vessels, facilities, and OCS facilities subject to MTSA. The proposed requirements include account security measures, device security measures, data security measures, governance and training, risk management, supply chain management, resilience, network segmentation, reporting, and physical security.

The Coast Guard has statutory authority to promulgate regulations under 43 U.S.C. 1333(d); 46 U.S.C. 3306, 3703, 70102 through 70104, 70124; and DHS Delegation No. 00170, Revision No. 01.3. Section 4 of the Outer Continental Shelf Lands Act of 1953, codified as amended at 43 U.S.C. 1333(d), authorizes the Secretary to promulgate regulations with respect to safety equipment and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices on the OCS. This authority was delegated to the Coast Guard by DHS Delegation No. 00170(II)(90), Revision No. 01.3.

Sections 70102 through 70104 in Title 46 of the U.S.C. authorize the Secretary to evaluate for compliance vessel and facility vulnerability assessments, security plans, and response plans. Section 70124 authorizes the Secretary to promulgate regulations to implement Chapter 701, including sections 70102 through 70104, dealing with vulnerability assessments for the security of vessels, facilities, and OCS facilities; VSPs, FSPs, and OCS FSPs; and response plans for vessels, facilities, and OCS facilities. These authorities were delegated to the Coast Guard by DHS Delegation No. 00170(II)(97)(a) through (c), Revision No. 01.3.

Section III.C. of this preamble, *Legal Authority to Address This Problem,* provides more details on the Coast Guard's legal basis for these actions.

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

This section considers the number of small entities likely to be affected by this NPRM. First, we determine which owners of facilities, OCS facilities, and vessels in the affected population qualify as small businesses, small not-for-profit organizations, or small governments. Then, we compare reported annual revenues among the identified small entities with annual

compliance costs estimated by the Coast Guard.

Number of Small Entities Affected

To identify the portion of the affected facility, OCS facility, and vessel owners that are likely to be small businesses and small not-for-profit organizations, we match business-and organization-specific information with size standards for small businesses published in the Small Business Administration's (SBA) Table of Small Business Size Standards.[127] [128] The SBA defines small businesses in terms of firm revenues or number of employees. Size thresholds of small businesses differ depending on the industry sector, defined in terms of NAICS codes; therefore, the analysis also requires us to identify the relevant NAICS codes for the affected facility and vessel owners. To accomplish this, we take the following steps:

(1) Identify the names and addresses of owners of facilities, OCS facilities, and U.S.-flagged vessels using information contained in the Coast Guard's MISLE database; [129]

(2) Upload the names and location information to D&B Hoovers' website and rely on D&B Hoovers' proprietary algorithm to match entities with the information stored in its database; [130]

(3) Collect the primary NAICS code, ownership type,[131] number of employees,[132] and annual revenue information from entities that matched the information in D&B Hoovers' database; and

(4) Determine which owners are small businesses or small not-for-profit organizations based on the SBA's definitions of small businesses matched to each NAICS code.[133]

The RIA considers facilities, OCS facilities, and vessels owned by governments or quasi-government organizations separately.[134] Small governmental jurisdictions are defined as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 (5 U.S.C. 601). After using D&B Hoovers to identify a sample of Government owners, the 2020 U.S. Census informed our classification of Government jurisdictions.[135]

Facility and OCS Facility Owners

MISLE identifies 3,411 regulated facilities and OCS facilities. Of the facilities, 2,663 are associated with 1,334 unique owners, and 748 lack owner information.[136] Like the cost analysis, this analysis assumes the 748 facilities lacking owner information in MISLE are associated with an additional 374 unique owners, under the assumption that the average facility owner is associated with 2 regulated facilities. In total, this analysis assumes a total of 1,708 affected owners and operators of facilities and OCS facilities.

The names and location information of all 1,334 identifiable affected owners were uploaded to D&B Hoovers, and the search function returned information for 786 entities (59 percent) with at least one identified NAICS code. The 548 unmatched entities either do not have business profiles in D&B Hoovers or the owner's name and location information stored in MISLE does not match the business records on the website. Included among the owners that matched with records in D&B Hoovers were 770 businesses (98 percent of the matched owners), 11 not-for-profit organizations (1 percent), and 5 Governments (1 percent). The 770 businesses categorize into 186 NAICS codes.

Table 53 reports the number of businesses in the top 10 most frequently occurring NAICS codes, as well as the portion that meet the definition of small business. An additional row summarizes the businesses across the remaining 176 NAICS codes. As presented, 615 of 770 businesses (80 percent) qualify as small based on their revenue or number of employees. Additionally, the 11 not-for-profit organizations include 10 small organizations (91 percent). The 5 Government jurisdictions include no small Governments (0 percent). Under the assumptions that (1) the 374 owners of facilities and OCS facilities without owner information in MISLE are small entities and (2) all 548 of facilities and OCS facilities for which D&B Hoovers profiles are not available are small entities, we estimate 1,533 total small entities are affected by the requirements for facilities and OCS facilities in this proposed rule (90 percent of affected facility owners) (374 owners without identifying information in MISLE + 548 unmatched facility owners + 601 matched small businesses + 10 matched small organizations + 0 matched small Governments= 1,533 total small entities). See table 53.

[127] SBA. ''Table of size standards.'' Available at: *https://www.sba.gov/document/support-table-size-standards.* Effective March 17, 2023, accessed July 21, 2023.

[128] To determine whether not-for-profit organizations are small entities, we rely on the self-identified NAICS code reported by each organization to D&B Hoovers and the SBA's small business size standard for that NAICS code. Any organization qualifying as a small business pursuant to SBA's threshold is considered to be ''not dominant in its field'' (15 U.S.C. 632) and is categorized as a small organization. If no NAICS code is available, we assume the organization is small.

[129] The Coast Guard provided MISLE data to Industrial Economics, Incorporated (IEc) on June 2, 2023, and June 9, 2023.

[130] This process relies on D&B Hoovers' automated search functions to identify the business profiles associated with a list of businesses, not manual business-by-business searching. This search functionality is described in more detail in D&B Hoovers (2019, page 25). You can find this resource at *https://app.dnbhoovers.com/product/wp-content/uploads/2020/10/DB-Hoovers-User-Guide-920.pdf.* The matched data were downloaded from D&B Hoovers on June 20, 2023, accessed via: *app.dnbhoovers.com/login,* July 21, 2023.

[131] D&B Hoovers provides ownership type for the matched entities. This analysis considers all entities marked as ''private,'' ''public,'' or ''partnership'' as businesses. ''Nonprofit'' ownership status is used to identify not-for-profit organizations.

[132] D&B Hoovers contains data fields for both ''employees at single site'' and ''employees at all sites.'' When both numbers are provided, we default to using the ''employees at all sites'' entry to capture the size of the larger parent company. When only the ''employees at single site'' information is available, we use that entry instead.

[133] In some cases, SBA provides a size standard for the NAICS code as well as an ''exception'' for a sub-set of businesses with specific activity types. This analysis does not consider the ''exceptions'' when classifying businesses and not-for-profit organizations as small.

[134] Government owners are identified using the ''public sector'' ownership status in D&B Hoovers. In most cases, the entities that fall into the ''public sector'' ownership type also have 92 NAICS codes.

[135] 2020 U.S. Census data accessed from: *https://www.census.gov/quickfacts/,* accessed July 21, 2023.

[136] Owners of facilities and OCS facilities are determined using various data files in MISLE. Owner information is not reported in a standard format for facilities and OCS facilities; therefore, considerable data cleaning was necessary to identify unique owner names and location information. This analysis assumes the sample of facilities with owner information identified is broadly representative of all regulated facilities. Additionally, D&B Hoovers further consolidated the list of affected owners of facilities and OCS facilities by identifying unifying parent companies for some owners thought to be independent businesses or organizations based on MISLE data.

Table 53: Number of Small Entities Affected by the Proposed Rule's Cybersecurity Requirements for Facilities and OCS Facilities

NAICS Code	Type of Industry	Size Standard Type	Size Standard Used	Total Affected Owners	Number of Affected Owners Classified as Small	Percent Small
488320	Marine Cargo Handling	Revenue	$47 million	57	39	68%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	Employees	200	37	33	89%
221118	Other Electric Power Generation	Employees	650	22	21	95%
324110	Petroleum Refineries	Employees	1,500	22	21	95%
493190	Other Warehousing and Storage	Revenue	$36.5 million	22	9	41%
424710	Petroleum Bulk Stations and Terminals	Employees	225	19	19	100%
483212	Inland Water Passenger Transportation	Employees	550	18	18	100%
336611	Ship Building and Repairing	Employees	1,300	17	15	88%
488510	Freight Transportation Arrangement	Revenue	$20 million	17	11	65%
493110	General Warehousing and Storage	Revenue	$34 million	17	9	53%
176 Additional NAICS Codes	Various	Various	Various	522	420	80%
Matched Businesses	**Various**	**Various**	**Various**	**770**	**615**	**80%**
Matched Not-for-Profit Organizations	**Various**	**Various**	**Various**	**11**	**10**	**91%**
Matched Governments	**Public Sector**	**Population**	**50,000**	**5**	**0**	**0%**
Unmatched Facility Owners				**548**	**548**	**100%**
Owners Without Identifying Information in MISLE				**374**	**374**	**100%**
Total Affected Owners of Facilities and OCS Facilities				**1,708**	**1,547**	**91%**

Notes:

- The first 10 rows include the most frequently occurring NAICS codes among businesses in the sample of owners that matched in D&B Hoovers.
- NAICS codes and type of industry reflect the 2022 NAICS classification.
- Small businesses and small not-for-profit organizations were identified using the SBA's *Table of Small Business Size Standards* (March 17, 2023, version).
- The owners considered in this analysis were established from the Coast Guard's MISLE database and classified as small entities based on information obtained from D&B Hoovers and the 2020 U.S. Census.
- See the main text for further analytic details and assumptions.

Vessel Owners

Across the eight categories of vessels regulated by the Coast Guard and considered for this proposed rule, MISLE identifies over 10,000 vessels owned by 1,775 unique entities.[137] The names and location information of all 1,775 owners stored in MISLE were uploaded to D&B Hoovers, and the search function returned information for 1,006 entities (57 percent) with at least 1 NAICS code identified. Included among the entities that matched with records in D&B Hoovers were 989 businesses (98 percent of the matched owners), 11 not-for-profit organizations (1 percent), and 6 Government jurisdictions (1 percent). The 989 businesses categorize into 170 NAICS codes.

Table 53 reports the number of businesses in the top 10 most frequently occurring NAICS codes, as well as the portion that meet the definition of small business. An additional row summarizes the businesses across the remaining 160 NAICS codes.[138] As presented, 900 of 989 businesses (91 percent) qualify as small businesses based on their revenue or number of employees. Additionally, the 11 not-for-profit organizations include 9 small organizations (82 percent), and the 6 Government jurisdictions include 1 small Government (17 percent). Under the assumption that all 769 vessel owners for which D&B Hoovers profiles are not available are small entities, we estimate 1,633 total small entities are affected by the vessel requirements in this proposed rule (92 percent of affected vessel owners) (769 unmatched vessel owners + 854 matched small businesses + 9 matched small organizations + 1 matched small Government = 1,633 total small entities). See table 54.

[137] Like facilities and OCS facilities, unique businesses are determined using both organization name and address as stored in the Coast Guard's MISLE database. The information for owners is more complete for vessels than for facilities and OCS facilities in MISLE; all vessels include owner information. D&B Hoovers was able to identify unifying parent companies for some owners thought to be independent businesses or organizations based on MISLE data.

[138] Included in this group is NAICS code 99990 ''unclassified.'' Because SBA does not propose a size standard for this code, we assume all entities with NAICS code 99990 are small. For the matched vessel owners, 46 entities are classified with this code in D&B Hoovers.

Table 54: Number of Small Entities Affected by the Proposed Cybersecurity Requirements for Vessels

NAICS Code	Type of Industry	Size Standard Type	Size Standard Used	Total Affected Owners	Number of Affected Owners Classified as Small	Percent Small
488330	Navigational Services to Shipping	Revenue	$47 million	118	108	92%
237990	Other Heavy and Civil Engineering Construction	Revenue	$45 million	87	72	83%
483211	Inland Water Freight Transportation	Employees	1,050	44	40	91%
487210	Scenic and Sightseeing Transportation, Water	Revenue	$14 million	33	28	85%
336611	Ship Building and Repairing	Employees	1,300	29	27	93%
483212	Inland Water Passenger Transportation	Employees	550	29	29	100%
488410	Motor Vehicle Towing	Revenue	$9 million	28	26	93%
441222	Boat Dealers	Revenue	$40 million	26	26	100%
488320	Marine Cargo Handling	Revenue	$47 million	24	23	96%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	Revenue	$40 million	20	19	95%
160 Additional NAICS Codes	Various	Various	Various	551	456	83%
Matched Businesses	**Various**	**Various**	**Various**	**989**	**854**	**86%**
Matched Not-for-Profit Organizations	**Various**	**Various**	**Various**	**11**	**9**	**82%**
Matched Governments (all 92 NAICS codes)	**Public Sector**	**Population**	**50,000**	**6**	**1**	**17%**
Unmatched Vessel Owners				**769**	**769**	**100%**
Total Affected Vessel Owners				**1,775**	**1,633**	**92%**

Notes:

- The first 10 rows include the most frequently occurring NAICS codes among businesses in the sample of owners that matched in D&B Hoovers.
- NAICS codes and type of industry reflect the 2022 NAICS classification.
- Small businesses and small not-for-profit organizations were identified using the SBA's *Table of Small Business Size Standards* (March 17, 2023, version).
- The owners considered in this analysis were established from the Coast Guard's MISLE database and classified as small entities based on information obtained from D&B Hoovers and the 2020 U.S. Census.
- See the main text for further analytic details and assumptions.

Summary

Across the combined 3,483 affected owners of facilities, OCS facilities, or vessels, we estimate that 3,180 small entities (91 percent) may be affected, including small businesses, small not-for-profit organizations, and small Governments. Because this analysis assumes all owners for which NAICS codes, employment, or revenue information is unmatched in D&B Hoovers are small entities, the projected number of affected small entities may be overestimated.

Costs Relative to Revenues

This discussion compares the cost of the proposed changes per facility and vessel owner with annual revenues of affected small entities. Revenue information is obtained from D&B Hoovers for small businesses and small not-for-profit organizations. For small Governments, we use the *2021 State and Local Government Finance Historical Datasets and Tables* available through the U.S. Census.[139] We assume that the findings of this analysis are indicative of the impacts on entities for which revenue information is not readily available.

The RFA does not define a ''significant effect'' in quantitative terms. In its guidance to agencies on how to comply with the RFA, the SBA states, ''[i]n the absence of statutory specificity, what is 'significant' will vary depending on the economics of the industry or sector to be regulated. The agency is in the best position to gauge the small entity impacts of its regulation.'' [140] One of the measures SBA uses to illustrate whether an impact could be significant, is to determine whether the cost per entity exceeds 1 percent of the gross revenues.[141] Therefore, this analysis considers the 1 percent threshold when analyzing these potential impacts.

Facility and OCS Facility Owners

Assuming that an owner or operator would need to implement each of the provisions required by this proposed rule, Coast Guard estimates that the highest single-year costs would be incurred in year 2 of the analysis period. We estimate the year 2 cost is $37,667 for an owner or operator with one facility or OCS facility. Each additional facility or OCS facility owned or operated would increase the estimated annual costs by the cost of an additional Cybersecurity Plan, since each facility or OCS facility will require an individual Cybersecurity Plan. For example, consider an entity that owns 4 facilities. The estimated cost to that entity in year 2 is calculated as follows: $37,667 + (3 × $8,414) = $62,909. Table 55 provides a breakdown of the costs per owner or operator of one facility or OCS facility. The text that follows provides more detail on these cost calculations.

[139] Data downloaded on July 14, 2023, from *https://www.census.gov/data/datasets/2021/econ/local/public-use-datasets.html,* accessed July 21, 2023.

[140] U.S. Small Business Administration (SBA). 2017. *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.* Available at *https://advocacy.sba.gov/2017/08/31/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/,* page 18, accessed July 21, 2023.

[141] Id. Page 19.

To estimate the cost for an individual owner or operator of a facility or OCS facility to develop, resubmit, conduct annual maintenance, and audit the Cybersecurity Plan, we use estimates provided earlier in the analysis. The hour-burden estimates are 100 hours to develop the Cybersecurity Plan (average hour burden), 10 hours to conduct annual maintenance of the Cybersecurity Plan (which would include amendments), 15 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans. Based on

Table 55: Summary of Total Costs of the Proposed Rule per Owner or Operator of One Facility and OCS Facility (2022 Dollars, 10-year Undiscounted Costs)

Year	Facility Count	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Cyber Incident Reporting	Total
1	1	$4,207	$841	$576	$20,100	$4,633	$0	$3,390	$13	$33,760
2	1	$8,414	$841	$576	$11,100	$4,633	$8,700	$3,390	$13	$37,667
3	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
4	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
5	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
6	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
7	1	$1,893	$841	$576	$11,100	$4,633	$8,700	$3,390	$13	$31,146
8	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
9	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
10	1	$4,207	$841	$576	$11,100	$4,633	$0	$3,390	$13	$24,760
Total										**$275,893**
Annualized										**$27,589**

Note: Totals may not sum due to independent rounding.

estimates from the Coast Guard's FSP and OCS FSP reviewers at local inspections offices, approximately 10 percent of Plans would need to be revised and resubmitted in the second year, which is consistent with the current resubmission rate for FSPs and OCS FSPs.

For renewals of Plans after 5 years (occurring in the seventh year of the analysis period), Plans would need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the analysis, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases resulting in a conservative (upper-bound) estimate of per-entity costs. We estimate the time for revision and resubmission to be about half the time to develop the Plan itself, or 50 hours in the second year of submission, and 7.5 hours after 5 years (in the seventh year of the analysis period). Because we include the annual Cybersecurity Assessment in the cost to develop Cybersecurity Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures, we divide the estimated 100 hours to develop Plans equally across the first and second years of analysis. Using the CySO loaded hourly CySO wage of $84.14, we estimate the Cybersecurity Plan related costs by adding the total number of hours to develop, resubmit, maintain, and audit each year and multiplying by the CySO wage. For example, we estimate owners would incur $8,414 in costs in year 2 of the analysis period [1 facility × $84.14 CySO wage × (50 hours to develop the Plan + 50 hours to revise and resubmit the Plan) = $8,414]. Table 56 displays the per-entity cost estimates for an owner or operator of one facility over a 10-year period of analysis. For an owner or operator with multiple facilities or OCS facilities, we estimate the total costs by multiplying the estimates in table 56 by the number of owned facilities.

Table 56: Cybersecurity Plan Related Costs per Owner or Operator of a Facility and OCS Facility (2022 Dollars, 10-year Undiscounted Costs)

Year	Facility Count	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	1	$84.14	50	0	0	0	$4,207
2	1	$84.14	50	50	0	0	$8,414
3	1	$84.14	0	0	10	40	$4,207
4	1	$84.14	0	0	10	40	$4,207
5	1	$84.14	0	0	10	40	$4,207
6	1	$84.14	0	0	10	40	$4,207
7	1	$84.14	15	7.5	0	0	$1,893
8	1	$84.14	0	0	10	40	$4,207
9	1	$84.14	0	0	10	40	$4,207
10	1	$84.14	0	0	10	40	$4,207
Total							**$43,963**
Annualized							**$4,396**

Note: Totals may not sum due to independent rounding.

Similarly, we use earlier estimates for the calculation of per-entity costs for drills and exercises, implementing account security measures, implementing multifactor authentication, cybersecurity training, penetration testing, vulnerability management, and resilience.

For drills and exercises, we assume that a CySO on behalf of each owner and operator of a facility or OCS facility will develop cybersecurity components to add to existing physical security drills and exercises. This development is expected to take 0.5 hours for each of the 4 annual drills and 8 hours for an annual exercise. Using the loaded hourly wage for a CySO of $84.14, we estimate annual costs of approximately $841 per owner or operator of a facility or OCS facility [$84.14 CySO wage × ((0.5 hours × 4 drills) + (8 hours × 1 exercise)) = $841], as seen in table 55.

For account security measures, we assume that a database administrator on behalf of each owner or operator will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 55.

For multifactor authentication, we assume that an owner or operator of a facility or OCS facility will spend $9,000 in the initial year on average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first year costs of approximately $20,100 [$9,000 implementation cost + ($150 support and maintenance costs × 74 average facility company employees)], and subsequent year costs of $11,100 ($150 support and maintenance costs × 74 average facility company employees), as seen in table 55.

For cybersecurity training, we assume that a CySO at a facility or OCS facility will take 2 hours each year to develop and manage cybersecurity training for

employees, and employees at a facility or OCS facility will take 1 hour to complete the training each year. Using the estimated CySO wage of $84.14 and the estimated employee wages at a facility or OCS facility of $60.34, we estimate annual training costs of approximately $4,633 [($84.14 × 2 hours) + ($60.34 × 74 facility company employees × 1 hour)], as seen in table 55.

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that owners and operators of facilities or OCS facilities will spend approximately $5,000 per penetration test and an additional $50 per IP address at the organization to capture network complexity. We use the total number of company employees as a proxy for the number of IP addresses, since the Coast Guard does not have data on IP addresses or the network complexity at a given company. As a result, we estimate second- and seventh-year costs of approximately $8,700 [$5,000 testing cost + ($50 × 74 employees)], as seen in table 55.

For vulnerability management, we assume that each facility or OCS facility will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with implementing or using a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 55.

Finally, for resilience, we assume that each owner or operator of a facility or OCS facility will need to make at least one cybersecurity incident report per year. While this is incongruent with historical data that shows the entire affected population of facilities and OCS facilities reports only 18 cybersecurity incidents per year, we are attempting to capture a complete estimate of what the costs of this proposed rule could be for an affected entity. As such, we estimate that a CySO will need to take 0.15 hours to report a cybersecurity incident to the NRC, leading to annual per entity costs of approximately $13 ($84.14 CySO wage × 0.15 hours), as seen in table 55.

As demonstrated in table 55, affected entities are expected to incur the highest costs in year 2 of this proposed rule. This analysis estimates the cost of this proposed rule in year 2 per affected small entity, using the information presented in table 55 and adjusting for the number of facilities and OCS facilities owned by the entity as recorded in MISLE. Among all 1,547 presumed small entities (see table 53), 833 owners (54 percent) are associated with one facility ($37,667 cost in year 2), and the average small entity owns approximately 2 facilities ($45,609 cost in year 2). The small entity with the highest projected cost owns 37 facilities ($340,571 cost in year 2).

Table 57 compares the estimated year 2 costs specific to each entity with the annual revenues of 416 small entities in our sample of affected facilities for which revenue information is provided in D&B Hoovers.[142] As shown, approximately 55 percent of small entities may incur costs that meet or exceed 1 percent of annual revenue in the second year of the rule [(61 + 168) ÷ 416 = 55 percent]. The small entity with the highest ratio cost-to-revenue ratio is projected to incur costs of 158 percent of its reported annual revenue.

Table 57: Revenue Impact of the Proposed Rule on Identified Small Entities Owning Facilities and OCS Facilities

% Revenue Impact	Greatest Annual Cost (Year 2)	
	Small Facility Owners with Known Revenue	Portion of Small Facilities with Known Revenue
<1%	187	45%
1-3%	61	15%
>3%	168	40%
Total	**416**	**100%**

Source: IEc calculations using data from the Coast Guard and D&B Hoovers. See text for details.
Notes:
- The 416 small entities included in this calculation represent the subset of small entities identified in table 52 for which sales data is provided in D&B Hoovers.
- This table includes only small businesses and small not-for-profit organizations because we did not identify any affected small governments in the matched sample. It is possible that some small governments are affected if they are included among the entities that did not match with an entity in the D&B Hoovers database.
- The compliance costs used in this analysis are calculated specific to the number of facilities owned by each affected small entity. The second year of implementing the provisions in this proposed rule is projected to have the highest costs and is therefore used in this analysis. See text for details.
- Totals may not sum due to rounding

[142] Sales information is not available for 209 of the identified small businesses and small not-for-profit organizations with matched profiles in D&B Hoovers (33 percent of the 625 total matched small businesses and small not-for-profit organizations). This analysis does not identify small Governments among the set of owners with matched profiles in D&B Hoovers.

Vessel Owners

The costs to owners and operators of U.S.-flagged vessels differ from the costs to owners and operators of facilities and OCS facilities and are more heavily influenced by the number of vessels owned. Table 58 presents the estimated fixed costs per entity regardless of the number of vessels owned and vessel type, equivalent to $10,877 per year on average across the first 10 years of implementing the provisions in this proposed rule. The data and assumptions underlying these estimates are provided later in this section.

Several other categories of costs are dependent on the type and number of vessels owned by each entity. These costs are calibrated to the average number of employees by vessel type as well as a unique weighted hourly wage

Table 58: Summary of Fixed Costs of the Proposed Rule per Owner or Operator of U.S.-flagged Vessels (2022 Dollars, 10-year Undiscounted Costs)

Year	Cybersecurity Plan	Drills and Exercises	Account Security Measures	Multifactor Authentication	Cybersecurity Training	Penetration Testing	Vulnerability Management	Cyber Incident Reporting	Total
1	$3,366	$841	$576	$9,000	$168	$0	$3,390	$13	$17,354
2	$6,731	$841	$576	$0	$168	$5,000	$3,390	$13	$16,719
3	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
4	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
5	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
6	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
7	$1,515	$841	$576	$0	$168	$5,000	$3,390	$13	$11,503
8	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
9	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
10	$4,039	$841	$576	$0	$168	$0	$3,390	$13	$9,027
Total									**$108,765**
Annualized									**$10,877**

Note: Totals may not sum due to independent rounding.

based on the personnel employed on the vessels.[143] Table 59 displays the average number of employees for each vessel type, including shoreside employees, and their unique weighted mean hourly wages. Table 60, which follows, displays the variable per-vessel costs associated with each type of vessel. To calculate the total estimated cost per entity in the population of U.S.-flagged vessels, we add the annual estimated costs per vessel and per vessel type from table 60 based on the number and types of vessels owned observed in MISLE to the fixed costs presented in table 58. For example, consider an entity that owns two passenger vessels subject to subchapter H. The estimated cost to that entity in year 2 is calculated as follows: (2 × $20,557) + $16,719 = $57,833.

Table 59: Summary of Employees and Wages by Vessel Type

Vessel Type	Number of Employees per Vessel (Includes Shoreside)	Weighted Mean Hourly Wage
MODU	372	$39.60
Subchapter I Vessels	82	$46.36
OSVs	16	$54.92
Subchapter H Passenger Vessels	85	$41.85
Subchapter K Passenger Vessels	35	$45.52
Subchapter M Towing Vessels	13	$51.28
Subchapter D and Combination Subchapters O&D Tank Vessels	40	$55.94
Subchapter D, O, or I Barges	0	$0.00
Subchapters K and T International Passenger Vessels	27	$44.59

Table 60: Summary of Annual Costs of the Proposed Rule per U.S.-flagged Vessels Based on Type of Vessel (2022 Dollars, Undiscounted Costs)

Vessel Type	Vessel Count	Multifactor Authentication	Cybersecurity Training	Penetration Testing (Years 2 and 7)[144]	Total
MODU	1	$55,800	$14,731	$18,600	$89,131
Subchapter I Vessels	1	$12,300	$3,802	$4,100	$20,202
OSVs	1	$2,400	$879	$800	$4,079
Subchapter H Passenger Vessels	1	$12,750	$3,557	$4,250	$20,557
Subchapter K Passenger Vessels	1	$5,250	$1,593	$1,750	$8,593
Subchapter M Towing Vessels	1	$1,950	$667	$650	$3,267
Subchapter D and Combination Subchapters O&D Tank Vessels	1	$6,000	$2,238	$2,000	$10,238
Subchapter D, O, or I Barges	1	$0	$0	$0	$0
Subchapters K and T International Passenger Vessels	1	$4,050	$1,204	$1,350	$6,604

[143] The average per-vessel employee counts were taken from manning requirements in the certificates of inspection in MISLE. We averaged the mariner counts listed for each vessel within a subpopulation of vessels, then applied a 1.33 shoreside employee modifier to account for non-mariner employees. The calculation of wage rates across vessel types are described in ''Appendix A: Wages Across Vessel Types.''

[144] When adding these costs to the fixed costs for owners and operators, only add the estimated penetration testing costs in years 2 and 7.

To estimate the cost for an owner or operator of a U.S.-flagged vessel to develop, resubmit, conduct annual maintenance, and audit the Cybersecurity Plan, we use estimates provided earlier in the analysis. The hour-burden estimates are 80 hours for developing the Cybersecurity Plan (average hour burden), 8 hours for conducting annual maintenance of the Cybersecurity Plan (which would include amendments), 12 hours to renew Cybersecurity Plans every 5 years, and 40 hours to conduct annual audits of Cybersecurity Plans. Based on estimates from Coast Guard VSP reviewers at MSC, approximately 10 percent of Plans would need to be resubmitted in the second year due to necessary revisions, which is consistent with the current resubmission rate for VSPs.

For renewing Cybersecurity Plans after 5 years (occurring in the seventh year of the analysis period), Plans would need to be further revised and resubmitted in approximately 10 percent of cases as well. However, in this portion of the analysis, we estimate costs as though the owner or operator will need to revise and resubmit their Plans in all cases resulting in a conservative (upper-bound) estimate of per-entity costs. We estimate the time for revision and resubmission to be about half the time to develop the Plan itself, or 40 hours in the second year of submission, and 6 hours after 5 years (in the seventh year of the analysis period).

Because we include the annual Cybersecurity Assessment in the cost to develop Cybersecurity Plans, and we do not assume that owners and operators will wait until the second year of analysis to begin developing the Cybersecurity Plan or implementing related cybersecurity measures, we divide the estimated 80 hours to develop plans equally across the first and second years of analysis. Using the loaded hourly CySO wage of $84.14, we estimate the Cybersecurity Plan-related costs by adding the total number of hours to develop, resubmit, maintain, and audit the Plan each year and multiplying that figure by the CySO wage. For example, we estimate owners and operators would incur approximately $6,731 in costs in year 2 of the analysis period [$84.14 CySO wage × (40 hours to develop the plan + 40 hours to revise and resubmit the Plan) = $6,731]. See table 61.

Table 61: Cybersecurity Plan Related Costs per Owner or Operator of a U.S.-flagged Vessel (2022 Dollars, 10-year Undiscounted Costs)

Year	CySO Wage	Hours to Develop Plan	Hours to Resubmit Plan	Annual Maintenance Hours	Audit Hours	Total
1	$84.14	40	0	0	0	$3,366
2	$84.14	40	40	0	0	$6,731
3	$84.14	0	0	8	40	$4,039
4	$84.14	0	0	8	40	$4,039
5	$84.14	0	0	8	40	$4,039
6	$84.14	0	0	8	40	$4,039
7	$84.14	12	6	0	0	$1,515
8	$84.14	0	0	8	40	$4,039
9	$84.14	0	0	8	40	$4,039
10	$84.14	0	0	8	40	$4,039
Total						**$39,885**
Annualized						**$3,989**

Note: Totals may not sum due to independent rounding.

For drills and exercises, we assume that a CySO on behalf of each owner and operator of a vessel will develop cybersecurity components to add to existing physical security drills and exercises. This development is expected to take 0.5 hours for each of the 4 annual drills and 8 hours for an annual exercise. Using the loaded hourly wage for a CySO of $84.14, we estimate annual costs of approximately $841 per vessel owner or operator [$84.14 CySO wage × ((0.5 hours × 4 drills) + (8 hours × 1 exercise)) = $841], as seen in table 58.

For account security measures, we assume that a database administrator on behalf of each owner or operator of a vessel will spend 8 hours each year implementing and managing account security. Using the loaded hourly wage for a database administrator of $71.96, we estimate annual costs of approximately $576 ($71.96 database administrator wage × 8 hours = $576), as seen in table 58.

For multifactor authentication, we assume that a vessel owner or operator will spend $9,000 in the initial year on average to implement a multifactor authentication system and spend approximately $150 per employee annually for system maintenance and support. Therefore, we estimate first-year fixed costs of approximately $9,000 for all owners and operators, with annual costs in years 2 through 10 dependent on the number of employees for each type of vessel. For example, we estimate the first-year costs to an owner or operator of one OSV to be approximately $11,400 [$9,000 implementation cost + ($150 support and maintenance costs × 16 average employees per OSV)], and subsequent

year costs of $2,400 ($150 support and maintenance costs × 16 average employees per OSV). Fixed per-entity implementation costs of $9,000 can be found in table 58 and variable per-vessel costs can be found in table 60.

For cybersecurity training, we assume that a CySO for each owner or operator of a vessel will take 2 hours each year to develop and manage employee cybersecurity training, and vessel employees will take 1 hour to complete the training each year. The per employee costs associated with training vary depending on the types and number of vessels and would be based on the average number of employees per vessel and the associated weighted hourly wage. For example, using the estimated CySO wage of $84.14 and the estimated OSV employee wage of $54.91, we estimate annual training costs of approximately $1,047 [($84.14 × 2 hours) + ($54.91 × 16 average employees per OSV × 1 hour)]. Fixed per-entity costs of $168 can be found in table 58 and variable per-vessel costs can be found in table 60.

For penetration testing, we estimate costs only in the second and seventh years of analysis since tests are required to be performed in conjunction with submitting and renewing the Cybersecurity Plan. We assume that owners and operators of vessels will spend approximately $5,000 per penetration test and an additional $50 per IP address at the organization to capture network complexity. We use the average number of employees per vessel as a proxy for the number of IP addresses, since the Coast Guard does not have data on IP addresses or the network complexity at a given company. As a result, we estimate second- and seventh-year costs as follows: [$5,000 testing cost + ($50 × average number of employees per vessel)]. For example, we estimate second- and seventh-year cost of approximately $5,800 for an owner or operator of an OSV [$5,000 testing cost + ($50 × 16 average number of employees per OSV)]. Fixed per-entity costs of $5,000 can be found in table 58 and variable per-vessel costs can be found in table 60.

For vulnerability management, we assume that each owner or operator of a U.S.-flagged vessel will need to secure a vulnerability scanning program or software. Because vulnerability scans can occur in the background, we do not assume an additional hour burden associated with the implementation or use of a vulnerability scanner each year. Using the annual subscription cost of an industry leading vulnerability scanning software, we estimate annual costs of approximately $3,390, as seen in table 58.

Finally, for resilience, we assume that each owner or operator of a U.S.-flagged vessel will need to make at least one cybersecurity incident report per year. While this is incongruent with historical data that shows the entire affected population of vessels only reports two cybersecurity incidents per year on average, we are attempting to capture a complete estimate of what the costs of this proposed rule could be for an affected entity. As such, we estimate that a CySO will need to take 0.15 hours a year to report a cybersecurity incident to the NRC, leading to annual per-entity costs of approximately $13 ($84.14 CySO wage × 0.15 hours), as seen in table 58.

This analysis calculates vessel owner-specific annual compliance costs based on the type and number of vessels associated with each small entity as identified in MISLE. For the small entities that own only barges, there are no variable costs per vessel, and we assume that they will only incur per-company costs related to the Cybersecurity Plan and developing drills and exercises, meaning the greatest per-owner costs would occur in year 2. Our analysis identifies 161 small entities that fall into this category and presumes this proposed rule will cost these entities $7,572 each in year 2 ($6,731 Cybersecurity Plan-related costs + $841 drills and exercises costs). For all other small entities that own vessels, the costs include a per-owner component as well as per-vessel costs that vary by vessel type, and the highest total annual costs per owner would also occur in year 2. Among the 1,472 small entities in this category, 770 owners (52 percent) are associated with 1 vessel (with an average cost of $23,271 in year 2). The average small entity owns 5 vessels (with an average cost of $32,850 in year 2), while the small entity with the highest projected costs owns 359 vessels (with a cost of $148,588 in year 2).[145]

Table 62 compares the entity-specific costs in year 2 with the greatest costs with the annual revenues of 793 small entities in our sample of affected facilities for which revenue information is provided in D&B Hoovers (for small businesses and small not-for-profit organizations) or the *2021 State and Local Government Finance Historical Datasets and Tables* available through the U.S. Census (for small Governments).[146] As shown, 59 percent of small entities may incur costs that meet or exceed 1 percent of annual revenue in the second year of the rule [(167 + 298) ÷ 793 = 59 percent]. The small entity with the highest cost-to-revenue ratio is projected to incur costs of 146 percent of its reported annual revenue.

[145] Values may not directly align with the incremental cost analysis due to rounding.

[146] Sales information is not available for 71 of the identified small businesses and small not-for-profit organizations with matched profiles in D&B Hoovers (8 percent of the 864 total matched small entities).

Table 62: Revenue Impact of the Proposed Rule on Identified Small Entities Owning Vessels

% Revenue Impact	Greatest Annual Cost (Year 2)	
	Small Vessel Owners with Known Revenue	Portion of Small Vessel Owners with Known Revenue
<1%	328	41%
1-3%	167	21%
>3%	298	38%
Total	**793**	**100%**

Source: IEc calculations using data from the Coast Guard, D&B Hoovers, and *2021 State and Local Government Finance Historical Datasets and Tables* available through the U.S. Census. See text for details.
Notes:
- The 793 small entities included in this calculation represent the subset of small entities identified in Table 21 for which sales data is provided in D&B Hoovers or the *2021 State and Local Government Finance Historical Datasets and Tables.*
- The compliance costs used in this analysis are calculated specific to the number and type of vessels owned by each affected small entity. See text for details.
- Totals may not sum due to rounding

Summary

This IRFA characterizes the revenue impacts on small entities by projecting costs for each affected owner specific to the number and type of U.S.-flagged vessels as well as the number of facilities or OCS facilities owned according to data from the Coast Guard. There are two reasons the estimated compliance costs, and, therefore, the impacts on small entities, are likely to be overestimated. First, the approach we took to estimate costs assumes that all owners will incur costs associated with all provisions required in this proposed rule. However, it is highly likely that many affected owners already have invested in some of the cybersecurity measures before the publication of this proposed rule. Data available to the Coast Guard demonstrate this is the case for many facility and OCS facility owners, although whether those facility owners are small entities is uncertain.[147] Second, some affected owners are unlikely to have IT or OT systems to which this proposed rule will apply. Those owners will incur only the costs associated with requesting a waiver or equivalence, which are likely to be far less than the costs described in this section.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

This proposed rule would call for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. Section VI.D., *Collection of Information,* describes the title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden. For a description of all other compliance requirements and their associated estimated costs, please see the preceding analysis of the per-entity costs of this proposed rule.

5. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

The Coast Guard has identified two primary areas of overlap with this proposed rule. First, under proposed § 101.645, the Coast Guard would require the CySO to maintain an effective means of communication to convey changes in cybersecurity conditions to the personnel of the U.S.-flagged vessel, facility, or OCS facility. The communication systems and procedures would need to allow for effective and continuous communications between security personnel at a vessel, facility, or OCS facility, vessels interfacing with a facility or an OCS facility, the cognizant COTP, and national and local authorities with security responsibilities. While these requirements would require the CySO to maintain means to specifically maintain communications regarding cybersecurity conditions, the Coast Guard believes there may be significant overlap with communication requirements for physical security established in 33 CFR 105.235 for facilities, 106.240 for OCS facilities, and 104.245 for vessels. Accordingly, we do not estimate additional costs related to these communications systems, but we request public comment on this assumption and if this new cybersecurity-specific requirement would create additional burden.

Second, under proposed § 101.650(i), the Coast Guard would require affected owners or operators to limit physical access to OT and related IT equipment to only authorized personnel and confirm that all HMIs and other hardware are secured, monitored, and logged for personnel access, with access granted on a by-exception basis. While these requirements are specific to the physical security of IT and OT systems, there is some overlap with physical security requirements established in §§ 104.265 and 104.270 for vessels, §§ 105.255 and 105.260 for facilities, and §§ 106.260 and 106.265 for OCS facilities under which areas containing IT and OT systems should be designated restricted areas. Accordingly, we do not estimate additional costs related to these requirements but request public comment on this assumption and if these new cybersecurity-specific requirements would create additional burdens.

6. *A description of any significant alternatives to the proposed rule which*

[147] See footnote 69.

accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

The purpose of this proposed rule is to safeguard the MTS against current and emerging threats associated with cybersecurity by adding minimum cybersecurity requirements to 33 CFR part 101. However, rather than making these requirements prescriptive, the Coast Guard is choosing to propose minimum performance-based cybersecurity requirements for the MTS. Like the existing requirements in 33 CFR parts 104, 105 and 106, the Coast Guard would allow owners and operators the flexibility to determine the best way to implement and comply with these new requirements. This means that, while the Coast Guard may require the implementation of a multifactor authentication system, for example, it is up to the discretion of the impacted owner or operator to determine what shape or form that system may take, and how many resources should be expended to implement it. As a result, many of the cost estimates in this RIA and small entities analysis represent conservative (upper-bound) estimates as we attempt to capture costs for a wide range of affected owners and operators. Further, the Coast Guard proposes to make waivers and equivalencies available to affected owners and operators who feel they are unable to meet the requirements of this proposed rule, offering additional flexibility to small entities that are not able to meet the full requirements.

The Coast Guard also considered an alternative that would make the penetration testing requirements of this proposed rule optional for small entities. Given the nature of penetration testing, it can often come with a high cost, particularly for small entities with limited resources. Leaving the penetration testing requirements up to owner discretion could allow small entities in the affected population to prioritize different cybersecurity measures that may make more sense for their organization. The decision to undertake penetration testing could be made as a result of thorough risk assessments for each organization, considering its operational environments, risk profile, and pertinent threats. Under this alternative, an owner or operator, or a CySO on their behalf, could determine when a penetration test is warranted, if at all.

Because penetration testing would be optional, this could hypothetically reduce costs for owners and operators for penetration testing down to zero, meaning an estimated cost reduction of $8,700 in the second and seventh years of analysis for an owner or operator of facilities and OCS facilities. It would also lead to estimated cost reductions in the second and seventh years of $23,600 ($5,000 + $18,600) for owners and operators of MODUs, $9,100 ($5,000 + $4,100) for owners and operators of vessels under subchapter I, $5,800 ($5,000 + $800) for owners and operators of OSVs, $9,250 ($5,000 + $4,250) for owners and operators of passenger vessels under subchapter H, $6,750 ($5,000 + $1,750) for owners and operators of passenger vessels under subchapter K, $5,650 ($5,000 + $650) for owners and operators of towing vessels under subchapter M, $7,000 ($5,000 + $2,000) for owners and operators of tank vessels under subchapter D and a combination of subchapters O&D, and $6,350 ($5,000 + $1,350) for owners and operators of international passenger vessels under subchapters K and T. The estimated cost reductions could be higher if ownership of multiple vessels is considered.

Despite the potential for minimizing economic impacts, however, the value of penetration testing for most organizations, including small entities, cannot be overstated. When integrated into a comprehensive cybersecurity strategy, penetration testing can be very effective in identifying vulnerabilities. By fostering a proactive rather than reactive approach in cybersecurity, penetration testing enables organizations to stay ahead of potential threats and better understand how malicious actors could exploit weaknesses in IT and OT systems. This is particularly crucial given the quickly evolving landscape of cyber threats. In addition, because the costs of a potential cyber incident are so high, the Coast Guard must prioritize some level of oversight on provisions that could lessen the risk of a cyber incident. Therefore, we rejected this alternative despite the potential cost reductions.

It should be noted, however, that according to proposed § 101.665, owners and operators of facilities, OCS facilities, and U.S.-flagged vessels can seek a waiver or an equivalence determination if they are unable to meet any proposed requirements, penetration testing included. The Coast Guard requests public comment on the alternative presented here, as well as any other alternatives or options related to the proposed provisions that would alleviate impacts on affected small entities.

Conclusion

The Coast Guard is interested in the potential impacts from this proposed rule on small entities (businesses and Governments), and we request public comment on these potential impacts. If you think that this proposed rule will have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under **ADDRESSES** in this proposed rule. In your comment, explain why, how, and to what degree you think this proposed rule would have an economic impact on you.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering, and maintaining the data needed, and completing and reviewing the collection.

Title: Cybersecurity Plans.

OMB Control Number: 1625–new.

Summary of Collection of Information: This collection of information would be new. The Coast Guard would collect information from the owners and operators of vessels, facilities, and OCS facilities under 33 CFR part 101, subpart F. The information collection would be for the submission of Cybersecurity Plans, amendments to Cybersecurity Plans, and cyber incident reports proposed in 33 CFR 101.650.

Need for Information: The Coast Guard would be creating new cybersecurity requirements for vessel and facility owners and operators to mitigate or prevent a cyber incident from occurring. The information we would request from industry would be from (1) the development of Cybersecurity Plans, which would include details on implemented drills and exercise, training, and various cybersecurity measures in § 101.650 that might safeguard critical IT and OT systems from cyber incidents; (2) amendments to Cybersecurity Plans; and (3) reporting cyber incidents to the NRC.

Proposed Use of Information: The Coast Guard would use this information to determine if vessel and facility owners and operators have cybersecurity measures in place and to ensure that owners and operators are conducting periodic reviews of plans and testing their IT and OT systems for adequacy. Additionally, the Coast Guard would ensure vessel and facility owners and operators are reporting cyber incidents to the Coast Guard.

Description of the Respondents: The respondents are owners and operators of U.S.-flagged vessels, U.S. facilities, and OCS facilities.

Number of Respondents: The number of respondents would be about 1,775 U.S.-flagged vessel owners and operators and about 1,708 facility and OCS facility owners and operators. We assume that a CySO would be responsible for the reporting and recordkeeping requirements of the proposed rule on behalf of each owner and operator.

Frequency of Response: The number of responses to this proposed rule would vary annually.

Burden of Response: The burden of response would vary for each regulatory requirement.

Estimate of Total Annual Burden: The estimate of annual burden varies based on the year of analysis. For the initial year of analysis, the hour burden for Cybersecurity Plan activities and cyber incident reporting would be about 241,553 hours across the affected population. This is derived from the development of 3,411 facility and OCS facility Cybersecurity Plans for 50 hours each, 1,775 vessel Cybersecurity Plans for 40 hours each, and 20 cyber incidents being reported for 0.15 hours each [(3,411 × 50) + (1,775 × 40) + (20 × 0.15)].

For the second year of analysis, the hour burden for Cybersecurity Plan activities and cyber incident reporting would be about 265,723 hours across the affected population. The second year of analysis represents the highest estimated hour burden for all years of analysis. This is derived from the development of 3,411 facility and OCS facility Cybersecurity Plans for 50 hours each, 341 facility and OCS facility Cybersecurity Plans being revised and resubmitted for an additional 50 hours, 1,775 vessel Cybersecurity Plans for 40 hours each, 178 vessel Cybersecurity Plans being revised and resubmitted for an additional 40 hours, and 20 cyber incidents being reported for 0.15 hours each [(3,411 × 50) + (341 × 50) + (1,775 × 40) + (178 × 40) + (20 × 0.15)].

For the third through the sixth years of analysis, and the eighth through the tenth years of analysis, when Cybersecurity Plans are being maintained and amendments are being developed, the hour burden for Cybersecurity Plan activities and cyber incident reporting would be about 48,313 hours across the affected population. This is derived from the maintenance and amendment of 3,411 facility and OCS facility Cybersecurity Plans for 10 hours each, the maintenance and amendment of 1,775 vessel Cybersecurity Plans for 8 hours each, and 20 cyber incidents being reported for 0.15 hours each [(3,411 × 10) + (1,775 × 8) + (20 × 0.15)].

For the seventh year of analysis, when Cybersecurity Plans are renewed, the hour burden for Cybersecurity Plan activities and cyber incident reporting would be about 76,094 hours across the affected population. This is derived from the renewal of 3,411 facility and OCS facility Cybersecurity Plans for 15 hours each, 341 facility and OCS facility Cybersecurity Plans being revised and resubmitted for an additional 7.5 hours, 1,775 vessel Cybersecurity Plans being renewed for 12 hours each, 178 vessel Cybersecurity Plans being revised and resubmitted for an additional 6 hours, and 20 cyber incidents being reported for 0.15 hours each [(3,411 × 15) + (341 × 7.5) + (1,775 × 12) + (178 × 6) + (20 × 0.15)].

This leads to an annualized hour burden total of 92,156 hours over the 10-year period of analysis.

As required by 44 U.S.C. 3507(d), we will submit a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine, among other things—

- How useful the information is;
- Whether the information can help us perform our functions better;
- How we can improve the quality, usefulness, and clarity of the information;
- Whether the information is readily available elsewhere;
- How accurate our estimate is of the burden of collection;
- How valid our methods are for determining the burden of collection; and
- How we can minimize the burden of collection.

If you submit comments on the collection of information, submit them to both the OMB and to the docket indicated under **ADDRESSES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard and that all categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. *See United States* v. *Locke,* 529 U.S. 89 (2000). This proposed rule would

expand maritime security requirements under MTSA to expressly address current and emerging cybersecurity risks and safeguard the MTS. In enacting MTSA, Congress articulated a need to address port security threats around the United States while preserving the free flow of interstate and foreign commerce. MTSA's mandatory, comprehensive maritime security regime, founded on this stated interest of facilitating interstate and international maritime commerce, indicates that States and local governments are generally foreclosed from regulating in this field. Particularly with respect to vessels subject to this new subpart F, the Coast Guard's above noted comprehensive law and regulations would preclude State and local laws. OCS facilities, which do not generally fall under any State or local jurisdiction, are principally subject to federal law and regulation.

Notwithstanding MTSA's general preemptive effect, States and local governments have traditionally shared certain regulatory jurisdiction with the Federal Government over waterfront facilities. Accordingly, current MTSA regulations make clear that the maritime facility security requirements of 33 CFR part 105 only preempt State or local regulation when the two conflict.[148] Similarly, the cybersecurity requirements of this proposed rule as they apply to a facility under 33 CFR part 105 would only have preemptive effect over a State or local law or regulation insofar as the two actually conflict (meaning compliance with both requirements is impossible or the State or local requirement frustrates an overriding Federal need for uniformity). In the unlikely event that state or local government would claim jurisdiction over an OCS facility, the aforenoted conflict preemption principles would apply.

In light of the foregoing analysis, this proposed rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this proposed rule would have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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. 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 million (adjusted for inflation) or more in any one year.

Upon adjusting for inflation, this proposed action would need to result in the expenditure of $177 million or more in any one year, in 2022 dollars. To obtain this inflated value, we use the 2022 and 1995 annual gross domestic product implicit price deflator values of 127.224 and 71.823, respectively. We divide these values to obtain a factor of approximately 1.77, rounded (127.224 ÷ 71.823 = 1.77).[149] Multiplying this factor by the expenditure amount identified in the Unfunded Mandates Reform Act of 1995 gives us our expenditure amount adjusted for inflation ($1.77 \times 100{,}000{,}000 = 177{,}000{,}000$). Because this proposed rule would result in the expenditure by the private sector of approximately $91,170,100 in undiscounted 2022 dollars in the most cost-heavy year, this proposed action would not require an assessment.

Although this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble. Additionally, many of the provisions proposed in this NPRM are intentionally designed to take owner or operator discretion into account, which could help reduce anticipated expenditures. While this proposed rule may require action related to a security measure (implementing multifactor authentication, for example), the method or policy used to achieve compliance with the provision is at the discretion of the impacted owner or operator. This NPRM also includes the option for waivers and equivalents, in § 101.665, for any affected party unable to meet the requirements of this proposed rule. These intentional flexibilities can help reduce expected costs for those in the affected population and allow for more tailored cybersecurity solutions.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

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.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a ''significant energy action'' under that order because although it is a ''significant regulatory action'' under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in

[148] 33 CFR 101.112(b).

[149] We use the implicit price deflator for gross domestic product values from the Bureau of Economic Analysis National Income and Product Accounts interactive data tables. See *https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=11#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJDYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyMyJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ==*, accessed July 13, 2023.

their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management 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. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

This proposed rule would be categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents, notably those of a strictly administrative or procedural nature; and those that interpret or amend an existing regulation without changing its environmental effect. Paragraph L54 pertains to regulations that are editorial or procedural. This proposed rule involves establishing minimum cybersecurity requirements in Coast Guard regulations such as account security measures, device security measures, governance and training, risk management, supply chain management, resilience, network segmentation, reporting, and physical security. This proposed rule would promote the Coast Guard's maritime security mission by establishing measures to safeguard the MTS against emerging threats associated with cybersecurity. This proposed rule also would promote the Coast Guard's marine environmental protection mission by preventing or mitigating marine environmental damage that could ensue due to a cybersecurity incident. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 101 as follows:

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 is revised to read as follows:

Authority: 46 U.S.C. 70101–70104 and 70124; 43 U.S.C. 1333(d); Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Amend part 101 by adding subpart F, consisting of §§ 101.600 through 101.670, to read as follows:

Subpart F—Cybersecurity

Sec.

§ 101.600 Purpose.

The purpose of this subpart is to set minimum cybersecurity requirements for vessels and facilities to safeguard and ensure the security and resilience of the Marine Transportation System (MTS).

§ 101.605 Applicability.

(a) This subpart applies to the owners and operators of U.S.-flagged vessels subject to 33 CFR part 104, U.S. facilities subject to 33 CFR part 105, and Outer Continental Shelf (OCS) facilities subject to 33 CFR part 106.

(b) This subpart does not apply to any foreign-flagged vessels subject to 33 CFR part 104.

§ 101.610 Federalism.

Consistent with § 101.112(b), with respect to a facility regulated under 33 CFR part 105 to which this subpart applies, the regulations in this subpart have preemptive effect over a State or local law or regulation insofar as the State or local law or regulation applicable to the facility conflicts with these regulations, either by actually conflicting or by frustrating an overriding Federal need for uniformity.

§ 101.615 Definitions.

Unless otherwise specified, as used in this subpart:

Approved list means an owner or operator's authoritative catalog for products that meet cybersecurity requirements.

Backup means a copy of physical or virtual files or databases in a secondary location for preservation. It may also refer to the process of creating a copy.

Credentials means a set of data attributes that uniquely identifies a system entity such as a person, an organization, a service, or a device, and attests to one's right to access to a particular system.

Critical Information Technology (IT) or Operational Technology (OT) systems means any Information Technology or Operational Technology system used by the vessel, facility, or OCS facility that, if compromised or exploited, could result in a transportation security incident, as determined by the Cybersecurity Officer (CySO) in the Cybersecurity Plan. Critical IT or OT systems include those business support services that, if compromised or exploited, could result in a transportation security incident. This term includes systems whose ownership, operation, maintenance, or control is delegated wholly or in part to any other party.

Cyber incident means an occurrence that actually jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an Information System, or actually jeopardizes, without lawful authority, an Information System.

Cyber Incident Response Plan means a set of predetermined and documented procedures to respond to a cyber incident. It is a document that gives the owner or operator or a designated Cybersecurity Officer (CySO) instructions on how to respond to a cyber incident and pre-identifies key roles, responsibilities, and decision-makers. *Cyber threat* means an action,

not protected by the First Amendment to the Constitution of the United States, on or through an information system that may result in an unauthorized effort to adversely impact the security, availability, confidentiality, or integrity of an information system or information that is stored on, processed by, or transiting an information system. The term ''cyber threat'' does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement.

Cybersecurity Assessment means the appraisal of the risks facing an entity, asset, system, or network, organizational operations, individuals, geographic area, other organizations, or society, and includes identification of relevant vulnerabilities and threats and determining the extent to which adverse circumstances or events could result in operational disruption and other harmful consequences.

Cybersecurity Officer, or CySO, means the person(s) designated as responsible for the development, implementation, and maintenance of the cybersecurity portions of the Vessel Security Plan (VSP), Facility Security Plan (FSP), or Outer Continental Shelf (OCS) FSP, and for liaison with the Captain of the Port (COTP) and Company, Vessel, and Facility Security Officers.

Cybersecurity Plan means a plan developed to ensure application and implementation of cybersecurity measures designed to protect the owners' or operators' systems and equipment, as required by this part. A Cybersecurity Plan is either included in a VSP, FSP, or OCS FSP, or is an annex to a VSP, FSP, or OCS FSP.

Cybersecurity risk means threats to and vulnerabilities of information or information systems and any related consequences caused by or resulting from unauthorized access, use, disclosure, degradation, disruption, modification, or destruction of such information or information systems, including such related consequences caused by an act of terrorism. It does not include any action that solely involves a violation of a consumer term of service or a consumer licensing agreement.

Cybersecurity vulnerability means any attribute of hardware, software, process, or procedure that could enable or facilitate the defeat of a security control.

Encryption means any procedure used in cryptography to convert plain text into cipher text to prevent anyone but the intended recipient from reading that data.

Executable code means any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by such computer to execute instructions.

Exploitable channel means any information channel (such as a portable media device and other hardware) that allows for the violation of the security policy governing the information system and is usable or detectable by subjects external to the trusted user.

Firmware means computer programs (which are stored in and executed by computer hardware) and associated data (which is also stored in the hardware) that may be dynamically written or modified during execution.

Hardware means, collectively, the equipment that makes up physical parts of a computer, including its electronic circuitry, together with keyboards, readers, scanners, and printers.

Human-Machine Interface, or HMI, means the hardware or software through which an operator interacts with a controller for industrial systems. An HMI can range from a physical control panel with buttons and indicator lights to an industrial personal computer with a color graphics display running dedicated HMI software.

Information System means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software data, applications, communications, and people. It includes the application of Information Technology, Operational Technology, or a combination of both.

Information Technology, or IT, means any equipment or interconnected system or subsystem of equipment, used in the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

Known Exploited Vulnerability, or KEV, means a computer vulnerability that has been exploited in the past.

Multifactor Authentication means a layered approach to securing data and applications where a system requires users to present a combination of two or more credentials to verify their identity for login.

Network means information system(s) implemented with a collection of interconnected components. A network is a collection of computers, servers, mainframes, network devices, peripherals, or other devices connected to allow data sharing. A network consists of two or more computers that are linked in order to share resources, exchange files, or allow electronic communications.

Network map means a visual representation of internal network topologies and components.

Network segmentation means a physical or virtual architectural approach that divides a network into multiple segments, each acting as its own subnetwork, to provide additional security and control that can help prevent or minimize the impact of a cyber incident.

Operational Technology, or OT, means programmable systems or devices that interact with the physical environment (or manage devices that interact with the physical environment). These systems or devices detect or cause a change through the monitoring or control of devices, processes, and events.

Patching means updating software and operating systems to address cybersecurity vulnerabilities within a program or product.

Penetration test means a test of the security of a computer system or software application by attempting to compromise its security and the security of an underlying operating system and network component configurations.

Principle of least privilege means that an individual should be given only those privileges that are needed to complete a task. Further, the individual's function, not identity, should control the assignment of privileges.

Privileged user means a user who is authorized (and, therefore, trusted) to perform security functions that ordinary users are not authorized to perform.

Risk means a measure of the extent to which an entity is threatened by a potential circumstance or event, and typically is a function of: (1) the adverse impact, or magnitude of harm, that would arise if the circumstance or event occurs; and (2) the likelihood of occurrence.

Software means a set of instructions, data, or programs used to operate a computer and execute specific tasks.

Supply chain means a system of organizations, people, activities, information, and resources for creating computer products and offering IT services to their customers.

Threat means any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, individuals, other organizations, or the Nation through an information system through unauthorized access, destruction, disclosure, modification of information, or denial of service.

Vulnerability means a characteristic or specific weakness that renders an

organization or asset (such as information or an information system) open to exploitation by a given threat or susceptible to a given hazard.

Vulnerability scan means a technique used to identify hosts or host attributes and associated vulnerabilities.

§ 101.620 Owner or Operator.

(a) Each owner or operator of a vessel, facility, or OCS facility is responsible for compliance with the requirements of this subpart.

(b) For each vessel, facility, or OCS facility, the owner or operator must—

(1) Ensure a Cybersecurity Plan is developed, approved, and maintained;

(2) Define in Section 1 of the Cybersecurity Plan the cybersecurity organizational structure and identify each person exercising cybersecurity duties and responsibilities within that structure, with the support needed to fulfill those obligations;

(3) Designate, in writing, by name and by title, a CySO who is accessible to the Coast Guard 24 hours a day, 7 days a week, and identify how the CySO can be contacted at any time;

(4) Ensure that cybersecurity exercises, audits, and inspections, as well as the Cybersecurity Assessment, are conducted as required by this part and in accordance with the Cybersecurity Plan (see § 101.625(d)(1), (3), (6) and (7));

(5) Ensure that the vessel, facility, or OCS facility operates in compliance with the approved Cybersecurity Plan;

(6) Ensure the development, approval, and execution of the Cyber Incident Response Plan; and

(7) Ensure all cyber incidents are reported to the National Response Center (NRC) at the telephone number listed in § 101.305 of this part.

§ 101.625 Cybersecurity Officer.

(a) *Other duties.* The Cybersecurity Officer (CySO) may perform other duties within the owner's or operator's organization (vessel or facility), provided the person is able to perform the duties and responsibilities required of the CySO by this part.

(b) *Serving as CySO for Multiple Vessels, Facilities or OCS Facilities.* The same person may serve as the CySO for more than one vessel, facility, or OCS facility. If a person serves as the CySO for more than one vessel, facility, or OCS facility, the name of each location for which that person is the CySO must be listed in the Cybersecurity Plan of each vessel, facility, or OCS facility for which that person is the CySO.

(c) *Assigning Duties Permitted.* The CySO may assign security duties to other vessel, facility, or OCS facility personnel; however, the CySO retains ultimate responsibility for these duties.

(d) *Responsibilities.* For each vessel, facility, or OCS facility for which they are designated, the CySO must—

(1) Ensure that the Cybersecurity Assessment is conducted as required by this part;

(2) Ensure the cybersecurity measures in the Cybersecurity Plan are developed, implemented, and operating as intended;

(3) Ensure that an annual audit of the Cybersecurity Plan and its implementation is conducted and, if necessary, ensure that the Cybersecurity Plan is updated;

(4) Ensure the Cyber Incident Response Plan is executed and exercised;

(5) Ensure the Cybersecurity Plan is exercised in accordance with § 101.635(c) of this part;

(6) Arrange for cybersecurity inspections in conjunction with vessel, facility and OCS facility inspections;

(7) Ensure the prompt correction of problems identified by exercises, audits, or inspections;

(8) Ensure the cybersecurity awareness and vigilance of personnel through briefings, drills, exercises, and training;

(9) Ensure adequate cybersecurity training of personnel;

(10) Ensure all breaches of security, suspicious activity that may result in TSIs, TSIs, and cyber incidents are recorded and reported to the owner or operator;

(11) Ensure that records required by this part are maintained in accordance with § 101.640 of this part;

(12) Ensure any reports as required by this part have been prepared and submitted;

(13) Ensure that the Cybersecurity Plan, as well as proposed substantive changes (or major amendments) to cybersecurity measures included therein, are submitted for approval to the cognizant COTP or the Officer in Charge, Marine Inspections (OCMI) for facilities or OCS facilities, or to the Marine Safety Center (MSC) for vessels, prior to amending the Cybersecurity Plan, in accordance with § 101.630 of this part;

(14) Ensure relevant security and management personnel are briefed regarding changes in cybersecurity conditions on board the vessel, facility, or OCS facility; and

(15) Ensure identification and mitigation of all KEVs in critical IT or OT systems, without delay.

(e) *Qualifications.* The CySO must have general knowledge, through training or equivalent job experience, in the following:

(1) General vessel, facility, or OCS facility operations and conditions;

(2) General cybersecurity guidance and best practices;

(3) The vessel, facility, or OCS facility's Cyber Incident Response Plan;

(4) The vessel, facility, or OCS facility's Cybersecurity Plan;

(5) Cybersecurity equipment and systems;

(6) Methods of conducting cybersecurity audits, inspections, control, and monitoring techniques;

(7) Relevant laws and regulations pertaining to cybersecurity;

(8) Instruction techniques for cybersecurity training and education;

(9) Handling of Sensitive Security Information and security related communications;

(10) Current cybersecurity threat patterns and KEVs;

(11) Recognizing characteristics and behavioral patterns of persons who are likely to threaten security; and

(12) Conducting and assessing cybersecurity drills and exercises.

§ 101.630 Cybersecurity Plan.

(a) *General.* The CySO must develop, implement, and verify a Cybersecurity Plan for each vessel, facility, or OCS facility. The Cybersecurity Plan must reflect all cybersecurity measures required in this subpart, as appropriate, to mitigate risks identified during the Cybersecurity Assessment. The Plan must describe in detail how the requirements of subpart F will be met. The Cybersecurity Plan may be included in a VSP or an FSP, or as an annex to the VSP or FSP.

(b) *Protecting Sensitive Security Information.* The Cybersecurity Plan is Sensitive Security Information and must be protected in accordance with 49 CFR part 1520.

(c) *Format.* The owner or operator must ensure that the Cybersecurity Plan consists of the individual sections listed in this paragraph. If the Cybersecurity Plan does not follow the order as it appears on the list, the owner or operator must ensure that the Plan contains an index identifying the location of each of the following sections:

(1) Cybersecurity organization and identity of the CySO;

(2) Personnel training;

(3) Drills and exercises;

(4) Records and documentation;

(5) Communications;

(6) Cybersecurity systems and equipment, with associated maintenance;

(7) Cybersecurity measures for access control, including the computer, IT, and OT access areas;

(8) Physical security controls for IT and OT systems;

(9) Cybersecurity measures for monitoring;

(10) Audits and amendments to the Cybersecurity Plan;

(11) Reports of all cybersecurity audits and inspections, to include documentation of resolution or mitigation of all identified vulnerabilities;

(12) Documentation of all identified, unresolved vulnerabilities, to include those that are intentionally unresolved due to owner or operator risk acceptance;

(13) Cyber incident reporting procedures in accordance with part 101 of this subchapter; and

(14) Cybersecurity Assessment.

(d) *Submission and approval.* Each owner or operator must submit one copy of their Cybersecurity Plan for review and approval to the cognizant COTP or the OCMI for the facility or OCS facility, or to the MSC for the vessel. A letter certifying that the Plan meets the requirements of this subpart must accompany the submission.

(1) The COTP, OCMI, or MSC will evaluate each submission for compliance with this part, and either—

(i) Approve the Cybersecurity Plan and return a letter to the owner or operator indicating approval and any conditional approval;

(ii) Require additional information or revisions to the Cybersecurity Plan and return a copy to the owner or operator with a brief description of the required revisions or additional information; or

(iii) Disapprove the Cybersecurity Plan and return a copy, without delay, to the owner or operator with a brief statement of the reasons for disapproval.

(iv) If the cognizant COTP, OCMI, or MSC requires additional time to review the plan, they have the authority to return a written acknowledgement to the owner or operator stating that the Coast Guard will review the Cybersecurity Plan submitted for approval, and that the U.S.-flagged vessel, facility, or OCS facility may continue to operate as long as it remains in compliance with the submitted Cybersecurity Plan.

(2) Owners or operators submitting one Cybersecurity Plan to cover two or more vessels or facilities of similar operations must ensure the Plan addresses the specific cybersecurity risks for each vessel or facility.

(3) A Plan that is approved by the COTP, OCMI, or MSC is valid for 5 years from the date of its approval.

(e) *Amendments to the Cybersecurity Plan.*

(1) Amendments to a Coast Guard-approved Cybersecurity Plan must be initiated by either—

(i) The owner or operator or the CySO; or

(ii) When the COTP, OCMI, or MSC finds that the Cybersecurity Plan no longer meets the requirements in this part, the Plan will be returned to the owner or operator with a letter explaining why the Plan no longer meets the requirements and requires amendment. The owner or operator will have at least 60 days to amend the Plan and cure deficiencies outlined in the letter. Until the amendments are approved, the owner or operator must ensure temporary cybersecurity measures are implemented to the satisfaction of the Coast Guard.

(2) Major amendments, as determined by the owner or operator based on types of changes to their security measures and operational risks, to the Cybersecurity Plan must be proposed to the Coast Guard prior to implementation. Proposed amendments to the Cybersecurity Plan must be sent to the Coast Guard at least 30 days before the proposed amendment's effective date. The Coast Guard will approve or disapprove the proposed amendment in accordance with this part. An owner or operator must notify the Coast Guard by the most rapid means practicable as to the nature of the amendments, the circumstances that prompted these amendments, and the period these amendments are expected to be in place.

(3) If the owner or operator has changed, the CySO must amend the Cybersecurity Plan, without delay, to include the name and contact information of the new owner or operator and submit the affected portion of the Plan for review and approval in accordance with this part.

(4) If the CySO has changed, the Coast Guard must be notified without delay and the affected portion of the Cybersecurity Plan must be amended and submitted to the Coast Guard for review and approval in accordance with this part without delay.

(f) *Audits.* (1) The CySO must ensure that an audit of the Cybersecurity Plan and its implementation is performed annually, beginning no later than 1 year from the initial date of approval. The CySO must attach a report to the Plan certifying that the Plan meets the applicable requirements of this subpart.

(2) In addition to the annual audit, the CySO must audit the Cybersecurity Plan if there is a change in the owner or operator of the vessel, facility, or OCS facility, or if there have been modifications to the cybersecurity measures, including, but not limited to, physical access, incident response procedures, security measures, or operations.

(3) Auditing the Cybersecurity Plan as a result of modifications to the vessel, facility, or OCS facility, or because of changes to the cybersecurity measures, may be limited to those sections of the Plan affected by the modifications.

(4) Personnel conducting internal audits of the cybersecurity measures specified in the Plan or evaluating its implementation must—

(i) Have knowledge of methods of conducting audits and inspections, as well as access control and monitoring techniques;

(ii) Not have regularly assigned cybersecurity duties for the vessel, facility, or OCS facility being audited; and

(iii) Be independent of any cybersecurity measures being audited.

(5) If the results of an audit require amending the Cybersecurity Plan, the CySO must submit, in accordance with this part, the amendments to the Coast Guard for review and approval no later than 30 days after completion of the audit with a letter certifying that the amended Plan meets applicable requirements of subpart F.

§ 101.635 Drills and Exercises.

(a) *General.* (1) Drills and exercises must be used to test the proficiency of the vessel, facility, and OCS facility personnel in assigned cybersecurity duties and the effective implementation of the VSP, FSP, OCS FSP, and Cybersecurity Plan. The drills and exercises must enable the CySO to identify any related cybersecurity deficiencies that need to be addressed.

(2) The drill or exercise requirements specified in this section may be satisfied with the implementation of cybersecurity measures required by the VSP, FSP, OCS FSP, and Cybersecurity Plan as the result of a cyber incident, as long as the vessel, facility, or OCS facility achieves and documents attainment of drill and exercise goals for the cognizant COTP.

(b) *Drills.* (1) The CySO must ensure that at least one cybersecurity drill is conducted every 3 months. Cybersecurity drills may be held in conjunction with other security or non-security drills, where appropriate.

(2) Drills must test individual elements of the Cybersecurity Plan, including responses to cybersecurity threats and incidents. Cybersecurity drills must take into account the types of operations of the vessel, facility, or OCS facility; changes to the vessel, facility, or OCS facility personnel; the

type of vessel a facility is serving; and other relevant circumstances.

(3) If a vessel is moored at a facility on a date a facility has planned to conduct any drills, the facility cannot require the vessel or vessel personnel to be a part of or participate in the facility's scheduled drill.

(c) *Exercises.* (1) Exercises must be conducted at least once each calendar year, with no more than 18 months between exercises.

(2) Exercises may be—

(i) Full-scale or live;

(ii) Tabletop simulation;

(iii) Combined with other appropriate exercises; or

(iv) A combination of the elements in paragraphs (c)(2)(i) through (iii) of this section.

(3) Exercises may be vessel- or facility-specific, or part of a cooperative exercise program to exercise applicable vessel, facility, and OCS facility Cybersecurity Plans or comprehensive port exercises.

(4) Each exercise must test communication and notification procedures and elements of coordination, resource availability, and response.

(5) Exercises are a full test of the cybersecurity program and must include the substantial and active participation of the CySO(s).

(6) If any corrective action identified during an exercise is needed, it must be addressed and documented as soon as possible.

§ 101.640 Records and Documentation.

All records, reports, and other documents mentioned in this subpart must be created and maintained in accordance with 33 CFR 104.235 for vessels, 105.225 for facilities, and 106.230 for OCS facilities. At a minimum, the records must be created for the following activities: training, drills, exercises, cybersecurity threats, incidents, and audits of the Cybersecurity Plan.

§ 101.645 Communications.

(a) The CySO must have a means to effectively notify owners or operators and personnel of a vessel, facility, or OCS facility of changes in cybersecurity conditions at the vessel, facility, and OCS facility.

(b) Communication systems and procedures must allow effective and continuous communications between vessel, facility, and OCS facility security personnel, vessels interfacing with a facility or an OCS facility, the cognizant COTP, and national and local authorities with security responsibilities.

§ 101.650 Cybersecurity Measures.

(a) *Account security measures.* Each owner or operator of a vessel, facility, or OCS facility must ensure, at a minimum, the following account security measures are in place and documented in Section 7 of the Cybersecurity Plan:

(1) Automatic account lockout after repeated failed login attempts must be enabled on all password-protected IT and OT systems.

(2) Default passwords must be changed before using any IT or OT systems.

(3) A minimum password strength must be maintained on all IT and OT systems that are technically capable of password protection.

(4) Multifactor authentication must be implemented on password-protected IT and remotely accessible OT systems.

(5) The principle of least privilege must be applied to administrator or otherwise privileged accounts on both IT and OT systems;

(6) The owner or operator must ensure that users maintain separate credentials on critical IT and OT systems; and

(7) The owner or operator must ensure that user credentials are removed or revoked when a user leaves the organization.

(b) *Device security measures.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following device security measures are in place and documented in Section 6 of the Cybersecurity Plan:

(1) Develop and maintain a list of approved hardware, firmware, and software that may be installed on IT or OT systems. Any hardware, firmware, and software installed on IT and OT systems must be on the owner- or operator-approved list.

(2) Ensure applications running executable code must be disabled by default on critical IT and OT systems. Exemptions must be justified and documented in the Cybersecurity Plan.

(3) Maintain an accurate inventory of network-connected systems, including designation of critical IT and OT systems; and

(4) Develop and maintain accurate documentation identifying the network map and OT device configuration information.

(c) *Data security measures.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following data security measures are in place and documented in Section 4 of the Cybersecurity Plan:

(1) Data logs must be securely captured, stored, and protected so that they are accessible only by privileged users; and

(2) All data, both in transit and at rest, must be encrypted using a suitably strong algorithm.

(d) *Cybersecurity training for personnel.* The training program to address requirements under this paragraph must be documented in Sections 2 and 4 of the Cybersecurity Plan.

(1) All personnel with access to the IT or OT systems, including contractors, whether part-time, full-time, temporary, or permanent, must have cybersecurity training in the following topics:

(i) Relevant provisions of the Cybersecurity Plan;

(ii) Recognition and detection of cybersecurity threats and all types of cyber incidents;

(iii) Techniques used to circumvent cybersecurity measures;

(iv) Procedures for reporting a cyber incident to the CySO; and

(v) OT-specific cybersecurity training for all personnel whose duties include using OT.

(2) Key personnel with access to the IT or remotely accessible OT systems, including contractors, whether part-time, full-time, temporary, or permanent, must also have cybersecurity training in the following additional topics:

(i) Understanding their roles and responsibilities during a cyber incident and response procedure; and

(ii) Maintaining current knowledge of changing cybersecurity threats and countermeasures.

(3) All personnel must complete the training specified in paragraphs (d)(1)(ii) through (v) of this section by [DATE 180 DAYS AFTER EFFECTIVE DATE OF THE FINAL RULE], and annually thereafter. Key personnel must complete the training specified in paragraph (d)(2) of this section by [DATE 180 DAYS AFTER EFFECTIVE DATE OF THE FINAL RULE], and annually thereafter, or more frequently as needed. Training for new personnel not in place at the time of the effective date of this rule must be completed within 5 days of gaining system access, but no later than within 30 days of hiring, and annually thereafter. Training for personnel on new IT or OT systems not in place at the time of the effective date of this rule must be completed within 5 days of system access, and annually thereafter. All personnel must complete the training specified in paragraph (d)(1)(i) within 60 days of receiving approval of the Cybersecurity Plan. The training must be documented and maintained in the owner's or operator's records in accordance with 33 CFR 104.235 for vessels, 105.225 for facilities, and 106.230 for OCS facilities.

(e) *Risk management.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following measures for risk management are in place and documented in Sections 11 and 12 of the Cybersecurity Plan:

(1) *Cybersecurity Assessment.* Each owner or operator or designated CySO of a U.S.-flagged vessel, facility, or OCS facility must ensure completion of a Cybersecurity Assessment that addresses each covered vessel, facility, and OCS facility. A Cybersecurity Assessment must be conducted within 1 year from [EFFECTIVE DATE OF FINAL RULE] and annually thereafter. However, the Cybersecurity Assessment must be conducted sooner than annually if there is a change in ownership of a U.S.-flagged vessel, facility, or OCS facility; or if there are major amendments to the Cybersecurity Plan. In conducting the Cybersecurity Assessment, the owner or operator must—

(i) Analyze all networks to identify vulnerabilities to IT and OT systems and the risk posed by each digital asset;

(ii) Validate the Cybersecurity Plan;

(iii) Document recommendations and resolutions in the Facility Security Assessment (FSA)/Vessel Security Assessment (VSA), in accordance with 33 CFR 104.305, 105.305, and 106.305;

(iv) Document and mitigate any unresolved vulnerabilities; and

(v) Incorporate recommendations and resolutions from paragraph (e)(1)(iii) of this section into the Cybersecurity Plan through an amendment, in accordance with § 101.630(e) of this part.

(2) *Penetration Testing.* In conjunction with FSP, OCS FSP, or VSP renewal, the owner or operator or designated CySO must ensure that a penetration test has been completed. Following the penetration test, all identified vulnerabilities must be included in the FSA or VSA, in accordance with 33 CFR 104.305, 105.305, and 106.305.

(3) *Routine system maintenance.* Each owner or operator or a designated CySO of a vessel, facility, or OCS facility must ensure the following measures for routine system maintenance are in place and documented in Section 6 of the Cybersecurity Plan:

(i) Ensure patching or implementation of documented compensating controls for all KEVs in critical IT or OT systems, without delay;

(ii) Maintain a method to receive and act on publicly submitted vulnerabilities;

(iii) Maintain a method to share threat and vulnerability information with external stakeholders;

(iv) Ensure there are no exploitable channels directly exposed to internet-accessible systems;

(v) Ensure no OT is connected to the publicly accessible internet unless explicitly required for operation, and verify that, for any remotely accessible OT system, there is a documented justification; and

(vi) Conduct vulnerability scans as specified in the Cybersecurity Plan.

(f) *Supply chain.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following supply-chain measures are in place and documented in Section 4 of the Cybersecurity Plan:

(1) Consider cybersecurity capability as criteria for evaluation to procure IT and OT systems or services;

(2) Establish a process through which all IT and OT vendors or service providers notify the owner or operator or designated CySO of any cybersecurity vulnerabilities, incidents, or breaches, without delay; and

(3) Monitor and document all third-party remote connections to detect cyber incidents.

(g) *Resilience.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following measures for resilience are in place and documented in Sections 3 and 9 of the Cybersecurity Plan:

(1) Report any cyber incidents to the NRC, without delay, to the telephone number listed in § 101.305 of this part;

(2) In addition to other plans mentioned in this subpart, develop, implement, maintain, and exercise the Cyber Incident Response Plan;

(3) Periodically validate the effectiveness of the Cybersecurity Plan through annual tabletop exercises, annual reviews of incident response cases, or post-cyber incident review, as determined by the owner or operator; and

(4) Perform backup of critical IT and OT systems, with those backups being sufficiently protected and tested frequently.

(h) *Network segmentation.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following measures for network segmentation are in place and documented in Sections 7 and 8 of the Cybersecurity Plan:

(1) Implement segmentation between IT and OT networks; and

(2) Verify that all connections between IT and OT systems are logged and monitored for suspicious activity, breaches of security, TSIs, unauthorized access, and cyber incidents.

(i) *Physical security.* Each owner or operator or designated CySO of a vessel, facility, or OCS facility must ensure the following measures for physical security are in place and documented in Sections 7 and 8 of the Cybersecurity Plan:

(1) In addition to any other requirements in this part, limit physical access to OT and related IT equipment to only authorized personnel, and confirm that all HMIs and other hardware are secured, monitored, and logged for personnel access; and

(2) Ensure unauthorized media and hardware are not connected to IT and OT infrastructure, including blocking, disabling, or removing unused physical access ports, and establishing procedures for granting access on a by-exception basis.

§ 101.655 Cybersecurity Compliance Dates.

All Cybersecurity Plans mentioned in this subpart must be submitted to the Coast Guard for review and approval during the second annual audit following [EFFECTIVE DATE OF FINAL RULE], according to 33 CFR 104.415 for vessels, 33 CFR 105.415 for facilities, or 106.415 for OCS facilities.

§ 101.660 Cybersecurity Compliance Documentation.

Each owner or operator must ensure that the cybersecurity portion of their Plan and penetration test results are available to the Coast Guard upon request. The Alternative Security Program provisions are addressed in 33 CFR 104.140 for vessels, 105.140 for facilities, and 106.135 for OCS facilities.

§ 101.665 Noncompliance, Waivers, and Equivalents.

An owner or operator who is unable to meet the requirements in subpart F may seek a waiver or an equivalence determination using the provisions applicable to a vessel, facility, or OCS facility as outlined in 33 CFR 104.130, 104.135, 105.130, 105.135, 106.125, or 106.130. If an owner or operator is temporarily unable to meet the requirements in this part, they must notify the cognizant COTP or MSC, and may request temporary permission to continue to operate under the provisions as outlined in 33 CFR 104.125, 105.125, or 106.120.

§ 101.670 Severability.

Any provision of this subpart held to be invalid or unenforceable as applied to any person or circumstance shall be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this subpart and shall not affect the remainder thereof.

Linda Fagan,

Admiral, U.S. Coast Guard, Commandant.

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Part III

Department of Education

34 CFR Parts 655, 656, and 657
National Resource Centers Program and Foreign Language and Area Studies Fellowships Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 655, 656, and 657

RIN 1840–AD94

[Docket ID ED–2024–OPE–0017]

National Resource Centers Program and Foreign Language and Area Studies Fellowships Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations that govern the National Resource Centers (NRC) Program, Assistance Listing Number 84.015A, and the Foreign Language and Area Studies (FLAS) Fellowships Program, Assistance Listing Number 84.015B. The proposed regulations would clarify interpretations of statutory language, redesign the selection criteria, and make necessary updates based upon program management experience. These proposed changes would remove ambiguity and redundancy in the selection criteria and definitions of key terms, improve the application process, and align the administration of these programs with developments in modern foreign language and area studies education. A brief summary of the proposed rule is available on *Regulations.gov* in the docket for the rulemaking.

DATES: We must receive your comments on or before March 25, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *Regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *Regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. The Department will not make comments that contain personally identifiable information about someone other than the commenter publicly available on *www.regulations.gov* for privacy reasons. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Tim Duvall, U.S. Department of Education, 400 Maryland Ave. SW, Room 5C105, Washington, DC 20202. Telephone: (202) 987–0383. Email: *timothy.duvall@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:

Executive Summary

Purpose of this Regulatory Action: The regulations for the NRC and FLAS programs were last revised in 2009 (74 FR 35070) and were impacted by subsequent technical corrections made to 34 CFR part 655, International Education Programs—General Provisions, adopted in 2014 (79 FR 75867). Because these regulations provide the foundation for the administration of these programs, we have reviewed them, evaluated them for provisions that, over time, have become outdated, unnecessary, or inconsistent with other Department regulations as well as with established practices for administering these programs in the Department, and identified ways in which they can be updated, streamlined, and otherwise improved. Specifically, we propose to amend parts 655, 656, and 657 of title 34 of the Code of Federal Regulations. These changes are detailed in the Summary of Major Provisions of this Regulatory Action.

Summary of Major Provisions of this Regulatory Action: As discussed in greater detail in the *Summary of Proposed Regulations* section of this document, the proposed regulations would:

- Make technical updates to refer to up-to-date statutory authorities, remove outdated terminology, use consistent references, and eliminate obsolete cross-references.
- Clarify and streamline the selection criteria the Secretary may use to make discretionary awards under parts 656 and 657.
- Add new selection criteria the Secretary may use to make discretionary grants for special purposes under part 656.
- Add definitions for ambiguous terms related to program administration, including ''areas of national need'' and ''diverse perspectives.''
- Add a requirement for a geographical area of focus for discretionary grants made under parts 656 and 657.
- Clarify the differences between comprehensive and undergraduate National Resource Centers for Foreign Language and Area Studies.
- Add a student eligibility requirement for fellowships awarded under part 657 based upon a student's educational program.
- Simplify the administration of allocations of fellowships made under part 657 by eliminating the institutional payment as a component of fellowships and allowing fellows to receive a single stipend payment.

Costs and Benefits: The Department believes that the benefits of this regulatory action would outweigh any associated costs to States, local educational agencies (LEAs), colleges and universities, and other Department applicants and grantees. The proposed regulations would, in part, update terminology to align with applicable statutes and regulations. Many of the adjustments would support the Department, its grantees, or both, in selecting high-quality grantees and to support those grantees in ensuring the effectiveness and improvement of their projects. These changes include, for example, altering selection criteria to allow for a more efficient and effective peer review process, as announced in a notice inviting applications (NIA), and adding and clarifying definitions that apply to the programs affected so that peer reviewers and applicants have a better sense of how application reviews are conducted. Please refer to the *Regulatory Impact Analysis* section of this document for a more detailed discussion of costs and benefits.

Invitation to Comment: We invite you to submit comments regarding the proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We also invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from the proposed regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. The Department also welcomes comments on any alternative approaches to the subjects addressed in the proposed regulations.

During and after the comment period, you may inspect public comments about the proposed regulations by accessing *Regulations.gov*.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

Programs authorized under title VI of the Higher Education Act of 1965, as amended (HEA), build institutional capacity for training and research in modern foreign languages and area studies; promote access to international and foreign language knowledge; respond to the ongoing national need for individuals with expertise and competence in world languages and area studies; advance national security by developing a pipeline of highly trained experts in critical world regions who are proficient in a large number of diverse modern foreign languages, especially but not limited to less commonly taught languages; and contribute to developing a globally competent multilingual and multicultural workforce able to engage with people in the United States and around the world.

The NRC Program and the FLAS Fellowships Program are the two largest programs funded under title VI of the HEA. The NRC Program provides grants to institutions of higher education (IHE) and consortia of IHEs to establish, strengthen, and operate comprehensive and undergraduate foreign language and area studies centers. These centers serve as centers of excellence for training and teaching in any modern foreign language, research, and instruction in fields needed to provide full understanding of areas, regions, or countries where the languages are commonly used. See 34 CFR part 656; 20 U.S.C. 1122(a)(1). The FLAS Fellowships Program awards allocations of fellowships, through IHEs or consortia of IHEs, to meritorious students enrolled in programs that offer performance-based instruction in world languages in combination with area studies, international studies, or the international aspects of professional studies. See 34 CFR part 657; 20 U.S.C. 1122(b)(1). Both programs share a common focus on modern foreign language and area studies education.

The regulations for these programs were last revised in 2009 (74 FR 35070) and were impacted by subsequent technical corrections made to 34 CFR part 655, International Education Programs—General Provisions, adopted in 2014 (79 FR 75867). We propose to amend the regulations that govern the NRC Program and the FLAS Fellowships Program, and to make related amendments and technical corrections to 34 CFR part 655. The proposed changes would clarify interpretations of statutory language, redesign the selection criteria, and make necessary updates based upon program management experience. The proposed regulations would remove ambiguity and redundancy in the selection criteria and definitions of key terms, improve the application process, and align the administration of these programs with developments in modern foreign language and area studies education.

Selection Criteria and Application Process. Over many grant cycles, administering the NRC and FLAS grant competitions using the current selection criteria has been unwieldy and burdensome for both applicants and peer reviewers. The Secretary proposes changes to the selection criteria that would clarify selection criteria, eliminate redundant criteria, reduce the burden on applicants and peer reviewers, and improve alignment with the statute, particularly with regard to comprehensive and undergraduate Centers. The Secretary proposes reducing the comprehensive NRC selection criteria from 10 criteria with 27 sub-criteria to six criteria with 24 sub-criteria; the undergraduate NRC selection criteria from 10 criteria with 26 sub-criteria to six criteria with 24 sub-criteria; and the FLAS selection criteria from nine criteria with 22 sub-criteria to six criteria with 22 sub-criteria. The proposed criteria include some new criteria for the NRC Program, including a ''quality of existing academic programs'' criterion, and also for FLAS, including ''project design and rationale'' and ''project planning and budget'' criteria.

Definitions. The Secretary proposes, to remain current with standards in the fields of language and area studies, to add and remove definitions in 34 CFR part 655, including defining ''areas of national need'' and ''consultation on areas of national need'' to better align the programs with the statute. The Secretary also proposes adding, among others, definitions of (a) ''educational program abroad'' and ''diverse perspectives'' to part 655, and (b) add a definition of ''stipend'' to the FLAS regulations in part 657. These proposed definitions would clarify concepts that have proven to be opaque or absent during the application and administration phases of these grants.

Alignment with the statute. The Secretary proposes to amend the regulations to align them more closely with the statute and with accepted grant administrative practices. The NRC Program is intended to operate as a national network of centers to advance foreign language and area studies knowledge and expertise. NRCs work together and separately toward a common national goal of providing resources for teaching, training, and research relating to foreign languages and area studies. The proposed changes would highlight this common national goal and renew emphasis on the importance of less commonly taught languages to the NRC Program. The proposed changes would also clarify the expectation that all centers should have a geographically defined focus, which helps centers align their activities with areas of national need identified by the Secretary and the statute's mandated consultation on national need for foreign language and area studies knowledge and expertise. The proposed changes would draw a clear distinction between undergraduate and comprehensive NRCs and clarify the role that each type of center plays in the NRC network. Finally, the proposed changes, among other things, would clarify student eligibility, include a student's educational program as a relevant criterion for determining FLAS fellowship eligibility, and define ''distance education.''

Summary of Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Part 655

Section 655.4 What definitions apply to the International Education Programs?

Statute: Sections 601 through 613 of the HEA (20 U.S.C. 1121–1130b) provide authority for defining terms necessary for the implementation of the International Education Programs.

Current Regulations: Section 655.4 sets forth definitions for the International Education Programs, including the NRC Program and FLAS Fellowships Program.

Proposed Regulation: The definitions in § 655.4 apply to all International Education Programs, including but not limited to NRC Program and FLAS Fellowships Program. Proposed § 655.4 would add new definitions, consolidate current definitions that apply to multiple International Education Programs, and remove one term. Specifically, the Department proposes to add a definition of ''consultation on areas of national need,'' based on the process outlined in the statute, as well as a definition of ''areas of national need.'' We also propose a definition of ''diverse perspectives.'' Additional proposed changes would relocate and centralize definitions such as ''area studies'' and ''intensive language instruction'' that were previously defined in the context of the NRC Program. The proposed changes would incorporate definitions for ''educational program abroad'' from section 631 of the HEA. The proposed changes incorporate definitions for ''academic engagement,'' ''clock hour,'' ''correspondence course,'' ''credit hour,'' ''distance education,'' ''educational program,'' ''enrolled,'' full-time student,'' ''graduate or professional student,'' ''half-time student,'' ''National level,'' ''regular student,'' and ''undergraduate student'' from §§ 600.2 and 668.2. Finally, the proposed changes would remove the definition of ''critical languages'' from § 655.4.

Reasons: The Department proposes to remove the definition of ''critical languages'' in current § 655.4, which was based on a separate statute (the Education for Economic Security Act). The proposed definitions of ''areas of national need'' and ''consultation on areas of national need are tied more closely to the language and goals of the program statute. The Department believes application of these definitions would, as a practical matter, acknowledge the statutorily required consultation process is sufficient to identify languages that could be identified as ''areas of national need.'' A list of languages created through this process would be substantially the same as or identical to the updated list of ''critical languages'' required by current § 655.4, eliminating the need for development of a separate list of critical languages under current § 655.4.

The new definitions generally would acknowledge the Secretary's ability to identify relevant national needs and emphasize the importance of the consultation process, as well as establishing a single common term (''consultation on areas of national need'') to be used in the implementation of the International Education Programs. This would reduce the potential for confusion and improve the efficiency of program implementation. The proposed definition of ''consultation on areas of national need'' also would assist and provide additional clarity to NRC Program and FLAS Fellowship Program applicants when completing their required assurances related to national needs, which would assist the Secretary in identifying the relevant ''areas of national need.'' As noted above, because ''consultation on areas of national need'' is statutorily required for the grant programs funded under title VI of the HEA, which include the NRC Program and the FLAS Fellowship program, see HEA § 601(c), adopting and applying that term would be more directly tailored to the activities of the grant programs authorized under title VI than is the current concept of ''critical languages,'' which is based on a different statute (the Education for Economic Security Act (Pub. L. 98–377) and also is used in HEA programs outside title VI.

The Department proposes a definition of ''diverse perspectives'' to clarify the statutory requirement in section 602 of the HEA that ''activities funded by the grant will reflect diverse perspectives[,]'' emphasizing the relevance of a variety of viewpoints in understanding world regions. The proposed change would reduce ambiguity by introducing a standard interpretation and improve the efficiency of program implementation.

The relocation of definitions for the terms ''area studies,'' ''intensive language instruction,'' and ''educational program abroad'' would provide standard definitions applicable to all International Education Programs. The proposed changes would standardize the use of terms that apply to postsecondary education generally, by adding references to other parts of title 34 that are also authorized by the HEA. Specifically, the incorporation of terms defined in §§ 600.2 and 668.2 would provide a shared set of terms that would more closely align implementation of the International Education Programs with implementation of the HEA.

Section 655.31 What general selection criteria does the Secretary use?

Statute: Sections 601 through 607 of the HEA (20 U.S.C. 1121–1127) provide authority for establishing general selection criteria necessary for the implementation of the International Education Programs.

Current Regulations: Section 655.31(e)(2)(i) sets forth the factors the Secretary considers as part of the ''adequacy of resources'' selection criterion, specifically whether the facilities the applicant plans to use in carrying out its proposed project, ''other than library,'' are adequate.

Proposed Regulation: Proposed § 655.31(e)(2)(i) would expand the types of facilities that may be considered when evaluating this selection criterion to include libraries.

Reasons: The proposed change would not specifically exclude any type of facility when assessing the adequacy of an applicant's resources, so an applicant would be able to address the adequacy of library facilities if these facilities were relevant to the proposed project. The proposed wording would recognize that libraries increasingly fulfill a diverse set of functions at IHEs in support of teaching, research, and engagement. In addition to housing various collections and information professionals, libraries frequently are the sites where specialized information technology, media production facilities, and other resources are located.

Part 656

Statute: 20 U.S.C. 1122.

Current Regulations: Part 656 contains the regulations for the NRC Program, titled ''National Resource Centers Program for Foreign Language and Area Studies or Foreign Language and International Studies.''

Proposed Regulation: The Department proposes to replace part 656 in its entirety due to the number of necessary changes and the accompanying need to reorganize this part to improve readability. We propose to combine sections that address similar topics, and to eliminate duplicative or contradictory paragraphs. We propose to rename part 656 as ''National Resource Centers Program for Foreign Language and Area Studies'' to align more closely with the headings in 20 U.S.C. 1122 and 1122(a), which do not include ''international studies.''

Reasons: As described in more detail in each of the following sections related to part 656, these changes would allow the Department to substantially revise

the selection criteria and application processes for the NRC Program, introduce new definitions, revise or eliminate existing definitions, align the regulations with the statute, and reduce the burden associated with the NRC Program.

Section 656.1 What is the purpose of the National Resource Centers Program?

Statute: Section 602(a)(1)(B) of the HEA (20 U.S.C. 1122(a)(1)(B)) provides that centers and programs awarded grants are national resources for teaching modern foreign languages as well as for related research and instruction in other academic fields. Sections 601(a)(4) and (b)(1)(C) of the HEA (20 U.S.C. 1121(a)(4) and (b)(1)(C)) specifically mention the importance of less commonly taught languages for programs authorized under title VI of the HEA. These sections also highlight the importance of enhancing the capacity of IHEs in the United States to train experts in modern foreign language and area studies and produce research based upon such expertise.

Current Regulation: Section 656.1 describes the purpose of the NRC Program.

Proposed Regulation: We propose to expand the introductory language to § 656.1 to require Centers to act cooperatively as national resources to carry out program purposes. We also propose to expand the portion of the program description regarding resources for teaching to emphasize less commonly taught languages.

Reasons: The Nation's security, stability, and economic vitality depend upon the existence of experts in the United States who enable robust research and training at IHEs. The NRC Program exists to ensure that institutional capacity at IHEs in the United States meets or exceeds this threshold. Emphasizing less commonly taught languages would signal that the NRC Program supports the development and maintenance of such capacity for all world areas, all modern foreign languages, and all academic disciplines at all times. Given the unpredictability of world events, this broad-based support ensures that a pool of experts and knowledgeable individuals are prepared to face any threats and take advantage of any opportunities that require knowledge of modern foreign languages and area studies topics and approaches.

The proposed changes also would add that the NRC Program anticipates that grantees will act cooperatively as a network of IHEs that jointly serve as national resources for teaching, training, and research related to modern foreign languages and area studies. The proposed wording would emphasize the core identity and sense of purpose that NRCs share. The proposed change would not alter eligibility criteria for the NRC Program.

Despite the competitive nature of discretionary grants, the NRC Program is intended to build institutional capacity that broadly benefits the United States after the end of a single grant period. This effect is magnified when NRCs engage in joint activities, form partnerships, and build linkages to one another and to other postsecondary institutions in the United States. This approach ensures that a wide range of IHEs can contribute to meeting national needs related to modern foreign language and area studies identified by Federal agencies and other needs in the education, business, and nonprofit sectors.

Section 656.2 What entities are eligible to receive a grant?

Statute: Section 602(a)(1)(A) of the HEA (20 U.S.C. 1122(a)(1)(A)) authorizes the Secretary to make grants to institutions of higher education or consortia of such institutions. Section 602(a)(3)–(4) of the HEA (20 U.S.C. 1122(a)(3)–(4)) authorizes the Secretary to make additional grants to centers for specific purposes, such as maintaining important library collections.

Current Regulation: Section 656.2 states that an IHE or a consortium of IHEs is eligible to receive a grant under the NRC Program, but this section does not specifically address the eligibility for additional grants authorized by 20 U.S.C. 1122(a)(3)–(4).

Proposed Regulation: We propose to amend the eligibility criteria in § 656.2 to clarify that only an IHE or a consortium of IHEs that has received a grant under part 656 as either a comprehensive Center or undergraduate Center is eligible to receive a grant for the purposes described in 20 U.S.C. 1122(a)(3)–(4).

Reasons: The current regulation does not address the eligibility criteria for additional grants authorized by 20 U.S.C. 1122(a)(3)–(4), which are for maintaining library collections, and for conducting outreach and summer institutes, respectively. This creates ambiguity regarding the appropriate recipients of these grants. The proposed regulation would clarify that eligibility for these additional grants is limited to National Resource Centers, which accurately reflects the statute's characterization of these grants as additional or special purpose grants for Centers, to carry out specific activities in addition to those already part of the Center's funded project.

Section 656.3 What defines a comprehensive or undergraduate National Resource Center?

Statute: Section 631(a)(2) of the HEA (20 U.S.C. 1132(a)(2)) defines ''comprehensive foreign language and area or international studies center.'' Section 631(a)(10) of the HEA (20 U.S.C. 1132(a)(10)) defines ''undergraduate foreign language and area or international studies center.'' Under 20 U.S.C. 1127(b), the Secretary must set specific selection criteria to attain the objectives of the two types of centers, including the degree to which the activities of centers and programs address the national needs built into these definitions.

Current Regulation: Section 656.7 contains definitions for comprehensive and undergraduate Centers based on most, but not all, of the comparable definitions in 20 U.S.C. 1132(a)(2) and (a)(10). Section 656.7 states that Centers provide training at the undergraduate level and that comprehensive Centers provide graduate and professional training in addition to undergraduate training. Section 656.3 lists specific activities that define all National Resource Centers based on the allowable activities for all centers in 20 U.S.C. 1122(a)(2).

Proposed Regulation: The Department proposes to consolidate multiple current sections into proposed § 656.3, require all centers to adopt a geographically defined area of focus, and more completely define comprehensive and undergraduate Centers based on 20 U.S.C. 1132(a).

Reasons: The proposed approach would more clearly highlight the distinct purposes of the two Center types and more closely align with the statutory language. The definitional requirements for the two types of centers would address similar topics in a parallel format, while aligning with the distinct purpose of each type of Center and the different capacities of the IHEs likely to host these centers. Both types of Centers would still be required to engage in activities associated with the selection criteria described in 20 U.S.C. 1127(b). These activities include, among others, the generation and dissemination of information to the public, which is more commonly described as outreach.

The current approach accurately highlights many similarities between the two types of Centers but omits certain statutory differences and does not adequately distinguish the distinct purposes of these types of Centers. For

example, current § 656.3(f) states that both comprehensive and undergraduate Centers must employ faculty who engage in training and research relevant to the center's focus. The statutory definition of ''comprehensive Centers'' in 20 U.S.C. 1132(a)(2) is more precise, however, requiring comprehensive Centers to employ a critical mass of scholars related to a geographic concentration. Similarly, current § 656.3(e) prescribes that comprehensive and undergraduate Centers both have important library collections. However, the statute imposes this requirement only on comprehensive Centers (20 U.S.C. 1132(a)(2)), while requiring in section 1132(a)(10) that an undergraduate Center maintain library collections sufficient to support undergraduate education.

Current §§ 656.3 and 656.4 also omit certain statutory requirements that further clarify the respective roles of comprehensive and undergraduate Centers. For example, these sections do not clearly identify undergraduate Centers' contribution to the national interest by serving as a source of graduates who matriculate into advanced language and area studies programs. See 20 U.S.C. 1132(a)(10). These sections also do not mention that, pursuant to 20 U.S.C. 1132(a)(2), comprehensive Centers contribute to the national interest through advanced research and scholarship.

The current regulation allows international studies centers to declare a thematic focus with no geographically defined referent. The proposed regulation would require all Centers to have a geographically defined focus. This change in policy would better support the program purpose. Although 20 U.S.C. 1122(a)(1)(A) authorizes the Secretary to make grants to area studies or international studies and programs, 20 U.S.C. 1122(a)(1)(B)(i)–(iv) states that all centers are expected to serve as resources for both area and international studies. We do not interpret the phrase ''area or international studies'' as a binary choice in the proposed regulations. Instead, we proposed to interpret the statute as describing the importance that a Center places on area studies relative to international studies such that neither approach could be completely absent from a center.

Area studies and international studies are not mutually exclusive and should be interpreted as mutually reinforcing academic approaches that should be represented to some degree within each Center. According to 20 U.S.C. 1122(a)(1)(B), Centers are expected to be national resources for teaching of any modern foreign language; instruction in fields needed to provide full understanding of areas, regions, or countries in which such language is commonly used; research and training in international studies, and the international and foreign language aspects of professional and other fields of study; and instruction and research on issues in world affairs that concern one or more countries. This portion of the statute suggests that focus on the study of a geographically defined area and international studies are complementary aspects of all centers. In addition, 20 U.S.C. 1122(a)(1)(B)(i)–(ii) clearly articulates the interconnectedness of these characteristics, including a specific relationship between modern foreign languages and the specific places in which those languages are used.

Area studies, as defined in section 1132(a), is a broad concept based on the comprehensive study of specific societies that does not exclude any discipline or approach. The inclusion of societies in this definition complements the program's interest in modern foreign languages and specific places, as articulated in 20 U.S.C. 1122(a)(1)(B)(i)–(ii). International studies approaches complement the specificity of area studies by drawing attention to patterns, trends, and phenomena relevant to understanding the larger context in which societies exist. It is now commonplace for Centers to emphasize interregional and global flows of people, concepts, and objects in their activities, so this proposed change would only emphasize how area studies and international studies offer complementary approaches to instruction, research, and training. This proposed interpretation also aligns with the larger program goals of section 1122(a)(1)(B). That is, even with a geographical focus, Centers would still be required to engage in all these activities to meet the program's purpose, including support for international studies. Centering a geographic world area also would help centers align their activities to the recommendations provided by the ''consultation on areas of national need'' for expertise in foreign languages and world regions required by 20 U.S.C. 1121(c)(1). A geographically defined focus also would support the Secretary's efforts to distribute funds in a manner that supports the consultation, which necessarily generates recommendations related to specific language and geographically defined world areas rather than themes or topics in international studies.

The importance of a geographically defined focus for Centers also is evident in other portions of the statute. Under 20 U.S.C. 1132(a)(2), a comprehensive Center must employ scholars related to a ''geographic concentration'' and offer intensive language training in its ''area of specialization.'' Section 1132(a)(10) expresses an expectation that undergraduate Centers will produce graduates who matriculate into advanced language and area studies programs. Accordingly, requiring a geographically defined area of focus for both comprehensive and undergraduate Centers is not incompatible with the overall purpose of the program. Under the proposed regulations, centers would retain the flexibility to define their geographic area of focus, which may be a traditionally recognized world region, a single country, or another configuration of space that draws attention to world issues, peoples, and any related languages outside the United States.

Section 656.4 For what special purposes may a Center receive an additional grant under this part?

Statute: Section 602(a)(3)–(4) of the HEA (20 U.S.C. 1122(a)(3)–(4)) authorizes the Secretary to make additional grants to centers for specific purposes, such as maintaining important library collections, conducting outreach, and hosting summer institutes.

Current Regulation: Section 656.5(b) allows the Secretary to make additional grants to support linkages, outreach, partnerships, and summer institutes related to the program's purpose, in the context of addressing activities authorized by the statute.

Proposed Regulation: Proposed § 656.4 would be a standalone section addressing the additional grants to centers authorized by 20 U.S.C. 1122(a)(3)–(4) and, consistent with the statute, would include the maintenance of important library collections among the list of permissible purposes for such grants.

Reasons: We believe the creation of a standalone section that addresses additional grants and mirrors the language in 20 U.S.C. 1122(a)(3)–(4) would allow for more efficient administration of the NRC program. The proposed regulation would clarify that these additional grants are for existing centers and any such additional grants also could be used for maintaining appropriate library collections.

Section 656.6 What definitions apply to this program?

Statute: Section 602 of the HEA (20 U.S.C. 1122) authorizes the Secretary to

define terms necessary to make grants under the NRC Program.

Current Regulation: Section 656.7 defines several terms relevant to the NRC Program and several terms that relate to multiple programs authorized by title VI of the HEA.

Proposed Regulation: Proposed § 656.6 would define ''critical mass of scholars'' and clarify the definition of ''Center'' for purposes of the NRC Program. The proposed regulation also would remove the definitions of ''area studies,'' ''comprehensive Center,'' ''intensive language instruction,'' and ''undergraduate Center'' all of which would be relocated to part 655.

Reasons: Reducing the number of definitions in proposed § 656.6, and clarifying those that remain, would improve the efficiency of NRC Program administration and reduce the burden on applicants and grantees. Defining the statutory term ''critical mass of scholars'' would provide guidance to applicants and reduce ambiguity in the regulations. It would also provide substantial flexibility in the describing qualifications, density, and overall significance of scholars.

Proposed § 656.6 also would clarify that a ''Center'' refers to a grantee under the NRC Program, regardless of its title or organizational form on campus. Grantees (or ''centers'' for purposes of the NRC Program) are distinct administrative subunits within an IHE.

Finally, terms related to the administration of multiple International Education Programs authorized by title VI of the HEA would be relocated to part 655, which applies to all International Education Programs.

Section 656.7 Severability

Statute: 20 U.S.C. 1122 authorizes the Secretary to define terms necessary to make grants under the NRC Program.

Current Regulations: The current regulations do not address severability.

Proposed Regulation: The proposed regulation would add a severability provision.

Reasons: The Department seeks to clarify its intent that, with regard to severability, each of the regulations in 34 CFR part 656 and its subparts serves one or more important, related, but distinct, purposes. To best serve these purposes, we included this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision or any of its subparts should not affect the remainder of the provisions.

Application and Selection Processes (§§ 656.10, 656.11, and 656.20)

Statute: Section 602(e) of the HEA (20 U.S.C. 1122(e)) requires institutions seeking a grant under this program to follow an application process designed by the Secretary.

Current Regulation: Section 656.10 allows an applicant to submit a combined application for the NRC and FLAS programs. Section 656.20 describes which selection criteria are used and how the Department communicates the point values for the selection criteria.

Proposed Regulation: The proposed regulation would update the application and selection process to provide more accurate guidance based on current program management practices. The proposed change would eliminate the possibility of submitting to both the NRC and FLAS Fellowships Program simultaneously (though applicants still could continue to submit separate applications under each program). Proposed § 656.10 would affirm that the NRC Program follows the Department's standard procedures for grant applications, by directing potential applicants to the application notice in the **Federal Register** for guidance. Proposed § 656.11 would clarify the assurances and materials required in every application for the NRC Program. Proposed § 656.20 would add additional information about the selection process, including a description of the peer review and ranking process, and the process that would apply to the grants authorized under 20 U.S.C. 1122(a)(3)–(4).

Reasons: The NRC and FLAS Fellowships Programs have long been identified by separate Assistance Listing Numbers, and applications for these programs have been evaluated using program-specific selection criteria. The Department began using *Grants.gov* to receive applications for these two programs for the fiscal year 2022 competition. In addition to the substantive differences between the programs and the selection criteria, *Grants.gov* cannot accept one application for two programs with individual Assistance Listing Numbers. Given these substantive differences and technical limitations, removing the option for simultaneous submission would improve the efficiency of program administration.

The additional information on assurances and required application materials in proposed § 656.11 would clarify statutory requirements and improve the efficiency of program administration. Section 602(e) of the HEA (20 U.S.C. 1122(e)) requires an explanation of how grant funded activities reflect diverse perspectives, as defined in proposed § 655.4, and how applicants will encourage government service in areas of national need, as well as in areas of need in the education, business, and non-profit sectors. The Department already has required applicants for the NRC Program to submit these assurances for multiple competitions. The proposed regulation would emphasize the importance of this requirement.

Proposed § 656.20 would promote transparency and support efficient program management by adding a more detailed description of the selection process. The proposed change also would clarify that applications for grants to centers for special purposes authorized in 20 U.S.C. 1122(a)(3)–(4) would be evaluated using a newly developed set of selection criteria specifically designed for this purpose.

Under proposed § 656.20, experts in relevant fields would review applications for comprehensive Centers, undergraduate Centers, and special purpose grants to determine excellence based on the appropriate selection criteria. Applications with similar areas of geographic focus would be grouped together. Peer reviewers would score each application separately, and then applications from each group would be selected for funding in rank order within each group based on the peer reviewers' scores. If a lack of funds prevented funding all highly ranked applications in each group, the proposed regulation would permit the Department to consider the degree to which applications were likely to serve any competition priorities published in the application notice that were derived from the ''consultation on areas of national need'' or that were related to specific countries, world areas, or languages.

Variations on the proposed peer review process have been included in the application notice for several grant cycles. This proposed change would increase transparency and benefit new applicants that may be unfamiliar with the selection process. It would also affirm the importance of supporting the study of world areas or languages identified through the consultation process or priorities established by the Secretary.

Selection Criteria and Program Priorities (§§ 656.21, 656.22, 656.23, 656.24)

Statute: Section 602(a)(1)(B) of the HEA (20 U.S.C. 1122(a)(1)(B)) describes centers and programs awarded grants under this section as national resources

for teaching modern foreign languages and providing related research and instruction in other academic fields. Section 602(a)(3)–(4) of the HEA (20 U.S.C. 1122(a)(3)–(4)) authorizes the Secretary to make additional grants to these centers for specific purposes, such as maintaining important library collections. Section 607(a) of the HEA (20 U.S.C. 1127(a)) requires separate grant selection criteria for comprehensive Centers and for undergraduate Centers. Section 607(b) of the HEA (20 U.S.C. 1127(b)) requires the Secretary to set selection criteria that will enable reviewers to determine excellence relative to the program's objectives. This section also requires the Secretary to consider specific selection criteria, such as the degree to which activities of centers and programs address national needs.

Current Regulation: Section 656.21 describes the selection criteria for comprehensive Centers. Section 656.22 describes the selection criteria for undergraduate Centers. Existing regulations do not describe selection criteria for additional grants made to centers for specific purposes mentioned in the statute. Section 656.23 describes the possible funding priorities for the NRC Program.

Proposed Regulation: The proposed changes to the selection criteria would add clarity, eliminate redundancy, and reduce the burden on applicants while improving alignment with the authorizing statute. The current selection criteria for comprehensive Centers are comprised of ten criteria and 27 specific sub-criteria, excluding competitive preference priorities. The current selection criteria for undergraduate Centers are comprised of ten criteria and 26 specific sub-criteria, excluding competitive preference priorities. The proposed changes would reduce the number of criteria for both comprehensive and undergraduate Centers to six and reduce the number of sub-criteria to 24. The proposed changes also would add a new set of selection criteria for the additional grants made to Centers for specific purposes authorized under 20 U.S.C. 1122(a)(3)–(4).

Proposed §§ 656.21(a)–(c) and 656.22(a)–(c) would require applicants to describe the current state of administrative operations, academic programs, educational resources, outreach and engagement initiatives, and other relevant activities. Proposed §§ 656.21(d)–(g) and 656.22(d)–(g) would ask applicants to describe their goals and plans for the grant period. Proposed § 656.23 would add selection criteria for additional special purpose grants authorized by the statute.

Proposed § 656.24 would rephrase the current list of priorities in § 656.23, add new priorities related to the teaching of specific modern foreign languages, the ''consultation on areas of national need,'' and the type of center, and it would remove a priority related to the types of center activities.

Reasons: The proposed revisions to the selection criteria are designed to provide greater alignment with the NRC Program statute. As described further below, focusing proposed §§ 656.21(a)–(c) and 656.22(a)–(c) on an applicant's current state of operations would help us select grantees that are most likely to meet the minimum characteristics of comprehensive and undergraduate Centers as defined in the statute and these proposed regulations. Proposed §§ 656.21(d)–(f) and 656.22(d)–(f) would require applicants to address plans to enhance their institutional capacity and conduct other project activities during the grant's performance period. The proposed arrangement of selection criteria would streamline the structure of the application narrative.

Proposed §§ 656.21(a) and 656.22(a) would add a criterion for ''Center scope, personnel and operations.'' This proposed criterion would combine and streamline elements of the selection criteria found in the current §§ 656.21(b) and 656.21(d) for comprehensive Centers and §§ 656.22(b) and 656.22(d) for undergraduate Centers. The proposed sections would continue to address the core operations of the proposed center, including staffing arrangement, governance, nondiscriminatory employment practices, and institutional commitment. Grouping sub-criteria related to these topics into a single category and clarifying that these sub-criteria refer specifically to the administrative unit seeking a designation as a National Resource Center under this program would reduce the confusion among applicants regarding the appropriate scope for this category. For example, a discussion of non-discriminatory employment practices should address practices specific to the proposed center rather than only providing general statements about practices at the institution as a whole, except to provide necessary context for the proposed Center's operations. The proposed category also would address topics that the current selection criteria do not address, such as the quality of existing academic programs and the impact of existing activities and resources.

Proposed §§ 656.21(a) and 656.22(a) would require applicants to explain how the focus of a proposed comprehensive Center or undergraduate Center, respectively, aligns with a geographic world area and existing opportunities for training, research, and instruction at the applicant institution. This approach would benefit applicants because we recognize that applicants may propose novel or distinctive approaches grounded in research, so they would be able to clearly explain the proposed center's area of focus to reviewers and describe the rationale for it.

As noted above, proposed §§ 656.21(a) and 656.22(a) also would combine elements of the selection criteria found in the current §§ 656.21(b) and 656.21(d) for comprehensive Centers and 656.22(b) and 656.22(d) for undergraduate Centers, respectively. The proposed criteria would continue to address staff qualifications and professional development, nondiscriminatory employment practices, oversight arrangements, and institutional commitment.

Proposed §§ 656.21(a)(2) and 656.22(a)(2) would limit consideration of personnel qualifications to the position of project director and the proposed Center's staff, and focus on administrative capacity, without extending consideration to teaching faculty and other staff as under current §§ 656.21(b)(1) and 656.22(b)(1). Applicants typically have large numbers of teaching faculty, most of whom are not directly involved in the administration of a proposed Center. Proposed §§ 656.21(b)(3)–(4) and 656.22(b)(3)–(4) would require applicants to describe the qualifications of teaching faculty to demonstrate the quality of academic programs, which more closely aligns with the major responsibilities of most teaching faculty. Proposed §§ 656.21(a)(3) and 656.22(a)(3) would specifically require consortia applicants to provide a rationale for the formation of a consortium, which would allow reviewers to evaluate the administrative impact of the consortium agreement.

Proposed §§ 656.21(a)(4) and 656.22(a)(4) would require applicants to describe financial, administrative, and other support specifically for the proposed Center rather than for the entire relevant subject area as under current §§ 656.21(d) and 656.22(d). Reported amounts of financial support are subject to wide variation for reasons unrelated to an institution's actual level of commitment. Labor and other costs vary substantially by geographic location within the United States. Financial support for students may reflect an IHE's tuition rates, which vary widely across institutions. For example,

an institution that charges very modest tuition and routinely waives all tuition and mandatory fees for students in an area studies program may report a lower level of total financial support for students under the current selection criteria than an institution that charges much higher tuition and only waives a small portion of tuition for a similar population of students. The proposed change would allow reviewers to evaluate institutional support that is directly relevant to the administration of the applicant's proposed project and the resources that will support the applicant to conduct project activities. The other proposed selection criteria provide alternative opportunities to demonstrate the effects of an institution's financial support for the proposed Center's area of focus in terms of the availability and quality of various educational resources, such as teaching staff, library resources, linkages with institutions abroad, outreach activities, and student support.

Proposed §§ 656.21(b) and 656.22(b) would add a criterion for ''Quality of existing academic programs.'' This proposed criterion would combine elements of the selection criteria found in the current §§ 656.21(f)–(h) and 656.22(f)–(h) for the comprehensive Centers and undergraduate Centers, respectively. The proposed criteria would continue to address elements of curriculum design, language instruction, non-language area studies instruction, but the proposed category would allow applicants to address these elements in a more integrated manner, emphasizing how these elements of academic excellence are closely interconnected. Overall, the proposed changes would explicitly require applicants to describe distinctive strengths in instruction and curriculum design, so applicants would be able to highlight features of national significance. Proposed §§ 656.21(b)(1) and 656.22(b)(1) would continue to emphasize the degree to which intentionally interdisciplinary approaches to instruction, training, and research are indicators of excellence for the NRC Program. Proposed §§ 656.21(b)(3) and 656.22(b)(3) would require applicants to describe whether applicants integrate performance goals into language instruction and how applicants determine whether those goals are being met. This sub-criterion would acknowledge that the design, implementation, and ongoing improvement of language instruction is an indicator of excellence.

The proposed changes in §§ 656.21(b) and 656.22(b) also use the definitional characteristics that appear in the statute as the basis for distinguishing more clearly between the complementary purposes of the academic programs associated with comprehensive Centers and the academic programs of undergraduate Centers. Proposed § 656.21(b)(1) would require applicants for a comprehensive Center to demonstrate that the applicant's institution or consortium of institutions serve undergraduate, graduate, and professional students through relevant educational programs. Proposed § 656.22(b)(1) would require applicants for an undergraduate Center to demonstrate that the institution or consortium of institutions primarily serves undergraduate students through educational programs as an outgrowth of the institution's mission and identity as an institution focused predominantly or even exclusively on undergraduate education. In this context, an institution ''predominantly'' serves undergraduate students when baccalaureate or higher degrees represent at least 50 percent of all degrees but where fewer than 50 master's degrees or 20 doctoral degrees were awarded in the most recent year preceding the application deadline for which data is available. These proposed criteria would improve the selection of all Centers described in 20 U.S.C. 1122(a)(1)(A), including a diverse network of undergraduate Centers that are distinct from the comprehensive Centers. These proposed criteria would not require the existence of any specific educational programs at applicant institutions.

The differences between comprehensive Centers and undergraduate Centers also would appear in other criteria. Proposed § 656.21(b)(2) would require comprehensive Centers to demonstrate the existence of intensive language instruction, which is a characteristic of a comprehensive Center mentioned in the proposed § 656.21(b)(4). Proposed § 656.22(b)(4) would address the relevant faculty, scholars, instructors, and other academic personnel that support educational programs at the applicant institution, but § 656.21(b)(4) would require comprehensive Center applicants to demonstrate the existence of a critical mass of expertise relevant to the proposed Center's area of focus. In addition to addressing definitional characteristics from the statute, this criterion would also allow applicants to demonstrate that faculty have the capacity to support graduate and professional programs rather than only undergraduate programs.

Proposed §§ 656.21(c) and 656.22(c) would add a criterion for ''Impact of existing activities and resources.'' This proposed criterion would combine elements of the selection criteria found in the current §§ 656.21(c), 656.21(e), and 656.21(i) for comprehensive Centers, and §§ 656.22(c), 656.22(e), and 656.22(i) for undergraduate Centers. The proposed criterion would require applicants to describe how the applicants' educational resources, efforts to engage various audiences, and educational programs demonstrate that proposed centers make distinctive contributions at the national level. Proposed §§ 656.21(c)(3) and 656.22(c)(3) would continue to affirm that effective outreach and engagement involving a wide range of audiences and partners are crucial elements of the NRC. The proposed wording both streamlines the discussion of outreach efforts and allows applicants to describe other audiences. The proposed change would also emphasize that the existence of outreach and engagement programs alone does not speak to their efficacy. Proposed §§ 656.21(c)(4) and 656.22(c)(4) would closely resemble the current §§ 656.21(c)(3)–(4) and 656.22(c)(3)–(4) by requiring applicants to respond to a criterion mandated by the statute that addresses how applicants currently address national needs for language and area studies expertise and knowledge identified by Federal agencies, as well as other needs identified in other sectors, including the education, business, and non-profit sectors.

Proposed §§ 656.21(c)(1)–(2) would further clarify that comprehensive Centers and affiliated individuals are expected to make significant contributions to research and the provision of access to educational resources that enable different types of research. As employed in proposed § 656.21(c)(1), we would interpret the ''national interest'' as broadly as possible to reflect the statute's interest in supporting the security, stability, and economic vitality of the United States, which includes the recognition that the production of advanced research about world regions is critical for ensuring that IHEs remain globally competitive within the global landscape of higher education.

Consistent with 20 U.S.C. 1132(a)(2), proposed § 656.21(c)(2) would require comprehensive Centers to maintain ''important'' library collections that would support the comprehensive Center's activities. The proposed sub-criterion would specify that important library collections include distinctive holdings that do not duplicate materials widely available at other libraries, especially in light of the increasing importance of digital access to scholarly monographs and journals. Including the concept of ''access'' would make clear

that important collections are collections that are used by researchers, including those not based at institutions of higher education. Whether through the digitization of special collections or access policies, applicants would be required to describe the degree to which they make their collections available to others through various means. Proposed §§ 656.22(c)(1)–(2) would adapt these sub-criteria to the distinct purpose of undergraduate Centers. This proposed sub-criterion would remove the explicit consideration of financial support for acquisition and library staff in current §§ 656.21(e)(1) and 656.22(e)(1), as well as direct consideration of cooperative arrangements and databases in current 656.21(e)(2) and 656.22(e)(2). Although financial support is critical for the long-term viability of academic libraries, such support is less directly relevant for reviewers to determine the resources and expertise that will be available during the grant's performance period. The proposed sub-criteria would directly address library staffing rather than financial support for staffing. Online databases and other electronic materials are now commonplace in library collections, so they do not need to be singled out as resources apart from a library's normal collections. Moreover, the concept of an ''important'' library collection is sufficiently broad that applicants for comprehensive Centers may include any or all of these considerations in their response to the proposed sub-criterion.

In contrast to proposed §§ 656.21(a)–(c) and 656.22(a)–(c) that would focus on the applicants' current operations, proposed §§ 656.21(d)–(g) and 656.22(d)–(g) would require applicants to describe their goals and plans for the grant period. Proposed §§ 656.21(d) and 656.22(d) would add a criterion for ''Project design and rationale.'' This criterion would require applicants to explain the overall vision for their projects and how their projects are intended to meet the purposes of the NRC Program. This proposed addition would complement the criteria proposed in §§ 656.21(e) and 656.22(e), which would address plans for activities and budgets, and the criteria in proposed §§ 656.21(f) and 656.22(f), which would address plans for project evaluation. Proposed §§ 656.21(e)–(f) and 656.22(e)–(f) would emphasize that applicants must select activities, allocate funds, and determine whether intended project outcomes are attained in an intentional manner that is responsive to institutional contexts and aligned with project goals. The changes also would emphasize in this context that evaluation plans must be simple, cost-effective, and focused on high level outcomes rather than on tracking expenses or the implementation of individual activities.

These three interrelated criteria would require applicants to explain the intended outcomes for their projects, specific activities and how they would align with the intended outcomes, and the evaluative process that would help determine whether those intended outcomes were being realized during the grant period. These criteria would enable peer reviewers to determine the excellence of the proposed project in relation to the current state described in proposed §§ 656.21(a)–(c) and 656.22(a)–(c).

Proposed §§ 656.21(d)(4) and 656.22(d)(4) would require applicants to explain how diverse perspectives and a wide range of views required by the statute would be represented in the project. This sub-criterion would allow expert peer reviewers to evaluate how effectively the proposed project would address a statutory mandate that project activities reflect diverse perspectives and a wide range of views on world regions and international affairs and generate debate on world regions and international affairs. This approach would complement the current requirement for applicants to submit an assurance on this topic by allowing applicants to receive expert feedback, which they currently do not. The proposed sub-criterion also would provide additional guidance to applicants that the discussion of diverse perspectives should be directly relevant to the proposed project rather than a general statement about institutional practices. This approach would ensure that high scoring applicants would be likely to meet the statutory expectation at the time of application and throughout the grant's performance period.

The proposed selection criteria would also eliminate certain elements of the current selection criteria not addressed above. Current §§ 656.21(h)(3) and 656.22(h)(3) specifically include the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs. The proposed selection criteria would not include identical provisions. Because proposed §§ 656.21(b)and 656.22(b) require applicants to address the extent to which an institution makes high-quality training in modern foreign language and area or international studies available, however, the proposed regulations would not preclude discussing student access to other institutions' study abroad and summer language programs in this context. The proposed regulations would eliminate current §§ 656.21(j) and 656.22(j), ''Degree to which priorities are served,'' as the Secretary may award points for competitive preference priorities without including such a category in the selection criteria. See generally 34 CFR 75.105(c). Although the Department has never interpreted the regulations to allow it, moreover, removing priorities from the selection criteria also avoids the appearance of allowing applicants to receive points twice for responding to the same competitive preference priority (once through the selection criteria, and once for responding to the priority). This proposed change would not alter the current approach to competitive preference priorities. Current §§ 656.21(c)(2) and 656.22(c)(2) require that an applicant's evaluation plan produce quantifiable, outcome-measure-oriented data. The proposed regulations would eliminate this explicit requirement. Instead, proposed §§ 656.21(f) and 656.22(f) would require applicants to describe a more holistic approach to evaluation, including the qualifications of the evaluator(s) and an evaluation plan that is appropriate for the grant project. Although many performance-related data are quantifiable, not all data collected for evaluation purposes are quantifiable. Qualitative data may be a component of an evaluation plan. The proposed regulations also would include a requirement to describe plans to obtain performance feedback and periodic assessment of progress toward meeting intended outcomes, so the proposed approach incorporates an interest in project outcomes. The proposed regulations would provide greater flexibility to applicants when designing an evaluation plan.

By separating the award of special project grants from the award of center grants, the addition of proposed § 656.23 would streamline the Department's implementation of the statute. Proposed § 656.23 would be very similar to proposed §§ 656.21(d)–(f) and 656.22(d)–(f), which focus on the purpose and activities related to an applicants' project, but because only Centers selected for funding under the NRC Program would be eligible for these additional grants, applicants would not be required to submit duplicative information about the current state of the applicant institution. Proposed § 656.23 would make clear that additional special purpose grants are intended to allow applicants to achieve a significant outcome in addition to the

funding typically provided under the NRC Program and cannot be used to supplant funding for other project activities.

Proposed § 656.24 would rephrase the current list of priorities in § 656.23, add three new priorities, and drop a priority. The rephrasing of priorities in current § 656.23 would enhance clarity by removing redundant or unnecessary words. Given the importance of the instruction of modern foreign languages, especially less commonly taught languages in the program statute, adding a priority related to the teaching of specific modern foreign languages would improve the Secretary's ability to meet the program purpose by prioritizing instruction in certain languages, if the need arises. The new priority related to the ''consultation on national need'' would allow the Secretary to select a priority that explicitly reflects the results of the consultation with Federal agencies. While such consultation is required by the statute, this proposed change would enable the Secretary to easily identify a priority for a specific language or world region as aligned with the national needs recognized by Federal agencies, which would better integrate the required consultation and the NRC Program. The proposed regulation would drop a priority related to the specific focus of a center but would add a similar priority that addresses both the geographically defined focus and topical focus of a center. This priority would align with the requirement that all centers declare a geographic area of focus incorporated into these proposed regulations. The combination of geographic focus and topical focus would ensure the Secretary is able to appropriately prioritize awards, if needed.

Section 656.30 What activities and costs are allowable?

Statute: Section 602(a)(2) of the HEA (20 U.S.C. 1122(a)(2)) states that grants made under this section may pay all or part of the cost of establishing or operating a relevant center or program.

Current Regulation: Sections 656.3, 656.5, and 656.30 explain allowable costs and activities for the NRC Program.

Proposed Regulation: Proposed § 656.30 would combine current § 656.30 with current §§ 656.3 and 656.5 to make one comprehensive allowable costs and activities section. Proposed § 656.30 would reorder the list of examples of allowable activities included in the current regulation and would add several new limitations on costs, including a prohibition on compensation for project directors and a limitation on personnel costs for individuals who are not directly engaged in the instruction of less commonly taught languages. The proposed regulation would also add an explicit pre-approval requirement for costs associated with international travel. The proposed regulation would preserve the current requirement that grant funds may not supplant funds normally used by applicants to support the same activities.

Reasons: Proposed § 656.30 would reduce repetition and streamline the description of allowable costs and activities by combining three sections into one comprehensive section. In keeping with the statutory direction in 20 U.S.C. 1122(a)(2), NRC Program grants may pay all or part of the cost associated with establishing or operating a center, so the NRC Program's primary limitations on allowable activities would remain the scope of funded applications and whether individual activities serve the purpose of establishing or operating a center. The listed activities and their associated costs would continue to serve as examples of activities and costs typically deemed allowed for the NRC Program. The list would highlight activities that are closely aligned with the program purpose.

The proposed changes would revise and reorder the combined list of activities to enhance clarity by highlighting activities that directly serve the program purpose. In addition, the proposed regulation would add to the list of allowable activities support for instructors of the less commonly taught languages, opportunities for the study of the less commonly taught languages, dissemination of information about the Center's area of focus to various audiences through domestic outreach activities, efforts to increase language proficiency for students in STEM fields, establishing and maintaining linkages with overseas institutions of higher education, and conducting projects that encourage and prepare students to seek employment relevant to the Center's area of focus in areas of national need. The proposed regulation would also expand the scope of listed activities related to libraries to include the maintenance of library collection and efforts to enhance access to library collections. Centers frequently engage in many of these activities.

The proposed regulation would preserve the current requirement that grant funds may not supplant funds normally used by applicants to support the same activities, to ensure that grant funds are a catalyst for institutional investment in a critical area of the national postsecondary education infrastructure. The proposed regulation also would add several new limitations on costs to limit or prohibit costs that would be unlikely to serve the purposes of the NRC Program, based upon substantial experience in administering the program. These limitations would include a prohibition on compensation for project directors and a limitation on personnel costs for individuals who are not directly engaged in the instruction of less commonly taught languages. The proposed regulation would also add an explicit pre-approval requirement for costs associated with international travel. Experience with administration of the NRC Program has demonstrated that these limitations and the pre-approval requirement are prudent and necessary to ensure that grant funds are being spent effectively in service of the program's purpose. These limitations also follow longstanding guidance and technical assistance to the grantee community.

Part 657

Statute: 20 U.S.C. 1122.

Current Regulations: Part 657 contains the regulations for the FLAS Fellowships Program.

Proposed Regulation: The Department proposes to replace part 657 in its entirety due to the number of necessary changes and the accompanying need to reorganize these parts to improve readability. Sections that address similar topics would be combined, and duplicative or contradictory paragraphs would be eliminated.

Reasons: These changes would allow the Department to substantially revise the selection criteria and application processes for the FLAS Fellowships Program, introduce new definitions, revise or eliminate existing definitions, align the regulations with the statute, and reduce the burden associated with the FLAS Fellowships Program.

Section 657.1 What is the Foreign Language and Area Studies Fellowships Program?

Statute: Section 602(b)(1) of the HEA (20 U.S.C. 1122(b)(1)) authorizes the Secretary to make grants to institutions of higher education or consortia of such institutions for the purpose of paying stipends to individuals undergoing advanced training in centers or programs approved by the Secretary.

Current Regulation: Section 657.1 describes the FLAS Fellowships Program as a program that provides IHEs with allocations of fellowships that are awarded to eligible students.

Proposed Regulation: Proposed § 657.1 would clarify that the FLAS Fellowships Program is an institutional program that enables eligible IHEs to compete for an allocation of fellowships that are distributed to eligible students on a competitive basis.

Reasons: The proposed change would reduce confusion by eliminating details about student eligibility criteria from this section, because these eligibility criteria would be addressed at greater length elsewhere. The proposed change would also highlight the advanced nature of the interdisciplinary training that the statute envisions for the fellows, to satisfy the statutory purpose of creating a pool of trained personnel and experts in foreign language and area studies to meet national needs identified by Federal agencies, as well as other needs identified in other sectors, including the education, business, and nonprofit sectors. See, *e.g.,* 20 U.S.C. 1121(b)(1)(B). The ongoing and sustained cultivation of expertise through training provided by IHEs across the full range of world areas and modern foreign languages helps ensure the security, stability, and economic vitality of the United States. The fellowships also provide invaluable support for instruction and training in area studies and foreign language at the IHEs that receive allocations of fellowships.

Institutional Eligibility and the Requirements for an Allocation of Fellowships (§§ 657.2 and 657.3)

Statute: Section 602(b)(1) of the HEA (20 U.S.C. 1122(b)(1)) authorizes the Secretary to make grants to institutions of higher education or consortia of such institutions for the purpose of paying stipends to individuals undergoing advanced training in any center or program approved by the Secretary.

Current Regulation: Section 657.2 describes the eligibility criteria for IHEs.

Proposed Regulation: Proposed § 657.2 would clarify that only IHEs or a consortium of IHEs are eligible for an allocation of fellowships under the FLAS program. Proposed § 657.3 would address all additional instructional and administrative requirements for grantees under this program.

Reasons: The proposed regulation would align the institutional eligibility determination in proposed § 657.2 with the statute by clearly stating that all IHEs are eligible to apply for an allocation of fellowships. Proposed § 657.3 would provide a more concise list of instructional and administrative requirements for institutional grantees under the FLAS Fellowships Program than the current § 657.2. Proposed § 657.3(b) would also improve transparency by clearly linking the administration of the allocation of fellowships with the applicants' application materials. As in the current regulations, proposed § 657.3 specifies that applicants would not need to be grantees under the NRC Program to be eligible to receive an allocation of fellowships under the FLAS Fellowships Program, even though the programs are complementary.

Section 657.4 Who is eligible to receive a fellowship?

Statute: Section 602(b)(2) of the HEA (20 U.S.C. 1122(b)(2)) describes the FLAS Fellowships Program eligibility criteria.

Current Regulation: Section 657.3 describes the fellowship eligibility criteria for students who are enrolled or have been accepted for enrollment at an IHE that receives an allocation of fellowships. Section 657.30 describes limitations on the award of fellowships, including with respect to student eligibility.

Proposed Regulation: Proposed § 657.4 would retain existing requirements for citizenship and residency, enrollment status, academic merit, and modern foreign language study in a program using or developing performance goals. The proposed regulation would add descriptions of the training that three distinct populations of students must be able to receive during the fellowship period to be eligible to receive fellowships. The proposed changes would clarify that a student's educational program is a relevant criterion for determining a student's eligibility for a FLAS Fellowship.

Reasons: The proposed regulation would reduce ambiguity and the potential for contradictory interpretations of student eligibility criteria. Adding descriptions of allowable types of training also would emphasize that student eligibility is tied to the availability of appropriate opportunities for instruction and training.

The proposed changes would tie fellowship eligibility to a student's educational program to better align the program design with the program's statutory purpose of promoting expertise in foreign language and area studies. In this context, a student's educational program refers to their degree program, inclusive of major requirements, minor requirements, general education requirements, certificate requirements, and other curricular requirements. The holistic emphasis on educational programs rather than solely focusing on individual courses during a specific academic term would ensure that fellowships are supporting the structured and intentional training of experts within appropriate curricular frameworks.

The proposed changes would allow a grantee to identify any educational program as eligible if the educational program combines the study of modern foreign languages with area studies or the study of other fields from an international perspective. The diversity of curricular options at grantee IHEs would ensure the cultivation of relevant expertise in a wide variety of fields. The proposed regulation would recognize that well-designed curricula leading to recognized educational credentials are the most appropriate means for cultivating the types of expertise in modern foreign languages and area studies contemplated by the statute. We believe that the proposed regulation would encourage IHEs to innovate and establish appropriate interdisciplinary curricular options for students to study modern foreign languages and area studies in all fields of study, including STEM and professional fields. Formal curricular options discourage ad hoc arrangements that benefit one or only a small number of students. Making educational programs a fellowship eligibility criterion also would mitigate risk to the Department because it would require IHEs to demonstrate commitment to provide relevant courses, faculty, and educational resources for fellows at the grantee institution throughout the performance period.

Section 657.5 What is the amount of a fellowship?

Statute: Section 602(b)(1) (20 U.S.C. 1122(b)(1)) authorizes the Secretary to makes grants to IHEs or consortia of such institutions for the purpose of paying stipends to eligible students.

Current Regulation: Section 657.31 describes the amount and components of a fellowship.

Proposed Regulation: The proposed changes would relocate the description of the fellowship amount to subpart A to improve the organization of the program regulations. Proposed § 657.5 would combine the current subsistence payment for the fellow (stipend) with the institutional payment for tuition and fees into a single stipend amount that would go to the fellow. This change would make a single stipend payment the major component of fellowships awarded under the FLAS Fellowships Program. Following current practice, the stipend amount for the academic year

and summer as well as graduate and undergraduate fellowships authorized under this program would be announced in the **Federal Register**.

Reasons: Given the program's longstanding prohibition on administrative costs, the elimination of the institutional payment would eliminate the substantial burden for grantees associated with tracking and processing institutional payments as distinct from the stipend payments. The proposed change also acknowledges that institutional definitions of mandatory fees vary greatly, which complicates the Department's ability to set an appropriate institutional payment amount. The proposed change would also establish predictable unit costs for fellowships, which would promote the efficient allocation and administration of fellowships. The proposed change would improve the ability of grantees to increase the number of meritorious students who apply for a fellowship because of the potential for larger stipend payments, which would enhance the program's ability to meet its statutory purpose. The Department anticipates that grantees already contributing to costs above the institutional payment amount, to match commitments made to similar students at the same IHE, will continue to do so.

The proposed change would not alter the Department's expectation that payments cover fellows' living expenses and the costs of advanced training in modern foreign languages and area studies. The proposed change would not affect the requirement that fellows remain in good academic standing and make satisfactory progress during the fellowship period or face potential termination of the fellowship. The proposed change would make additional funds available directly to the fellow and discourage IHEs from artificially increasing the institutional payment by setting tuition and fee amounts greater than actual costs. Increasing the amount of funds directly available to the fellow would allow the fellow to defray costs for specialized materials and experiences that support advanced training in modern foreign languages and area studies that would fall outside the definition of tuition, fees, or living expenses. The increased flexibility resulting from the proposed change would make the FLAS Fellowships Program more comparable to other Federal programs with similar goals, such as Boren Scholarships and Boren Fellowships, which cover recipient expenses for books, research materials, and other expenses apart from living expenses, tuition, and fees.

Section 657.7 What definitions apply to this program?

Statute: Section 602 of the HEA (20 U.S.C. 1122) authorizes the Secretary to define terms necessary to make grants under the FLAS Fellowships Program.

Current Regulation: Section 657.5 defines terms that apply to the FLAS Fellowships Program.

Proposed Regulation: Proposed § 657.7 would add the definition of ''stipend'' for the FLAS Fellowships Program. The proposed regulation would adjust the terminology used in part 657 by replacing the terms ''Center'' and ''program'' with the terms ''approved Centers'' and ''approved programs.''

Reasons: The proposed changes would reduce ambiguity in part 657. The proposed definition of ''stipend'' would reflect that the FLAS fellowships typically would consist of a single payment to a fellow rather than the current combination of a subsistence allowance paid to the student (stipend) and a separate institutional payment intended to cover the costs of tuition and fees. Adding this definition would standardize the use of the term, eliminate redundant terminology, and therefore improve the efficiency of program implementation. The introduction of the terms ''approved Center'' and ''approved program'' would clearly distinguish centers and programs approved under the NRC or FLAS Fellowships Programs from other centers and programs at IHEs.

Section 657.8 Severability

Statute: Section 602 of the HEA (20 U.S.C. 1122) authorizes the Secretary to define terms necessary to make grants under the NRC Program.

Current Regulations: The current regulations do not address severability.

Proposed Regulation: The proposed regulation would add a severability provision.

Reasons: The Department seeks to clarify its intent that, with regard to severability, each of the regulations in part 657 and its subparts serves one or more important, related, but distinct, purposes. To best serve these purposes, we included this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision or any of its subparts should not affect the remainder of the provisions.

Application and Selection Processes (§§ 657.10, 657.11, 657.12, and 657.20)

Statute: Section 602(e) of the HEA (20 U.S.C. 1122(e)) requires institutions seeking a grant under this program to follow an application process designed by the Secretary.

Current Regulation: Section 657.10 allows an applicant to submit a combined application for the NRC and FLAS programs. Section 657.20 describes which selection criteria are used and how the Department communicates the point values for the selection criteria.

Proposed Regulation: The proposed regulations would update the application and selection processes. The proposed change would eliminate the possibility of submitting to both the NRC and FLAS Fellowships Program simultaneously (though applicants still could continue to submit separate applications under each program). Proposed § 657.10 would affirm that the FLAS Fellowships Program follows the Department's standard procedures for grant applications by directing potential applicants to the application notice in the **Federal Register** for guidance. Proposed § 657.11 would clarify the assurances and materials required in every application for the FLAS Fellowships Program. Proposed § 657.12 would reaffirm that individual students apply for individual fellowships through IHEs that have received an allocation of fellowships. Proposed § 657.20 would add additional information about the selection process.

Reasons: The proposed regulations would provide more accurate guidance based on current program management practices. The NRC Program and FLAS Fellowships Program have long been identified by separate Assistance Listing Numbers, and applications for these programs have been evaluated using program-specific selection criteria. The Department began using *Grants.gov* to receive applications for these two programs for the fiscal year 2022 competition. In addition to the substantive differences between the programs and the selection criteria, *Grants.gov* cannot accept one application for two programs with individual Assistance Listing Numbers. Given these substantive differences and technical limitations, removing the option for simultaneous submission would improve the efficiency of program administration. Proposed § 657.10 affirms that the FLAS Fellowships Program follows the Department's standard procedures for grant applications by directing potential applicants to the application notice in the **Federal Register** for guidance.

The additional information on assurances and required application materials in proposed § 657.11 would clarify statutory requirements and

improve the efficiency of program administration. Section 602(e) of the HEA (20 U.S.C. 1122(e)) requires the explanation of how grant funded activities reflect diverse perspectives, as defined in the proposed regulations, and how applicants will encourage government service in areas of national need, as well as in areas of need in the education, business, and non-profit sectors. The Department already has required institutional applicants for the FLAS Fellowships Program to submit these assurances for multiple competitions. The proposed regulation would emphasize the importance of this requirement.

Proposed § 657.12 makes minor adjustments to the description of the student application process to make clear that individual students must apply for a fellowship through institutional grantees under part 657. The proposed change would codify longstanding practices that institutional grantees control the application and selection processes for individual fellowships.

Proposed § 657.20 would promote transparency and support efficient program management by adding a more detailed description of the selection process. Under proposed § 657.20, experts in relevant fields would review applications for an allocation of fellowships to determine excellence based on the appropriate selection criteria. Applications with similar areas of geographic focus would be grouped together. Peer reviewers would score each application separately, and then applications from each group would be selected for funding in rank order within each group based on the peer reviewers' scores. If a lack of funds prevented funding all highly ranked applications in each group, the proposed regulation would permit the Department to consider the degree to which applications were likely to serve any competition priorities published in the application notice that were derived from the ''consultation on areas of national need'' or that were related to specific countries, world areas, or languages.

Variations on the peer review process described in the proposed regulation have been included in the application notice for several grant cycles, so the proposed regulation would reflect longstanding practices. This added transparency also would benefit new applicants that may be unfamiliar with the selection process and would affirm the importance of supporting the study of world areas or languages identified through the consultation process or priorities established by the Secretary.

Selection Criteria and Program Priorities (§§ 657.21 and 657.22)

Statute: Section 607(b) of the HEA (20 U.S.C. 1127(b)) requires the Secretary to set selection criteria that will enable reviewers to make a determination of excellence relative to the program's objectives. This section also requires the Secretary to consider specific selection criteria, such as the degree to which fellowships at IHEs address national needs and generate information for and disseminate information to the public.

Current Regulation: Section 657.21 describes the selection criteria for comprehensive Centers. Section 656.22 describes the possible funding priorities for the FLAS Fellowships program.

Proposed Regulation: The proposed changes to the selection criteria would add clarity, eliminate redundancy, and reduce the burden on applicants while improving alignment with the authorizing statute. The current selection criteria are comprised of nine criteria and 22 specific sub-criteria, excluding specific sub-criteria describing the competitive preference priorities for a specific competition. The proposed changes would reduce the number of criteria to six without modifying the total number of sub-criteria.

Proposed § 657.21(a)–(c) would require applicants to describe the current state of administrative operations, academic programs, educational resources, and other relevant activities. Proposed §§ 657.21(d)–(f) would require applicants to describe their goals and plans for the grant period.

Proposed § 657.22 would rephrase the current list of priorities in § 657.22, add a new priority related to the use of stated performance goals in language instruction, add a new priority related to the ''consultation on areas of national need,'' add a priority related to academic terms, and drop a priority related to specific countries.

Reasons: The proposed revisions to the selection criteria are designed to provide greater alignment with the FLAS Fellowships Program statute. As described further below, the focus of proposed § 657.21(a)–(c) on an applicant's current state of operations would help us to select grantees that are most likely to meet the minimum instructional and administrative requirements included in the statute and these proposed regulations. Proposed § 657.21(d)–(f) would require applicants to address plans for the grant's performance period. The proposed arrangement of selection criteria would streamline the structure of the application narrative.

Proposed § 657.21(a) would add a criterion for ''Scope, personnel and operations.'' This proposed criterion would require applicants to explain how the applicant meets the instructional and administrative requirements detailed in proposed § 657.3(a), including, but not limited to, how the proposed allocation of fellowships would be used to support area studies and language training and instruction aligned with a geographically defined world area and specific languages associated with that world area. This approach would benefit applicants because we recognize that applicants may propose novel or distinctive approaches grounded in research, so they would be able to clearly explain the proposed allocation of fellowships to reviewers and describe the rationale for it.

Proposed § 657.21(a) also would combine elements of the selection criteria found in the current § 657.21(b) and 657.21(d). The proposed criterion would continue to address oversight arrangements and institutional commitment. Proposed §§ 657.21(a)(3) would specifically require consortia applicants to provide a rationale for the formation of a consortium which would allow reviewers to evaluate the administrative impact of the consortium agreement.

Proposed § 657.21(a)(4) would require applicants to describe financial, administrative, and other support specifically to support administration of the allocation of FLAS fellowships rather than for the entire relevant subject area as under current § 657.21(d). Reported amounts of financial support are subject to wide variation for reasons unrelated to an institution's actual level of commitment. For example, labor and other costs vary substantially by geographic location within the United States. Financial support for students may reflect an IHE's tuition rates, which vary widely across institutions. For example, an institution that charges relatively modest tuition and routinely waives all tuition and mandatory fees for students in an area studies program may report a lower level of total financial support for students under the current selection criteria than an institution that charges high tuition and only waives a portion of tuition for a similar population of students. The proposed change would allow reviewers to evaluate institutional contributions that are directly relevant to the administration of applicant's allocation of fellowships. The other proposed selection criteria provide

alternative opportunities to demonstrate the effects of an institution's financial support relevant to administration of the proposed allocation of fellowships in terms of the availability and quality of various educational resources, such as teaching staff, library resources, linkages with institutions abroad, and student support.

Grouping sub-criteria related to these topics into a single category and clarifying that these sub-criteria refer specifically to the administrative unit seeking an allocation of fellowships would help ensure that the allocation of fellowships aligns with the program purpose and that grantees have the necessary administrative capacity.

Proposed § 657.21(b) would add a criterion for ''Quality of curriculum and instruction'' that would combine elements of the selection criteria found in current §§ 657.21(f)–(h). The proposed criteria would continue to address elements of curriculum design, language instruction, and non-language area studies instruction, but the proposed category would allow applicants to address these elements in a more integrated manner, emphasizing how these elements of academic excellence are closely interconnected.

Overall, the proposed changes would explicitly require applicants to describe distinctive strengths in instruction and curriculum design, so applicants would be able to highlight features of national significance. Proposed § 657.21(b)(1) would continue to emphasize the degree to which intentionally interdisciplinary curriculum options for students are indicators of excellence for the FLAS Fellowships Program. Proposed § 656.22(b)(3) would require applicants to describe whether applicants integrate performance goals into language instruction and the degree to which such goals, if they exist, are met or are likely to be met by students. This sub-criterion resembles current § 657.21(g)(4) and responds more directly to the statutory requirement that fellows enroll in instructional programs with stated performance goals or in programs that are developing such performance goals (20 U.S.C. 1122(b)(2)(A)). This proposed sub-criterion also acknowledges that the design, implementation, and ongoing improvement of language instruction is an indicator of excellence. The proposed sub-criteria also would eliminate the extent to which students enroll in the study of language from explicit consideration as an indicator of quality for an applicant's program of language instruction, which is included in current § 657.21(g)(1), and instead require applicants to explain in proposed § 657.21(b)(2) the frequency with which relevant language courses at various level are offered. The proposed focus on frequency will allow reviewers to more directly evaluate an institution's capacity to offer relevant language instruction and training.

Proposed §§ 657.21(c) and 657.22(c) would add a criterion for ''Quality of faculty and academic resources.'' This proposed criterion would combine elements of the selection criteria found in the current §§ 657.21(c), 657.21(e), and 657.21(h). The proposed criterion would require applicants to describe how the applicants' educational resources and educational programs demonstrate that the proposed allocation of fellowships would support high quality and distinctive training opportunities for fellows. Proposed §§ 657.21(c)(1)–(2) would further emphasize the need to employ highly qualified faculty at IHEs receiving an allocation of fellowships. Proposed § 657.21(c)(2) would emphasize that IHEs receiving an allocation of fellowships must be deeply committed to a fellow's future success as demonstrated by the intentional provision of academic and career advising specifically tailored to the strengths and experiences of FLAS fellows. Such opportunities would potentially benefit all students with international experiences and expertise.

Proposed § 657.21(c)(3) would remind applicants that fellows undergoing advanced training in modern foreign languages and area studies must have access to appropriate educational resources, especially suitable library collections and other research collections. This proposed sub-criterion would remove the explicit consideration of financial support for acquisition and library staff in current § 657.21(e)(1), as well as direct consideration of cooperative arrangements and databases in current § 657.21(e)(2). Instead, proposed § 657.21(c)(3) requires applicants to describe library staffing arrangements relevant to the proposed allocation of fellowships. Although financial support is critical for the long-term viability of academic libraries, such support is less directly relevant for reviewers to determine the resources that will be available to fellows during the grant's performance period. Online databases and other electronic materials are now commonplace in library collections, so they do not need to be singled out as resources apart from a library's normal collections.

Proposed § 657.21(c)(4) would emphasize the importance of access to relevant research and study abroad opportunities for FLAS fellows and require applicants to discuss the actual use of such arrangements, which would indicate not only breadth of offerings but also their ease of use and the institution's responsiveness to student interests.

Proposed § 657.21(d) would add a criterion for ''Project design and rationale.'' This criterion would allow applicants to explain the overall vision for their projects and how their projects are intended to meet the purposes of the FLAS Fellowships Program. Current sub-criteria addressing national needs and placement would be merged with this criterion. Proposed § 657.21(d)(1) would require applicants to discuss how a proposed allocation of fellowships would fit with the applicants' educational programs and resources. This sub-criterion would encourage applicants to identify specific educational programs and languages that are likely to be supported by the proposed allocation of fellowships.

Proposed § 657.21(d)(4) would require applicants to explain how diverse perspectives and a wide range of views required by the statute would be represented in the project. This sub-criterion would allow expert reviewers to evaluate how effectively the proposed project would address the statutory mandate that project activities reflect diverse perspectives and a wide range of views and generate debate on world regions and international affairs. This approach would complement the current requirement for applicants to submit an assurance on this topic by allowing applicants to receive expert feedback, which they currently do not. The proposed sub-criterion also would provide additional guidance to applicants that the discussion of diverse perspectives should be directly relevant to the proposed project rather than a general statement about institutional practices. This approach would ensure that high scoring applicants would be likely to meet the statutory expectation at the time of application and throughout the grant's performance period.

Proposed § 657.21(e) would add a ''Project planning and budget'' criterion that would replace current § 657.21(a). This new criterion would enhance transparency and facilitate the efficient allocation of funding by inviting applicants to justify the amount of the requested allocation of fellowships. This criterion complements proposed § 657.21(f), which would address plans for project evaluation. These interrelated criteria would require applicants to explain the intended outcomes for their projects, the anticipated distribution of fellowships

and how they would align with the intended outcomes, and the evaluative process that would help determine whether those intended outcomes were being realized during the grant period. These criteria would allow reviewers to determine the excellence of the proposed project in relation to the current operations described in proposed § 657.21(a)–(c).

The proposed selection criteria would also eliminate certain elements of the current selection criteria not already addressed above. Current § 657.21(h)(3) specifically includes the extent to which the institution facilitates student access to other institutions' study abroad and summer language programs. The proposed selection criteria would not include identical provisions. Proposed § 657.21(b)(4) would, however, require applicants to describe formal arrangements for study to conduct research or study abroad relevant to the proposed allocation of fellowships, and would not preclude discussing student access to other institutions' study abroad and summer language programs in this context. The proposed regulations would eliminate current § 657.21(i), ''Degree to which priorities are served,'' as the Secretary may award points for competitive preference priorities without including such a category in the selection criteria. See generally 34 CFR 75.105(c). Although the Department has never interpreted the regulations to allow it, moreover, removing priorities from the selection criteria also avoids the appearance of allowing applicants to receive points twice for responding to the same competitive preference priority (once through the selection criteria, and once for responding to the priority). This proposed change would not alter the current approach to competitive preference priorities. Current § 657.21(c)(2) requires that an applicant's evaluation plan produce quantifiable, outcome-measure-oriented data. The proposed regulations would eliminate this explicit requirement. Instead, proposed § 657.21(f) would require applicants to describe a more holistic approach to evaluation, including the qualifications of the evaluator(s) and an evaluation plan that is appropriate for the grant project. Although many performance-related data are quantifiable, not all data collected for evaluation purposes are quantifiable. Qualitative data may be a component of an evaluation plan. The proposed regulations also would include a requirement to describe plans to obtain performance feedback and periodic assessment of progress toward meeting intended outcomes, so the proposed approach incorporates an interest in project outcomes. The proposed regulations would provide greater flexibility to applicants when designing an evaluation plan.

Proposed § 657.22 would rephrase the list of priorities in current § 657.22, add three priorities, and drop a priority. The new priority related to stated performance goals in language instruction would reflect the statutory requirements for fellowships and would allow the Secretary to more directly implement this provision when awarding allocations of fellowships. The new priority related to academic terms would allow the Secretary to prioritize academic year or summer fellowships. As described in proposed § 657.30(b), the duration of a fellowship would be related to the types of study, training, or research that are allowable for a fellow. The proposed priority would allow the Secretary to, for example, prioritize intensive language training during a summer term if the Secretary recognized a specific national need for intensive language instruction. The new priority related to the ''consultation on areas of national need'' would allow the Secretary to select a priority that explicitly reflects the results of the consultation with Federal agencies. While such consultation is required by the statute, this proposed change would enable the Secretary to easily identify a priority for a specific language or world region as aligned with the national needs recognized by Federal agencies, which would better integrate the required consultation and the FLAS Fellowships Program. The proposed regulation would drop a priority related to specific countries because the other priorities would provide a sufficient degree of specificity to select specific world regions in conjunction with specific languages and specific topics of study.

Section 657.30 What are the limitations on fellowships and the use of fellowship funds?

Statute: Section 602(b)–(d) of the HEA (20 U.S.C. 1122(b)–(d)) describe limitations on the use of fellowship funds and authorize the Secretary to set relevant policies.

Current Regulation: Sections 657.30 and 657.33 describe limitations on the use of fellowship funds.

Proposed Regulation: Proposed § 657.30 would consolidate two current sections that discuss limitations on the use of fellowship funds and clarify how funds may be used in frequently encountered situations not currently addressed in part 657.

Reasons: The proposed changes would align the program with developments in postsecondary education. The proposed changes would address distance education in light of the increasing use of this instruction modality and would emphasize that distance education may be appropriate for satisfying the fellowship's course requirements. The Secretary would have flexibility to approve distance education on a case-by-case basis, which would allow consideration of various factors, especially the extent to which the modality would benefit the fellow by enhancing access to advanced training opportunities.

The proposed changes would rephrase and explain in detail the duration of fellowships as well as providing more detail regarding eligibility for the different types of fellowships. In particular, the proposed changes would set forth requirements with regard to dissertation research and dissertation writing fellowships, which were left unstated in the current regulations. The proposed regulations would clearly explain what is required for a student to receive one of these fellowships, which would align the regulations with accepted program management practices.

The proposed changes also introduce a provision regarding internships. FLAS fellows sometimes find that it is useful to undertake an internship in the course of their study. The proposed regulation enables internships at the discretion of the Secretary. Also, the proposed changes make explicit that FLAS grantees must follow the procedures set forth in their applications when they select FLAS fellows. Other accepted practices in the management of these grants are also clearly stated in the proposed changes, including specific requirements that apply to study outside the U.S., the conditions that apply to acceptance of concurrent awards from other Federal agencies, the conditions that apply to a transfer of FLAS funds to another institution, and when FLAS funds may be used for undergraduate travel. Finally, the proposed regulations clarify the policy regarding fellowship vacancies. The proposed changes also would reinforce longstanding program guidance that program administration costs cannot be charged to grants providing an allocation of fellowships under the FLAS Fellowships Program. Grantee IHEs are the beneficiaries of the revenue generated by fellows' payments for tuition and fees, and the selection process is intended to identify IHEs with sufficient administrative capacity to administer an allocation of fellowships. Additional payments for

administrative costs would reduce the funds available for fellowships and run counter to the program purpose.

Section 657.33 What are the reporting requirements for grantee institutions and for individual fellows who receive funds under this program?

Statute: Section 602(b)(1) of the HEA (20 U.S.C. 1122(b)(1)) authorizes the Secretary to makes grants to IHEs for the purpose of paying stipends to eligible students. Additionally, 20 U.S.C. 1132–3 authorizes the Secretary to ''assess and ensure compliance with all the conditions and terms of grants'' provided under title VI of the HEA.

Current Regulation: Current regulations do not address reporting requirements.

Proposed Regulation: Proposed § 657.33 would affirm that all IHEs that receive an allocation of fellowships under this part and all fellows who receive a fellowship under this part are required to abide by all reporting requirements established for the FLAS Fellowships Program.

Reasons: The current regulations do not address the issue of reporting. The proposed changes would address grantee concerns by providing sufficient authority for IHEs to require fellows to submit all reports in a timely manner. This change would enable the Department to improve the efficiency of program administration by promoting the collection of complete and accurate records about fellows during the fellowship period.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (as of 2023 but adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles stated in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed the proposed regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866 (as amended by Executive Order 14094). To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' OMB's OIRA has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed regulations only on a reasoned determination that their benefits justify any associated costs. Based on the analysis that follows, the Department believes that the proposed regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, territorial, or Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Costs and Benefits

The potential costs to applicants, grant recipients, and the Department associated with the proposed regulatory change would be minimal, while there would be greater potential benefits to applicants, grant recipients, and the Department.

We anticipate a minimal increase in NRC Program and FLAS Fellowships Program applications as a result of revising the selection criteria, so we foresee minimal impact on the Department's time and cost of reviewing these applications.

Over the last four years, the amount of funding for the NRC Program has ranged from approximately $23.7 to $29.3 million per year with 155 eligible grant applications received and reviewed in the most recent competition. Of these applicants, 98 received grant awards in fiscal year 2022, and an additional 15 of these applicants ultimately received grant awards through funding down the slate in fiscal year 2023. Over the same period, the amount of funding for the FLAS Fellowships Program has remained stable at approximately $31.2 million per year, with 160 eligible grant applications received and reviewed in the most recent competition. We awarded grants to 112 of these applications in fiscal year 2022.

The number of applications for both programs has remained relatively steady across recent competitions, but the number of grant awards for the NRC Program has increased slightly after funding down the slate. The Department expects the number of applications and grant rewards to remain similar in future years.

The proposed changes to the selection criteria would require the Department to develop new technical review forms. The proposed regulations also would require the Department to update program guidance and technical assistance materials for applicants, peer reviewers, and grant recipients. The Department anticipates the costs associated with these activities to be minimal, because we already engage in an ongoing process to revise, update, and improve these materials for each competition for these programs.

Similarly, any revisions to the selection criteria would have no effect on current grant recipients under both programs. The Department also believes the proposed revisions would have little net effect on applicants. Applicants already develop new applications for each competition in response to a Notice Inviting Applications that may contain new competitive preference priorities or a new allocation of points for the existing selection criteria. The proposed selection criteria refer to similar types of data as the current selection criteria. The Department foresees that the costs for applicants and grant recipients that result from the proposed changes to the selection criteria would be minimal.

The Department foresees that current grant recipients under the FLAS Fellowships Program may incur minor costs associated with program administration due to the revised program regulations. Although the regulations would not make any major changes to the FLAS Fellowships Program, the regulations would be expanded to address new issues by codifying current guidance from the Department. As a result, grant recipients would need to familiarize themselves with the new regulations and update any references to the regulations that appear in their documents developed to assist program administration, especially in documents distributed to students and current and prospective fellows.

The benefits of amending these regulations include (1) clarifying statutory language, (2) redesigning the selection criteria to reduce redundancy to improve the application process, and (3) updating the current regulations to reflect current practices in program administration and relevant fields of education. We anticipate that the clarifications, reductions to the number of selection criteria, and adjustments to administration will reduce the burden on applicants and grant recipients for both the NRC Program and FLAS Fellowships Program.

Alternatives Considered

The Department reviewed and assessed various alternatives to the proposed regulations. The Department considered maintaining current regulations and developing additional technical assistance and guidance to address emerging topics in modern foreign language and area studies education, especially distance education. The Department also considered developing extensive new technical assistance and guidance to explain the differences that exist among similar sections of the regulations for both programs. The Department determined that revising the regulations was the most efficient option to decrease administrative burden and ensure that the programs fulfill their statutory purposes.

Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Clarity of the Regulation

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make the proposed regulation easier to understand, including answers to questions such as the following:

(a) Are the requirements in the proposed regulations clearly stated?

(b) Do the proposed regulations contain technical terms or other wording that interferes with their clarity?

(c) Do the format of the proposed regulations (use of headings, paragraphing, etc.) aid or reduce their clarity?

(d) Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 106.9 Dissemination of policy.)

(e) Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

(f) What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that the proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by the proposed regulations are IHEs that would submit applications to the Department under this program.

The Small Business Administration (SBA) defines ''small institution'' using data on revenue, market dominance, tax filing status, governing body, and population. The majority of entities to which the Office of Postsecondary Education's (OPE) regulations apply are postsecondary institutions, however, which do not report such data to the Department. As a result, for purposes of these proposed regulations, the Department continues to define ''small entities'' by reference to enrollment, to allow meaningful comparison of regulatory impact across all types of higher education institutions. The enrollment standard for small less-than-two-year institutions (below associate degrees) is less than 750 full-time-equivalent (FTE) students and for small institutions of at least two but less-than-4-years, and 4-year institutions, less than 1,000 FTE students.[1] As a result of discussions with the Small Business Administration, this is an update from the standard used in some prior rules. Those prior rules applied an enrollment standard for a small two-year institution of less than 500 full-time-equivalent (FTE) students and for a small 4-year institution, less than 1,000 FTE students.[2] The Department consulted with the Office of Advocacy for the SBA and the Office of Advocacy has approved the revised alternative standard. The Department continues to

[1] In regulations prior to 2016, the Department categorized small businesses based on tax status. Those regulations defined ''nonprofit organizations'' as ''small organizations'' if they were independently owned and operated and not dominant in their field of operation, or as ''small entities'' if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organizations as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

[2] In those prior rules, at least two but less-than-four-years institutions were considered in the broader two-year category. In this iteration, after consulting with the Office of Advocacy for the SBA, we separate this group into its own category.

believe this approach most accurately reflects a common basis for determining size categories that is linked to the provision of educational services and that it captures a similar universe of small entities as the SBA's revenue standard.

TABLE 1—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

Level	Type	Small	Total	Percent
2-year	Public	328	1,182	27.75
2-year	Private	182	199	91.46
2-year	Proprietary	1,777	1,952	91.03
4-year	Public	56	747	7.50
4-year	Private	789	1,602	49.25
4-year	Proprietary	249	331	75.23
Total		3,381	6,013	56.23

Source: 2018–19 data reported to the Department.

As the table indicates, these proposed regulations would affect institutions of higher education that meet the definition of small entities. They would not have a significant economic impact on these entities, however, because they would not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds. We invite the public to comment on our certification that these regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Sections 656.21, 656.22, 656.23, and 657.21 of the proposed regulations contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the final regulations, we will display the control number assigned by OMB to any information collection requirements proposed in this NPRM and adopted in the final regulations.

The information collection that would be impacted by these proposed regulatory changes is the current Application for the NRC and FLAS Fellowships Programs (1840–0807). This information collection includes application instructions and forms for the NRC Program (ALN Number 84.015A) and the FLAS Fellowships Program (ALN Number 84.015B), authorized under title VI of the Higher Education Act of 1965, as amended (20 U.S.C. 1122).

The NRC Program provides grants to IHEs or consortia of IHEs to establish, strengthen, and operate comprehensive and undergraduate foreign language and area or international studies centers. These centers serve as centers of excellence for world language training and teaching, research, and instruction in fields needed to provide full understanding of areas, regions, or countries where the languages are commonly used.

The FLAS Fellowships Program awards allocations of fellowships, through institutions of higher education or consortia of institutions of higher education, to meritorious students enrolled in programs that offer performance-based instruction in world languages in combination with area studies, international studies, or the international aspects of professional studies.

Together, these programs respond to the ongoing national need for individuals with expertise and competence in world languages and area or international studies; advance national security by developing a pipeline of highly proficient linguists and experts in critical world regions; and contribute to developing a globally competent workforce able to engage with a multilingual/multicultural clientele at home and abroad.

Eligible institutions of higher education use the information collection to submit applications to the Department of Education (ED) to request funding in response to the competition announcement. After grant applications are submitted, the Department determines the budget and staff resources it needs to conduct the peer review of applications and post award activities. External review panels use the information to evaluate grant applications and to identify high-quality applications. When developing funding slates, ED program officials consider the evaluations from the expert review panels, in conjunction with the NRC and FLAS legislative purposes and any Administration priorities. ED program officials also use the collection to inform strategic planning; to establish goals, performance measures and objectives; to develop monitoring plans; or to align program assessment standards with Department performance goals and initiatives.

Over many grant cycles, administering the NRC and FLAS grant competitions using the current selection criteria has been unwieldy and burdensome for both applicants and peer reviewers. The Secretary proposes changes to the selection criteria to clarify selection criteria, eliminate redundant criteria, reduce the burden on applicants and peer reviewers, and improve alignment with the statute, particularly with regard to comprehensive and undergraduate Centers. The Secretary proposes reducing the comprehensive NRC selection criteria from 10 criteria with 27 sub-criteria to six criteria with 24 sub-criteria; the undergraduate NRC

selection criteria from 10 criteria with 26 sub-criteria to six criteria with 24 sub-criteria; and the FLAS selection criteria from nine criteria with 22 sub-criteria to six criteria with 22 sub-criteria. The proposed criteria include some new criteria for the NRC Program, including a ''quality of existing academic programs'' criterion, and also for FLAS, including ''project design and rationale'' and ''project planning and budget'' criteria.

ED's Office of Postsecondary Education, International and Foreign Language Education (OPE–IFLE) has used the information received for the current collection to develop technical assistance materials for grantees, such as program administration manuals and technical assistance Webinars, to inform the performance reporting requirements for these programs, and to demonstrate the impact of these programs.

Competitions for these grants occur once every four years. The data in the table is an estimate of the time it takes for respondents to complete official forms, develop the application narrative and budget, and submit completed applications through the *Grants.gov* system.

The NRC application (1840–0807) would be affected by the proposed changes to the NRC selection criteria (§§ 656.21, 656.22, and 656.23), which require changes on the application package and technical review forms. This information collection would no longer address aspects of the FLAS program. The proposed changes to the NRC selection criteria would clarify interpretations of statutory language and redesign the selection criteria. The proposed regulations would remove ambiguity and redundancy in the selection criteria and definitions of key terms, improve the application process, and align the administration of the programs with the developments in modern foreign languages and area studies education.

The FLAS application (1840–NEW) would be affected by the proposed changes to the FLAS selection criteria (§§ 657.21), which require changes on the application package and technical review forms. This new information collection would reflect the separation of the applications for the NRC and FLAS programs. The proposed changes to the FLAS selection criteria would clarify interpretations of statutory language and redesign the selection criteria. The proposed regulations would remove ambiguity and redundancy in the selection criteria and definitions of key terms, improve the application process, and align the administration of the programs with the developments in modern foreign languages and area studies education.

Previously, both applications were combined into one information collection for the Application for the NRC and FLAS Fellowships Programs (1840–0807). The proposed regulations would necessitate fully separating the information collection into two distinct information collections. Accordingly, the burdens associated with these information collections are derived from the burden associated with the current version of the Application for the NRC and FLAS Fellowships Programs (1840–0807). Taken together, proposed selection criteria would reduce the hour burden per response by one hour, from 27 to 26. When multiplied by 165 respondents, this change would result in a decrease in Total Annual Burden hours from 4,455 to 4,290. The Total Annual Costs would decrease from $334,125 to $321,750.

The NRC and FLAS programs compete only once every four years. The application packages are cleared with OMB once every three years. For every three-year clearance period, the competitions are run once. Because of the separation of the two information collections, the Total Annual Burden Hours and Total Annual Costs are halved, as demonstrated in the tables below. For both the NRC Program and the FLAS Fellowships Program, 26 hours to complete both applications is reduced to 13 hours each. When multiplied by 165 respondents this yields Total Annual Burden Hours of 2,145 and Total Annual Costs of $160,875. Averaged over three years, the Total Annual Burden Hours are reduced to 715 and the Total Annual Costs are reduced to $52,301 for each program.

NRC PROGRAM (1840–0807)

Affected type	Number of respondents	Number of responses	Average burden hours per response	Estimated respondent average hourly wage	Total annual burden hours	Total annual costs
Institutions, private or non-profit	165	165	13	$75	2,145	$160,875

FLAS FELLOWSHIPS PROGRAM (1840–NEW)

Affected type	Number of respondents	Number of responses	Average burden hours per response	Estimated respondent average hourly wage	Total annual burden hours	Total annual costs
Institutions, private or non-profit	165	165	13	$75	2,145	$160,875

The NRC application (1840–0807) would be affected by the proposed changes to the NRC selection criteria (§§ 656.21, 656.22, and 656.23), which would require changes on the application package and technical review forms.

Regulatory section	Information collection	OMB control No. and estimated burden
§§ 656.21, 656.22, 656.23, and 657.21.	These proposed regulatory provisions would require changing the application package and technical review forms to reflect the modified selection criteria for this program.	1840–0807. The number of respondents would remain constant at 165 and the number of total burden hours for the application would be reduced to 2,145 when averaged over three years. The averaged total cost would be reduced to $160,875.

The FLAS application (1840–NEW) would be affected by the proposed changes to the FLAS selection criteria (§ 657.21), which would require changes on the application package and technical review forms.

Regulatory section	Information collection	OMB control No. and estimated burden
§ 657.21	These proposed regulatory provisions would require changing the application package and technical review forms to reflect the modified selection criteria for this program.	1840–NEW. The number of respondents would remain constant at 165 and the number of total burden hours for the application would be reduced to 2,145 when averaged over three years. The averaged total cost would be reduced to $160,875.

We have prepared Information Collection Requests for these information collection requirements. If you wish to review and comment on the Information Collection Requests, please follow the instructions in the **ADDRESSES** section of this notification.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments posted at *www.regulations.gov.*

We consider your comments on this proposed collection of information in—

- Deciding whether the proposed collection is necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB must make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by March 25, 2024. This does not affect the deadline for your comments to us on the proposed regulations. If your comments relate to the Information Collection Requests for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Intergovernmental Review

The proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act (GEPA), 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed regulations do not have federalism implications.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

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List of Subjects

34 CFR Part 655

Colleges and universities, Cultural exchange programs, Educational research, Educational study programs, Grant programs—education, Scholarships and fellowships.

34 CFR Part 656

Colleges and universities, Cultural exchange programs, Educational research, Educational study programs, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 657

Colleges and universities, Cultural exchange programs, Educational study programs, Grant programs—education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Miguel A. Cardona,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 655, 656, and 657 of title 34 of the Code of Federal Regulations as follows:

PART 655—INTERNATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

■ 1. The authority citation for part 655 is revised to read as follows:

Authority: 20 U.S.C. 1121–1130b and 1132–1132–7, unless otherwise noted.

■ 2. Amend § 655.1 by revising paragraph (a) to read as follows:

§ 655.1 Which programs do these regulations govern?

* * * * *

(a) The National Resource Centers Program for Foreign Language and Area Studies and the Foreign Language and

Area Studies Fellowships Program (section 602 of the Higher Education Act of 1965, as amended);

* * * * *

§ 655.3 [Amended]

■ 3. Amend § 655.3 by:

■ a. Removing paragraphs (a) and (d).

■ b. Redesignating paragraphs (b) through (c) as paragraphs (a) through (b).

■ 4. Revise § 655.4 to read as follows:

§ 655.4 What definitions apply to the International Education Programs?

(a) The following terms used in this part and 34 CFR parts 656, 657, 658, 660, 661, and 669 are defined in 2 CFR part 200, subpart A, 34 CFR 77.1, 34 CFR 600.2, or 34 CFR 668.2:

Academic engagement
Acquisition
Applicant
Application
Award
Budget
Clock hour
Contract
Correspondence course
Credit hour
Distance education
Educational program
EDGAR
Enrolled
Equipment
Facilities
Fiscal year
Full-time student
Graduate or professional student
Grant
Grantee
Grant period
Half-time student
Local educational agency
National level
Nonprofit
Project
Project period
Private
Public
Regular student
Secretary
State educational agency
Supplies
Undergraduate student

(b) The following definitions apply to International Education Programs:

Area studies means a program of comprehensive study of the aspects of a world area's society or societies, including study of history, culture, economy, politics, international relations, and languages.

Areas of national need means the various needs in the government, education, business, and nonprofit sectors for expertise in foreign language, area, and international studies identified by the Secretary as significant for maintaining or improving the security, stability, and economic vitality of the United States.

Consortium of institutions of higher education means a group of institutions of higher education that have entered into a cooperative arrangement for the purpose of carrying out a common objective, or a public or private nonprofit agency, organization, or institution designated or created by a group of institutions of higher education for the purpose of carrying out a common objective on their behalf.

Consultation on areas of national need means the process that allows the head officials of a wide range of Federal agencies to consult with the Secretary and provide recommendations regarding national needs for expertise in foreign languages and world areas that the Secretary may take into account when identifying areas of national need.

Diverse perspectives means a variety of viewpoints relevant to understanding global or international issues in context, especially those derived from scholarly research or sustained professional activities and community engagement abroad, and relevant to building multi-faceted knowledge and expertise in area studies, international studies, and the international aspects of professional studies, including issues related to world regions, foreign languages, and international affairs, among stakeholders.

Educational program abroad means a program of study, internship, or service learning outside the United States that is part of a foreign language or other international curriculum at the undergraduate or graduate education level.

Institution of higher education means an institution that meets the definition in section 101(a) of the Higher Education Act of 1965, as amended, as well as an institution that meets the requirements of section 101(a) except that—

(1) It is not located in the United States; and

(2) It applies for assistance under title VI of the Higher Education Act of 1965, as amended, in consortia with institutions that meet the definition in section 101(a).

Intensive language instruction means instruction of at least five contact hours per week during the academic year or the equivalent of a full academic year of language instruction during the summer.

■ 5. Revise § 655.30 to read as follows:

§ 655.30 How does the Secretary evaluate an application?

The Secretary evaluates applications for International Education Programs using the criteria described in one or more of the following:

(a) The general criteria in § 655.31.

(b) The specific criteria, as applicable, in subpart C of 34 CFR parts 656 and 657, or subpart D of 34 CFR parts 658, 660, 661, and 669.

■ 6. Amend § 655.31 by revising paragraph (e)(2)(i) to read as follows:

§ 655.31 What general selection criteria does the Secretary use?

* * * * *

(e) * * *

(2) * * *

(i) Facilities (including but not limited to language laboratory, museums, or library) that the applicant plans to use are adequate; and

* * * * *

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES OR FOREIGN LANGUAGE AND INTERNATIONAL STUDIES

■ 7. Revise part 656 to read as follows:

PART 656—NATIONAL RESOURCE CENTERS PROGRAM FOR FOREIGN LANGUAGE AND AREA STUDIES

Subpart A—General

Sec.

Subpart B—How does an eligible institution apply for a grant?

Subpart C—How does the Secretary make a grant?

Authority: 20 U.S.C. 1121, 1122, 1127, and 1132 unless otherwise noted.

Subpart A—General

§ 656.1 What is the purpose of the National Resource Centers Program?

Under the National Resource Centers Program for Foreign Language and Areas Studies (National Resource Centers Program), the Secretary awards grants to institutions of higher education and consortia of institutions to establish, strengthen, and operate comprehensive and undergraduate Centers that act cooperatively as national resources for—

(a) Teaching of modern foreign languages, especially less commonly taught languages;

(b) Instruction in fields of study needed to provide full understanding of areas, regions, or countries in which such languages are commonly used;

(c) Research and training in international studies and the international and foreign language aspects of professional and other fields of study; and

(d) Instruction and research on issues in world affairs that concern one or more countries.

§ 656.2 What entities are eligible to receive a grant?

(a) An institution of higher education or a consortium of institutions of higher education is eligible to receive a grant under this part as either a comprehensive Center or undergraduate Center.

(b) An institution of higher education or a consortium of institutions of higher education that has received a grant under this part as either a comprehensive Center or undergraduate Center is eligible to receive an additional grant under this part for special purposes related to library collections, outreach, and summer institutes, as described in § 656.4.

§ 656.3 What defines a comprehensive or undergraduate National Resource Center?

(a) A Center's area of focus must be aligned with all of the following:

(1) A geographic world area that serves as the focus of research, teaching, training, and instruction.

(2) Opportunities available at the institution for teaching, training, research, and instruction in specific languages, countries, regions, societies, or other units of analysis relevant to the chosen geographic world area.

(b) A comprehensive Center is an administrative unit of an eligible institution of higher education that independently or through collaboration with other administrative units—

(1) Provides intensive modern foreign language training, especially for less commonly taught languages, in the Center's area of focus;

(2) Contributes significantly to the national interest in advanced research and scholarship in the Center's area of focus;

(3) Employs a critical mass of scholars in diverse disciplines related to the Center's area of focus;

(4) Maintains important library collections related to the Center's area of focus;

(5) Makes training available in language and area studies in the Center's area of focus, to graduate, postgraduate, and undergraduate students;

(6) Addresses national needs for modern foreign language and area studies expertise and knowledge, including through, but not limited to, the placement of students into postgraduate employment, education, or training in areas of need; and

(7) Disseminates information about the Center's area of focus to audiences in the United States.

(c) An undergraduate Center independently or through collaboration with other administrative units—

(1) Teaches modern foreign languages, especially less commonly taught languages, related to the Center's area of focus;

(2) Prepares undergraduate students to matriculate into advanced modern foreign language and area studies programs and professional school programs;

(3) Incorporates substantial content related to the Center's area of focus into baccalaureate degree programs;

(4) Engages in research and curriculum development designed to broaden knowledge and expertise related to the Center's area of focus;

(5) Employs faculty with strong language, area, and international studies credentials related to the Center's area of focus;

(6) Maintains library holdings sufficient to support high-quality training and instruction in the Center's area of focus for undergraduate students;

(7) Makes training available predominantly to undergraduate students in support of the objectives of an undergraduate institution;

(8) Addresses national needs for language and area studies expertise and knowledge, including through, but not limited to, the placement of undergraduate students into postgraduate employment, education, or training in areas of need; and

(9) Disseminates information about the Center's area of focus to audiences in the United States.

§ 656.4 For what special purposes may a Center receive an additional grant under this part?

The Secretary may make additional grants to Centers for one or more of the following purposes:

(a) Linkage or outreach between foreign language, area studies, and other international fields and professional schools and colleges.

(b) Linkage or outreach with 2- and 4-year colleges and universities.

(c) Linkage or outreach between or among—

(1) Postsecondary programs or departments in foreign language, area studies, or other international fields; and

(2) State educational agencies or local educational agencies.

(d) Partnerships or programs of linkage and outreach with departments or agencies of Federal and State governments, including Federal or State scholarship programs for students in related areas.

(e) Linkage or outreach with the news media, business, professional, or trade associations.

(f) Summer institutes in area studies, foreign language, or other international fields designed to carry out the activities in paragraphs (a), (b), (d), and (e) of this section.

(g) Maintenance of important library collections.

§ 656.5 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 656.

§ 656.6 What definitions apply to this program?

The following definitions apply to this part:

(a) The definitions in 34 CFR part 655.

(b) The following definitions, unless otherwise specified:

Critical mass of scholars means a concentration of modern foreign language and area studies faculty, researchers, and other similar personnel associated with a Center who collectively make significant contributions in a field of area studies

because of their expertise and are distinguished by their training in many different academic disciplines in addition to their active engagement in interdisciplinary initiatives related to the Center's area of focus. The following are examples of other factors that may be considered in determining whether there is a *critical mass of scholars:*

(i) Whether instruction in many foreign languages is offered.

(ii) Whether specialized area studies or language instruction is regularly offered.

(iii) The number of graduate student research projects (dissertations, theses, or equivalents) supervised.

(iv) The degree of collaboration with international partners.

(v) Participation in professional activities or consultations with partners outside academia.

(vi) Professional awards and honors.

(vii) Roles in professional associations.

(viii) Activities funded by external grants.

(ix) The number of scholars relative to all similarly qualified individuals in the United States.

Institution means an institution of higher education, as defined in 34 CFR part 655. References to an institution include all institutions of higher education that operate as a consortium under this part.

National Resource Center (Center) means an administrative unit within an institution of higher education that is a grantee under this part that coordinates educational initiatives related to an area of focus as described in § 656.3(a) at that institution or for a consortium of institutions through direct access to faculty, staff, administrators, students, library collections and other research collections, and other educational resources that support research, training, and instruction in various academic disciplines, professional fields, and languages.

§ 656.7 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any other person, act, or practice will not be affected thereby.

Subpart B—How does an eligible institution apply for a grant?

§ 656.10 How does an institution submit a grant application?

The application notice published in the **Federal Register** explains how to apply for a new grant under this part.

§ 656.11 What assurances and other information must an applicant include in an application?

(a) Each institution of higher education, including each member of a consortium, applying for a grant under this part must provide all of the following:

(1) An explanation of how the activities funded by the grant will reflect diverse perspectives, as defined in part 655, and a wide range of views and generate debate on world regions and international affairs.

(2) A description of how the applicant will encourage government service in areas of national need, as identified by the Secretary, as well as in areas of need in the education, business, and nonprofit sectors.

(b) An applicant must submit an Applicant Profile Form, as described in the application package.

(c) Each consortium applying for an award under this part must submit a group agreement (consortium agreement) that addresses the required elements of 34 CFR 75.128 and describes a rationale for the formation of the consortium.

Subpart C—How does the Secretary make a grant?

§ 656.20 How does the Secretary select applications for funding?

(a) The Secretary evaluates an application for a comprehensive Center under the criteria contained in § 656.21, and for an undergraduate Center under the criteria contained in § 656.22. The Secretary evaluates applications for additional special purpose grants to Centers under the criteria contained in § 656.23.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(c) The Secretary makes grant awards using a peer review process. Applications that share the same or similar area of focus, as declared by each applicant under § 656.3(a), are grouped together for purposes of review. Each application is reviewed for excellence based on the applicable criteria referenced in paragraph (a) of this section. Applications are then ranked within each area of focus.

(d) The Secretary may determine a minimum total score required to demonstrate a sufficient degree of excellence to qualify for a grant under this part.

(e) If insufficient money is available to fund all applications demonstrating a sufficient degree of excellence as determined under paragraphs (a), (c), and (d) of this section, the Secretary considers the degree to which priorities derived from the consultation on areas of national need or established under the provisions of § 656.24 and relating to specific countries, world areas, or languages are served when selecting applications for funding and determining the amount of a grant.

§ 656.21 What selection criteria does the Secretary use to evaluate an application for a comprehensive Center?

The Secretary evaluates an application for a comprehensive Center on the basis of the criteria in this section.

(a) *Center scope, personnel, and operations.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the proposed Center's area of focus meets the requirements in § 656.3(a).

(2) The extent to which the Project Director and other staff are qualified to administer the proposed Center, including the degree to which they engage in ongoing professional development activities relevant to their roles at the proposed Center.

(3) The adequacy of governance and oversight arrangements for the proposed Center, including the extent to which faculty from a variety of academic units participate in administration and oversee outreach activities, and, for a consortium, the extent to which the consortium agreement demonstrates commitment to a common objective.

(4) The extent to which the institution provides or will provide financial, administrative, and other support to the operation of the proposed Center at a level sufficient to enable the administration of the proposed project and coordination of educational initiatives in the proposed Center's area of focus.

(5) The extent to which the proposed Center, as part of its nondiscriminatory employment practices for Center staff, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age or disability.

(b) *Quality of existing academic programs.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the institution makes high-quality training, especially integrated interdisciplinary training in modern foreign languages and area studies, appropriate to the applicant's area of focus, available in the curricula for graduate, professional, and

undergraduate students in a wide variety of educational programs.

(2) The extent to which the institution routinely provides language instruction, including intensive language instruction, relevant to the applicant's area of focus at multiple levels, as well as the degree to which these offerings represent distinctive commitments to depth or breadth.

(3) The extent to which qualified experts at the institution provide modern foreign language instruction in the applicant's area of focus, as well as the degree to which this instruction utilizes stated performance goals for functional foreign language use and the degree to which stated performance goals are met or are likely to be met by students.

(4) The extent to which the institution employs a critical mass of scholars in the applicant's area of focus, including the degree to which the institution employs enough qualified tenured and tenure-track faculty with teaching and advising responsibilities to enable the applicant to carry out interdisciplinary instructional and training programs supported by sufficient depth and breadth of course offerings in the applicant's area of focus.

(c) *Impact of existing activities and resources.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the applicant, affiliated faculty, and institutional partners contribute significantly to the national interest in advanced research and scholarship related to the applicant's area of focus.

(2) The extent to which the institution's library holdings (print and non-print, physical and digital, English and foreign language) and other research collections are important library collections in the applicant's area of focus that support advanced training and research, including the degree to which holdings are made available to researchers throughout the United States, the degree to which collections include unique or rare resources, and the degree to which the collections are supported by experts in the applicant's area of focus.

(3) The extent to which the applicant, including affiliated faculty and institutional partners, generates information about the applicant's area of focus, disseminates this information to various audiences in the United States, and effectively engages those audiences through sustained outreach activities at the regional and national levels that respond to the diverse needs of, for example, elementary and secondary schools, State educational agencies, postsecondary institutions, nonprofit organizations, businesses, the media, and Federal agencies.

(4) The extent to which the applicant's activities address national needs related to language and area studies expertise and knowledge, including, but not limited to, the applicant's record in placing students into post-graduate employment, education, or training in areas of national need related to language and area studies knowledge.

(d) *Project design and rationale.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the outcomes of the proposed project are clearly specified, possible to achieve within the project period, and address specific gaps or weaknesses in services, infrastructure, or opportunities related to the Center's area of focus, the purpose of the National Resource Centers Program described in § 656.1, and the comprehensive type of Center described in § 656.3(b).

(2) The extent to which the project is likely to contribute to meeting national needs related to language and area studies expertise and knowledge, including, but not limited to, by outcomes and other stated efforts related to increasing the number of students that go into post-graduate employment, education, or training in areas of national need.

(3) The extent to which the proposed project is designed to build institutional capacity in the Center's area of focus and sustain results beyond the project period.

(4) The extent to which the proposed project will reflect diverse perspectives, as defined in part 655, and a wide range of views and generate debate on world regions and international affairs.

(e) *Project planning and budget.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which all proposed activities are adequately described relative to their contribution to project outcomes.

(2) The extent to which all proposed activities are of high quality, including the degree to which they align with the purpose of the National Resource Centers program described in § 656.1, the comprehensive type of Center described in § 656.3(b), and the proposed project's outcomes.

(3) The extent to which the proposed timeline of activities and other application materials, such as letters of support, demonstrate the feasibility of completing proposed activities during the project period.

(4) The extent to which all costs are itemized in the budget narrative and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of project evaluation.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The qualifications, including relevant training, experience, and independence, of the evaluator(s).

§ 656.22 What selection criteria does the Secretary use to evaluate an application for an undergraduate Center?

The Secretary evaluates an application for an undergraduate Center on the basis of the criteria in this section.

(a) *Center scope, personnel, and operations.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the proposed Center's area of focus meets the requirements in § 656.3(a).

(2) The extent to which the Project Director and other staff are qualified to administer the proposed Center, including the degree to which they engage in ongoing professional development activities relevant to their roles at the proposed Center.

(3) The adequacy of governance and oversight arrangements for the proposed Center, including the extent to which faculty from a variety of academic units participate in administration and oversee outreach activities, and, for a consortium, the extent to which the consortium agreement demonstrates commitment to a common objective.

(4) The extent to which the institution provides or will provide financial, administrative, and other support to the operation of the proposed Center at a level sufficient to enable the administration of the proposed project and coordination of educational initiatives in the proposed Center's area of focus.

(5) The extent to which the proposed Center, as part of its nondiscriminatory employment practices for Center staff, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented based on race, color, national origin, gender, age or disability.

(b) *Quality of existing academic programs.* The Secretary reviews each

application to determine one or more of the following:

(1) The extent to which the institution makes high-quality training, especially integrated interdisciplinary training in modern foreign language and area or international studies, appropriate to the applicant's area of focus, available in educational programs predominantly for undergraduate students in support of the objectives of the undergraduate institution.

(2) The extent to which the institution routinely provides language instruction relevant to the applicant's area of focus, as well as the degree to which these offerings represent distinctive commitments to depth or breadth of coverage.

(3) The extent to which qualified experts at the institution provide modern foreign language instruction in the applicant's area of focus, as well as the degree to which this instruction utilizes stated performance goals for functional foreign language use and the degree to which stated performance goals are met or are likely to be met by students.

(4) The extent to which the institution employs faculty with strong language, area, and international studies credentials related to the applicant's area of focus, including the degree to which the institution employs enough qualified tenured and tenure-track faculty with teaching and advising responsibilities, to enable the applicant to carry out instructional and training programs supported by sufficient depth and breadth of course offerings predominantly for undergraduate students in the applicant's area of focus.

(c) *Impact of existing activities and resources.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the applicant predominantly prepares undergraduate students to matriculate into advanced language and area studies programs and professional school programs, especially through curriculum design, requirements for student research or study abroad opportunities, support for relevant internship or other co-curricular opportunities, or specialized advising.

(2) The extent to which the institution's library holdings (print and non-print, physical and digital, English and foreign language), other research collections, and staffing predominantly support undergraduate training in the applicant's area of focus through the provision of basic reference works, journals, and works in translation.

(3) The extent to which the applicant, including affiliated faculty and institutional partners, generate information about the applicant's area of focus, disseminate this information to various audiences in the United States, and effectively engage those audiences through sustained outreach activities at the regional and national levels that respond to the diverse needs of, for example, elementary and secondary schools, State educational agencies, postsecondary institutions, nonprofit organizations, businesses, the media, and Federal agencies.

(4) The extent to which the applicant's activities address national needs related to language and area studies expertise and knowledge, including, but not limited to, the applicant's record in placing undergraduate students into post-graduate employment, education, or training in areas of national need related to language and area studies knowledge.

(d) *Project design and rationale.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the outcomes of the proposed project are clearly specified, possible to achieve within the project period, and address specific gaps or weaknesses in services, infrastructure, or opportunities related to the Center's area of focus, the purpose of the National Resource Centers program described in § 656.1, and the undergraduate type of Center described in § 656.3(c).

(2) The extent to which the project is likely to contribute to meeting national needs related to language and area studies expertise and knowledge, including, but not limited to, by outcomes and other stated efforts related to increasing the number of undergraduate students that go into post-graduate employment, education, or training in areas of national need.

(3) The extent to which the proposed project is designed to build institutional capacity in the Center's area of focus and sustain results beyond the project period.

(4) The extent to which the proposed project will reflect diverse perspectives, as defined in part 655, and a wide range of views and generate debate on world regions and international affairs.

(e) *Project planning and budget.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which all proposed activities are adequately described relative to their contribution to project outcomes.

(2) The extent to which all proposed activities are of high quality, including the degree to which they align with the purpose of the National Resource Centers program as described in § 656.1, the undergraduate type of Center described in § 656.3(c), and the proposed project's outcomes.

(3) The extent to which the proposed timeline of activities and other application materials, such as letters of support, demonstrate the feasibility of completing proposed activities during the project period.

(4) The extent to which all costs are itemized in the budget narrative and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of project evaluation.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The qualifications, including relevant training, experience, and independence, of the evaluator(s).

§ 656.23 What selection criteria does the Secretary use to evaluate an application for an additional special purpose grant to a Center?

The Secretary evaluates an application for a special purpose grant on the basis of one or more of the criteria in this section.

(a) *Project design and rationale.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the project aligns with the Center's approved area of focus under § 656.3(a) and proposes at least one type of activity contained in § 656.4(a)–(g).

(2) The extent to which the outcomes of the proposed project are clearly specified, possible to achieve within the project period, and address specific gaps or weaknesses in services, infrastructure, or opportunities related the Center's area of focus, the purpose of the National Resource Centers program described in § 656.1, and the appropriate type of Center described in § 656.3(b)–(c).

(3) The extent to which the project is likely to contribute to meeting national needs related to language and area studies knowledge or expertise.

(4) The extent to which the proposed project is designed to build institutional capacity and sustain results beyond the project period.

(b) *Project planning and budget.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which all proposed activities are adequately described

relative to their contribution to project outcomes.

(2) The extent to which all proposed activities are of high quality, including the degree to which they align with the purpose of the National Resource Centers program as described in § 656.1, the appropriate type of Center described in § 656.3(b)–(c), and the proposed project's intended outcomes.

(3) The extent to which the proposed timeline of activities and other application materials, such as letters of support, demonstrate the feasibility of completing proposed activities during the project period.

(4) The extent to which all costs are itemized in the budget narrative and the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(c) *Key personnel and project operations.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which project personnel are qualified to oversee and carry out the proposed project.

(2) The adequacy of staffing, governance, and oversight arrangements, and, for a consortium, the extent to which the consortium agreement demonstrates commitment to a common objective.

(d) *Quality of project evaluation.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The qualifications, including relevant training, experience, and independence, of the evaluator(s).

§ 656.24 What priorities may the Secretary establish?

(a) The Secretary may select one or more of the following funding priorities:

(1) Specific world areas, countries, or societies.

(2) Instruction of specific modern foreign languages.

(3) Modern foreign language instruction at a specific level or degree of intensity, such as intermediate or advanced language instruction, or instruction at an intensity of 10 contact hours or more per week.

(4) Specific areas of national need for expertise in foreign languages and world areas derived from the consultation with Federal agencies on areas of national need.

(5) Specific area of focus, such as a world area or a portion of a world area, *e.g.,* a single country or society, in addition to a specific topic, *e.g.,* economic cooperation, cybersecurity, energy, climate change, translation, genocide prevention, or migration.

(b) The Secretary may select one or more of the activities listed in § 656.4 or § 656.30(a) as a funding priority.

(c) The Secretary announces any priorities in the application notice published in the **Federal Register**.

Subpart D—What conditions must be met by a grantee?

§ 656.30 What activities and costs are allowable?

(a) *Allowable activities and costs.* Except as provided under paragraph (b) of this section, a grant awarded under this part may be used to pay all or part of the cost of establishing, strengthening, or operating a comprehensive or undergraduate Center including, but not limited to, the cost of the following:

(1) Supporting instructors of the less commonly taught languages.

(2) Creating, expanding, or improving opportunities for the formal study of the less commonly taught languages related to the Center's area of focus.

(3) Creating or operating summer institutes in the United States or abroad designed to provide modern foreign language and area training in the Center's area of focus.

(4) Cooperating with other Centers to conduct projects that address issues of world, regional, cross-regional, international, or global importance.

(5) Bringing visiting scholars and faculty to the Center to teach, conduct research, or participate in conferences or workshops.

(6) Disseminating information about the Center's area of focus to various audiences in the United States through domestic outreach activities involving, for example, elementary and secondary schools, postsecondary institutions, businesses, and the media.

(7) Funding library acquisitions, the maintenance of library collections, or efforts to enhance access to library collections.

(8) Establishing and maintaining linkages with overseas institutions of higher education and other organizations that may contribute to the teaching and research of the Center's area of focus.

(9) Creating, obtaining, modifying, or improving access to teaching and research materials.

(10) Creating, expanding, or improving activities or teaching materials that are intended to increase modern foreign language proficiency among students in the science, technology, engineering, and mathematics fields.

(11) Conducting projects that encourage and prepare students to seek employment relevant to the Center's area of focus in areas of national need.

(12) Planning or developing curriculum.

(13) Engaging in professional development of the Center's faculty and staff.

(14) Funding salaries and travel for faculty and staff.

(b) *Limitations.* The following are limitations on allowable activities and costs:

(1) Equipment costs exceeding 10 percent of the grant are not allowable.

(2) Undergraduate student travel is only allowable if the costs are pre-approved by the Secretary and the travel is made in conjunction with a formal program of supervised study in the Center's area of focus.

(3) Grant funds may not be used to supplant funds normally used by grantees for purposes of this part.

(4) Personnel and related costs associated with compensation for the Project Director are not allowable.

(5) Personnel costs and other costs related to the compensation of individuals exceeding 50 percent of a full time equivalent for any individual not directly engaged in the instruction of a less commonly taught language are not allowable.

(6) Costs for international travel are only allowable if a Center has obtained pre-approval from the Secretary.

(7) Activities must be relevant to the Center's area of focus and the type of Center.

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

■ 8. Revise part 657 to read as follows:

PART 657—FOREIGN LANGUAGE AND AREA STUDIES FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

Authority: 20 U.S.C. 1122 and 1132–3, unless otherwise noted.

Subpart A—General

§ 657.1 What is the Foreign Language and Area Studies Fellowships Program?

Under the Foreign Language and Area Studies Fellowships Program, the Secretary provides allocations of fellowships to Centers and other administrative units at eligible institutions of higher education that award the fellowships on a competitive basis to undergraduate or graduate students who are undergoing advanced training in modern foreign languages and area studies.

§ 657.2 What entities are eligible to receive an allocation of fellowships?

The Secretary awards an allocation of fellowships (grant) to an institution of higher education or to a consortium of institutions of higher education.

§ 657.3 What are the instructional and administrative requirements for an allocation of fellowships?

(a) An allocation of fellowships must support area studies and language instruction that aligns with—

(1) A geographic world area that serves as the focus of training and instruction;

(2) Languages specific to the world area of focus; and

(3) Existing programs or proposed instructional programs that will be developed and implemented during the grant period.

(b) An allocation of fellowships must be administered according to the institution's written plan for distributing fellowships and allowances to eligible fellows for training and instruction during the academic year or summer, provided that—

(1) The fellowship types are described in the budget narrative of an application selected for funding under this part; or

(2) The Secretary has approved any proposed changes to an approved Center or Program's plan.

§ 657.4 Who is eligible to receive a fellowship?

A student must satisfy all of the following criteria during the fellowship period to be eligible to receive a fellowship from an approved Center or Program:

(a) The student is a—

(1) Citizen or national of the United States; or

(2) Permanent resident of the United States.

(b) The student is accepted for enrollment, is enrolled, or will continue to be enrolled in the institution receiving an allocation of fellowships.

(c) The student is pursuing an educational program that—

(1) Includes instruction or a demonstration of proficiency in a modern foreign language related to the allocation of fellowships; and

(2) Includes instruction or, for graduate students, supervised research related to the allocation of fellowships in—

(i) Area studies; or

(ii) The international aspects of professional fields and other fields of study, including but not limited to science, technology, engineering, and mathematics fields.

(d) The student demonstrates—

(1) Commitment to the study of a world area relevant to the allocation of fellowships; and

(2) Potential for high academic achievement based on such indices as grade point average, class ranking, or similar measures that the institution may determine.

(e) The student is engaged in modern foreign language training or instruction in a language—

(1) That is relevant to the student's educational program, as described in paragraph (c) of this section, as well as the allocation of fellowships; and

(2) For which the institution or program has developed or is developing performance goals for foreign language use, and in the case of summer programs has received approval from the Secretary.

(f) The student must engage in the type of training appropriate to their degree status:

(1) Undergraduate students must engage in the study of a less commonly taught language at the intermediate or advanced level.

(2) Non-dissertation or predissertation level graduate students must—

(i) Engage in the study of a modern foreign language at the intermediate or advanced level; or

(ii) Engage in the study of a modern foreign language at the beginning level, provided they demonstrate advanced proficiency in another modern foreign language relevant to their field of study or obtain the permission of the Secretary.

(3) Dissertation level graduate students must—

(i) Engage in dissertation research abroad or dissertation writing in the United States;

(ii) Demonstrate advanced proficiency in a modern foreign language relevant to the dissertation project and the allocation of fellowships; and

(iii) Use modern foreign language(s) relevant to the allocation of fellowships in their dissertation research or writing.

§ 657.5 What is the amount of a fellowship?

(a) Each fellowship consists of a stipend and any additional allowances permitted under this part, as determined by the Secretary and as allocated by an approved Center or Program.

(b) The Secretary announces the following in a notice published in the **Federal Register**:

(1) The amounts of the stipend for an academic year.

(2) The amounts of the stipend for a summer session.

(3) Whether travel allowances will be permitted.

(4) Whether dependents' allowances will be permitted.

(5) The amounts of any permitted allowances.

§ 657.6 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR part 655.

(b) The regulations in this part 657.

§ 657.7 What definitions apply to this program?

The following definitions apply to this part:

(a) The definitions in 34 CFR 655.4.

(b) The following definitions, unless otherwise specified:

Approved center means an administrative unit of an institution of higher education that has both received an allocation of fellowships under this part and a grant to operate a Center under 34 CFR part 656.

Approved program means a concentration of educational resources and activities in modern foreign language training and area studies with the administrative capacity to administer an allocation of fellowships under this part.

Fellow means a person who receives a fellowship under this part.

Fellowship means the payment a fellow receives under this part.

Stipend means the portion of the fellowship paid by the grantee to a fellow in support of living expenses and the costs associated with advanced training in a modern foreign language and area studies.

§ 657.8 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any other person, act, or practice will not be affected thereby.

Subpart B—How does an eligible institution or student apply?

§ 657.10 How does an institution submit a grant application?

The application notice published in the **Federal Register** explains how to apply for a new grant under this part.

§ 657.11 What assurances and other information must an applicant institution include in an application?

(a) Each eligible institution of higher education, including each member of a consortium of institutions of higher education, applying for an allocation of fellowships under this part must provide all of the following:

(1) An explanation of how the activities funded by the grant will reflect diverse perspectives, as defined in part 655, and a wide range of views and generate debate on world regions and international affairs.

(2) A description of how the applicant will encourage government service in areas of national need, as identified by the Secretary, as well as in areas of need in the education, business, and nonprofit sectors.

(3) An estimated number of the students at the applicant institution who currently meet the fellowship eligibility requirements.

(b) Each applicant institution must submit the Applicant Profile Form provided in the FLAS Fellowships Program application package.

(c) Each consortium of institutions of higher education applying for an award under this part must submit a group agreement (consortium agreement) that addresses the required elements in 34 CFR 75.128 and describes a rationale for the formation of the consortium.

§ 657.12 How does a student apply for a fellowship?

(a) A student must apply for a fellowship directly to an approved Center or Program at an institution of higher education that has received an allocation of fellowships according to the application procedures established by that approved Center or Program.

(b) Individual applicants must provide sufficient information to enable the approved Center or Program at the institution to determine the applicant's eligibility to receive a fellowship and whether the student should be selected according to the selection process established by the approved Center or Program.

Subpart C—How does the Secretary make a grant?

§ 657.20 How does the Secretary select institutional applications for funding?

(a) The Secretary evaluates an institutional application for an allocation of fellowships on the basis of the quality of the applicant's Center or program in modern foreign language and area studies training. The applicant's Center or program is evaluated and approved under the criteria in § 657.21.

(b) The Secretary informs applicants of the maximum possible score for each criterion in the application package or in a notice published in the **Federal Register**.

(c) The Secretary makes grant awards using a peer review process. Applications that share the same or similar area of focus, as declared by each applicant under § 657.3(a), are grouped together for purposes of review. Each application is reviewed for excellence based on the applicable criteria referenced in paragraph (a) of this section. Applications are then ranked within each area of focus.

(d) The Secretary may determine a minimum total score required to demonstrate a sufficient degree of excellence to qualify for a grant under this part.

(e) If insufficient money is available to fund all applications demonstrating a sufficient degree of excellence as determined under paragraphs (a), (c), and (d) of this section, the Secretary considers the degree to which priorities derived from the consultation on areas of national need or established under the provisions of § 657.22 and relating to specific countries, world areas, or languages are served when selecting applications for funding and determining the amount of a grant.

§ 657.21 What selection criteria does the Secretary use to evaluate an institutional application for an allocation of fellowships?

The Secretary evaluates an institutional application for an allocation of fellowships on the basis of the criteria in this section.

(a) *Scope, personnel, and operations.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the proposed allocation of fellowships meets the requirements in § 657.3(a).

(2) The extent to which the Project Director and other staff are qualified to administer the proposed allocation of fellowships, including the degree to which they engage in ongoing professional development activities relevant to their roles.

(3) The adequacy of governance and oversight arrangements for the proposed allocation of fellowships, and, for a consortium, the extent to which the consortium agreement demonstrates commitment to a common objective.

(4) The extent to which the institution provides or will provide financial, administrative, and other support to the administration of the proposed allocation of fellowships.

(b) *Quality of curriculum and instruction.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the applicant's curriculum provides training options for students from a variety of disciplines and professional fields, and the extent to which the curriculum and associated requirements (including language requirements) are appropriate for the applicant's area of focus and result in educational programs of high quality for students who will be served by the proposed allocation of fellowships.

(2) The levels of instruction offered for the modern foreign languages relevant to the proposed allocation of fellowships, including intensive language instruction, and the frequency with which the courses are offered.

(3) The extent to which the institution's instruction in modern foreign languages relevant to the proposed allocation of fellowships is using or developing stated performance goals for functional foreign language use, as well as the degree to which

stated performance goals are met or are likely to be met by students.

(4) The extent to which instruction in modern foreign languages is integrated with area studies courses, for example, area studies courses taught in modern foreign languages.

(c) *Quality of faculty and academic resources.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the institution employs faculty with strong language, area, and international studies credentials related to the proposed allocation of fellowships, including enough qualified tenured and tenure-track faculty with teaching and advising responsibilities to enable the applicant to carry out the instructional and training programs in the applicant's area of focus.

(2) The extent to which the applicant provides or will provide students who will be served by the proposed allocation of fellowships with substantive academic and career advising services that address the potential uses of their foreign language and area studies knowledge and training.

(3) The extent to which the institution's library holdings (print and non-print, physical and digital, English and foreign language), other research collections, and relevant staff support those who will be served by the proposed allocation of fellowships.

(4) The extent to which the applicant has established formal arrangements for students to conduct research or study abroad relevant to the proposed allocation of fellowships and the extent to which these arrangements are used.

(d) *Project design and rationale.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the proposed allocation of fellowships aligns with the applicant's educational programs, instructional resources, and language and area studies course offerings; and the ease of access to relevant instruction and training opportunities, including training from external providers.

(2) The applicant's record of placing students into post-graduate employment, education, or training in areas of national need and the applicant's efforts to increase the number of such students that go into such placement.

(3) The extent to which the allocation of fellowships will contribute to meeting national needs related to language and area studies expertise and support the generation of information for and dissemination of information to the public.

(4) The extent to which the proposed project will reflect diverse perspectives, as defined in part 655, and a wide range of views and generate debate on world regions and international affairs.

(e) *Project planning and budget.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the process for selecting fellows is thoroughly described and of high quality, including the institution-wide fellowship recruitment and advertisement process, the student application process, the FLAS Fellowships Program selection criteria and priorities, any supplemental institutional requirements consistent with the FLAS Fellowships Program requirements, the composition of the institution's selection committee, and the timeline for selecting and notifying students.

(2) The extent to which the institution requesting an allocation of fellowships identifies barriers, if any, to equitable access to and participation in the FLAS Fellowships Program and how the institution proposes to address these barriers.

(3) The extent to which the requested amount and proposed distribution of the allocation of fellowships is reasonable relative to the potential pool of eligible students with a demonstrated interest in relevant modern foreign language and area studies training and instruction.

(f) *Quality of project evaluation.* The Secretary reviews each application to determine one or more of the following:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the proposed project.

(2) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(3) The qualifications, including relevant training, experience, and independence, of the evaluator(s).

§ 657.22 What priorities may the Secretary establish?

(a) The Secretary may establish one or more of the following priorities for the allocation of fellowships:

(1) Instruction, training, or research in specific languages or all languages related to specific world areas.

(2) Programs of language instruction with stated performance goals for functional foreign language use or that are developing such performance goals.

(3) Instruction, training, or research related to specific world areas.

(4) Academic terms, such as academic year or summer.

(5) Levels of language offerings.

(6) Academic disciplines, such as linguistics or sociology.

(7) Professional studies, such as business, law, or education.

(8) Instruction, training, or research in particular subjects, such as population growth and planning or international trade and business.

(9) Specific areas of national need for expertise in foreign languages and world areas derived from the consultation with Federal agencies on areas of national need.

(10) A combination of any of these categories.

(b) The Secretary announces any priorities in the application notice published in the **Federal Register**.

Subpart D—What conditions must be met by institutional grantees and fellows?

§ 657.30 What are the limitations on fellowships and the use of fellowship funds?

(a) *Distance or online education.* Fellows may satisfy course requirements through instruction offered in person or, with the Secretary's prior approval, via distance education or hybrid formats. Correspondence courses do not satisfy program course requirements.

(b) *Duration and purpose.* An approved Center or Program may award a fellowship for any of the following combinations of duration and purpose:

(1) One academic year, provided that the fellow enrolls in one language course per term and at least two area studies courses per year.

(2) One academic year for dissertation research abroad, provided that the fellow is a doctoral candidate, uses advanced training in at least one modern foreign language in the research, and has a work plan approved by the Secretary.

(3) One academic year for dissertation writing, provided that the fellow is a doctoral candidate, uses advanced training in at least one modern foreign language for the dissertation, and has a work plan approved by the Secretary.

(4) One summer session if the summer session provides the fellow with the equivalent of one academic year of instruction in a modern foreign language.

(5) Other durations approved by the Secretary to accommodate exceptional circumstances that would enable a fellow to complete an appropriate amount of coursework, dissertation writing, or dissertation research.

(c) *Internships.* The Secretary may approve the use of a fellowship to support an internship for an eligible fellow.

(d) *Program administration costs.* This program does not allow administrative expenses.

(e) *Selection of fellowship recipients.* Approved Centers or Programs must select students to receive fellowships using the selection process described in the grant application submitted to the Department, or using any subsequent modifications to the selection process that have been approved by the Secretary.

(f) *Study outside the United States.* Before awarding a fellowship for use outside the United States, an institution must obtain the approval of the Secretary. The Secretary may approve the use of a fellowship outside the United States if the student is—

(1) Enrolled in an educational program abroad, approved by the institution at which the student is enrolled in the United States, for study of a foreign language at an intermediate or advanced level or at the beginning level if appropriate equivalent instruction is not available in the United States; or

(2) Engaged during the academic year in research that cannot be done effectively in the United States and is affiliated with an institution of higher education or other appropriate organization in the host country.

(g) *Support from other Federal agencies.* Recipients of fellowships under this part may accept concurrent awards from other Federal agencies such as Boren Fellowships and Critical Language Scholarships, provided that the other Federal awards are not used to pay for the same activity or cost allocated to the recipient's fellowship.

(h) *Transfer of funds.* Institutions may not transfer funds from their allocation of fellowships to any outside entity, including other approved Centers or Programs, unless the funds are transferred directly to an instructional program provider to cover the costs for the institution's own fellows to attend training programs carried out by the instructional program provider during the academic year or a summer session. The transfer of funds to any instructional program providers located outside the United Stated must be pre-approved by the Secretary.

(i) *Undergraduate travel.* No funds may be expended under this part for undergraduate travel except in accordance with rules prescribed by the Secretary setting forth policies and procedures to assure that Federal funds made available for such travel are expended as part of a formal program of supervised study.

(j) *Vacancies.* If a fellow vacates a fellowship before the end of an award period, the institution receiving the allocation of fellowships may award the balance of the fellowship to another student if—

(1) The student meets the eligibility requirements in § 657.4 and was selected in accordance with paragraph (e) of this section;

(2) The remaining fellowship period comprises at least one full academic quarter, semester, trimester, or summer session; and

(3) The amount of available funds is sufficient to award a full fellowship for the duration described in paragraph (j)(2) of this section.

§ 657.31 What is the payment procedure for fellowships?

(a) An institution must award a stipend to fellowship recipients.

(b) An institution must pay the stipend and any other allowances to the fellow in installments during the term of the academic year fellowship.

(c) An institution may make a payment only to a fellow who is in good standing and is making satisfactory progress.

(d) The institution must make appropriate adjustments of any overpayment or underpayment to a fellow.

(e) Any payments made for less than the full duration of a fellowship must be prorated to reflect the actual duration of the fellowship.

§ 657.32 Under what circumstances must an institution terminate a fellowship?

An institution must terminate a fellowship if—

(a) The fellow is not making satisfactory progress, is no longer enrolled, or is no longer in good standing at the institution; or

(b) The fellow fails to follow the course of study in modern foreign language and area studies, for which the fellow applied, unless a revised course of study is otherwise approved under this part.

§ 657.33 What are the reporting requirements for grantee institutions and for individual fellows who receive funds under this program?

Each institution of higher education, each member in a consortium of institutions of higher education, and each individual fellowship recipient under this program must submit performance reports, in such form and at such time as required by the Secretary.

(Authority: 20 U.S.C. 1132–3)

[FR Doc. 2024–03149 Filed 2–21–24; 8:45 am]

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Part IV

Department of Defense

Personnel Demonstration Project at the Army Futures Command Science and Technology Reinvention Laboratory (STRL); Notice

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0117]

Personnel Demonstration Project at the Army Futures Command Science and Technology Reinvention Laboratory (STRL)

AGENCY: Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

ACTION: Personnel demonstration project notice.

SUMMARY: This **Federal Register** Notice (FRN) serves as notice of the adoption of STRL personnel demonstration project flexibilities by an STRL comprised of certain organizations within the U.S. Army Futures Command (AFC), known collectively as the AFC STRL. The organizations comprising the AFC STRL are the U.S. Army Futures Command Headquarters and Headquarters Components (AFC HHC); the Futures and Concepts Center (FCC); Cross Functional Teams (CFTs); The Research and Analysis Center (TRAC); the Combat Capabilities Development Command (CCDC) Headquarters (also known as DEVCOM Headquarters); and the DEVCOM Analysis Center (DAC). The AFC STRL will adopt with some modifications, personnel demonstration project flexibilities implemented by the Combat Capabilities Development Command (CCDC) Army Research Laboratory (ARL); CCDC Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center (C5ISR); the Army Research Institute for the Behavioral and Social Sciences (ARI); the CCDC Armament Center (AC); the Technical Center (TC), U.S. Army Space and Missile Defense Command (USASMDC); and the Joint Warfare Analysis Center (JWAC). Most flexibilities and administrative procedures are adopted without changes. However, modifications were made when necessary to address specific management and workforce needs. In addition, changes were made based on current law, best practices, and administrative guidance.

DATES: Implementation of this demonstration project will begin in no earlier than February 22, 2024.

FOR FURTHER INFORMATION CONTACT:

- *AFC STRL:* Marlowe Richmond, (571) 588–1219, *marlowe.richmond.civ@army.mil.*
- *Office of Under Secretary of Defense (Research and Engineering), Defense Research Enterprise Office:* Dr. James B. Petro, (571) 286–6265, *James.B.Petro.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: As authorized by section 4121 of title 10, United States Code (U.S.C.), the Secretary of Defense may carry out personnel demonstration projects at DoD laboratories designated as DoD STRLs. On May 13, 2021, certain elements of AFC were designated as a single STRL, known as the AFC STRL. The AFC STRL will administer a single personnel demonstration project, hereinafter referred to as the ''Modernization Personnel Demonstration Project'' or ''Mod Demo,'' for these AFC organizations: the AFC Headquarters and Headquarters Components, the Futures and Concepts Center, Cross-Functional Teams (CFTs), the Research and Analysis Center, and the U.S. Army Combat Capabilities Development Command (DEVCOM) Headquarters offices. In addition, the DEVCOM Data and Analysis Center (DAC), which is partially aligned with the Army Research Laboratory STRL, will be realigned, in its entirety, as part of the AFC STRL. The remaining organizations within AFC will continue to operate as independent STRLs under their own personnel demonstration project authorities.

Through the USD(R&E), the Secretary exercises the authorities of the Director, Office of Personnel Management (OPM), under 5 U.S.C. 4703 to conduct personnel demonstration projects at DoD laboratories designated as STRLs. All STRLs authorized pursuant to 10 U.S.C. 4121 may use the provisions described in this FRN, when implementing these flexibilities as part of an approved personnel demonstration project plan published in an FRN and after fulfilling any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) as appropriate.

1. Background

Many studies have been conducted since 1966 on the workforce quality of the laboratories and associated personnel. Most of the studies recommended improvements in civilian personnel policy, organization, and management. Pursuant to the authority provided in 10 U.S.C. 4121, several DoD STRL personnel demonstration projects have been implemented. The demonstration projects are ''generally similar in nature'' to the Department of Navy's China Lake Personnel Demonstration Project. The terminology, ''generally similar in nature,'' does not imply an emulation of various features, but, rather, it implies a similar opportunity and authority to develop personnel flexibilities that significantly increase the decision authority of laboratory commanders and/or directors.

With the assistance of other DoD STRLs, including the independent STRLs within AFC, and experts from across DoD, the AFC STRL operational planning team conducted a thorough review of STRL personnel practices, laws, regulations, and guidance to identify potential flexibilities that would allow the AFC STRL to create a contemporary, flexible personnel management system to attract, motivate, train, and retain a top-performing science, technology, and modernization workforce. In addition to existing flexibilities available to all DoD STRL, new flexibilities and modifications are being proposed for MoD Demo following study and analysis by the AFC STRL operational planning team.

Although the organizations comprising the AFC STRL are components of the umbrella AFC organization that is responsible for modernizing the Army, the varied composition of the AFC STRL modernization workforce, including headquarters personnel, analysts, integrators, technology and concept creators, and traditional Science & Technology (S&T) innovators, requires significant personnel management flexibility. As a result, the proposed AFC STRL Mod Demo plan incorporates multiple IOPs, decentralized lines of authority, and new flexibilities adapted from other STRL demonstration projects.

The AFC STRL Mod Demo plan includes:

(1) Changes to appointment authorities, hiring rules, and qualification standards;

(2) Changes to pay setting rules and regulations;

(3) Pay banding and simplified job classification;

(4) Science, Technology, Engineering, and Mathematics (STEM) Student Employment Program (SSEP) and Accelerated Intern Compensation;

(5) Sabbaticals;

(6) Substitution for the Defense Performance Management and Appraisal Program (DPMAP);

(7) Academic degree, certificate, and critical skills training;

(8) Senior Scientific Technical Manager (SSTM) positions;

(9) Changes to workforce shaping rules, such as Reduction-in-Force (RIF), Voluntary Early Retirement Authority (VERA), and Voluntary Separation Incentive Program (VSIP);

(10) Voluntary Emeritus and Expert Program;

(11) Improved incentives; and

(12) Extended Probationary Periods.

Many aspects of a demonstration project are experimental. Modifications may be made from time to time as experience is gained, results analyzed, and conclusions reached on how the system is working, in accordance with the provisions of Department of Defense Instruction (DoDI) 3201.05, ''Management of Science and Technology Reinvention Laboratory Personnel Demonstration Projects'' (available at *https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/320105p.PDF?ver=e_ePssSOULpXxcH2PcRhwA%3d%3d*).

2. Overview

The AFC STRL will adopt flexibilities implemented by the following STRL Personnel Demonstration Project plans: CCDC AC, 76 FR 3744, January 20, 2011; ARI, 85 FR 76038, November 27, 2020; CCDC ARL, 63 FR 10680, March 4, 1998; CCDC C5ISR, 66 FR 54872, October 30, 2001; JWAC, 85 FR 29414, May 15, 2020; and USASMDC–TC, 85 FR 3339, January 21, 2020.

Adoption of STRL personnel demonstration project flexibilities will enable the AFC STRL to achieve the best workforce for its modernization mission, adjust the workforce for change, improve workforce quality, and allow the AFC STRL to acquire and retain an enthusiastic, innovative, and highly educated and trained workforce for Army modernization. The purpose of the project is to demonstrate that the effectiveness of DoD organizations can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system. Additionally, because AFC STRL component organizations are geographically dispersed to highly competitive recruitment areas, implementation of the AFC STRL Mod Demo is essential to competitively hire and retain a highly qualified workforce.

3. Access to Flexibilities of Other STRLs

Flexibilities published in this FRN will be available for use by DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121, including any newly designated STRLs, if they wish to adopt them in accordance with DoDI 3201.05, and after the fulfillment of any collective bargaining obligations.

4. Summary of Comments

Sixty-four (64) commenters provided comments and questions regarding the AFC STRL Personnel Demonstration Project, **Federal Register**, 87 FR 62801, dated October 17, 2022. The following is a summary of these written questions by topical area and a response to each.

A. Background

Comment: Some commenters asked for a copy of the AFC STRL Mod Demo plan and asked if the plan would be disseminated to the workforce for comment, specifically related to the workforce shaping rules.

Response: Changes to section II.F. of the Notice were made to clarify that, before implementation of the AFC STRL Mod Demo, the IOPs will be distributed to the workforce for information only. Details of the workforce reshaping rules will be included in the IOPs.

Comment: Several commenters suggested that the rationale for Mod Demo, to enhance managerial flexibilities to ''attract, motivate, train, and retain a top-performing science, technology, and modernization workforce,'' is boilerplate and not applicable to the AFC STRL.

Response: No changes to the Notice were made based on these comments. The introductory material explains why a one-size-fits-all government-wide system is no longer relevant for AFC and describes several new flexibilities designed to streamline and improve overall personnel management in AFC and facilitate efforts to compete with the private sector. AFC conducted a thorough review of the personnel practices adopted by STRLs and available flexibilities to identify those that would address AFC management and workforce needs. The resulting Mod Demo includes personnel flexibilities that optimize the ability to hire, retain, train, and engage a high-performing workforce while retaining many of the existing practices that make working for the Federal Government desirable. The proposed flexibilities, or innovative personnel practices, can be found in section III.

B. Purpose

Comment: A commenter recommended changing ''projects'' to ''project'' in the first sentence.

Response: This change has been made.

C. Problems With the Present System

Comment: Several commenters questioned DoD's conclusion that the current ''GS system's approach to career flexibility, progression, and changing work assignments is rigid, slow and designed for industrial-era employees who entered Civil Service and remained until retirement.'' The commenters stated that the current DPMAP system works well and that any problems were due to leaders failing to properly lead their employees. Furthermore, commenters asked what was meant by innovative personnel practices and what the proposed flexibilities were.

Response: No changes to the Notice were made based on these comments. For STRLs such as AFC, which is tasked with ensuring the Army and its Soldiers remain at the forefront of technological innovation and warfighting ability, the General Schedule (GS) personnel system and DPMAP do not provide quick or easy ways of responding to changing work requirements. Unlike the GS system, which has 15 grades with 10 levels each and involves individual position descriptions which must be classified by complex Title 5 classification standards, the AFC STRL Mod Demo will implement a pay banding system and a pay for performance system designed to provide an effective, efficient, and flexible method for assessing, compensating, and managing a transformation-focused workforce. Employees will continue to have an opportunity to receive a base pay increase based on their level of performance during the appraisal year. Importantly, changes to the classification and pay system will enable management to create new types of jobs that respond to the fast-changing world of modernization work in which AFC STRL is engaged. The speed with which new science, technology, and engineering concepts emerge demands the ability to quickly re-shape work assignments, re-skill and up-skill employees, and maximize the potential of the existing workforce. Unlike the rigid rules of the GS system which limit internal reassignments, promotions, and training, the AFC STRL Mod Demo provides flexibility to train and assign personnel as needed to respond to the rapid changes in the modernization mission. In addition, AFC STRL Mod Demo enables and enhances innovative ways to attract, recruit, and retain current and future employees through better pay and hiring flexibilities. In addition, AFC STRL Mod Demo will provide supervisor and leadership training to develop capabilities and skills to better engage employees.

D. Changes Required/Expected Benefits

Comment: Commenters questioned whether STRL personnel demonstration projects increase employee satisfaction and asked for surveys or other data to support this conclusion. Some commenters indicated that current and former alternate personnel systems adopted by DoD, such as the National

Security Personnel System (NSPS) and the Acquisition Demonstration, were not preferable to the General Schedule (GS) system. One commenter asked whether AFC and the Army studied other agencies that are succeeding and if any best practices were used to improve organizational effectiveness and employee satisfaction.

Response: No changes to the Notice were made based on these comments. Although surveys were not conducted with the AFC workforce to determine if the employees wanted a pay banded system or to determine if these changes would produce increased workforce satisfaction or engagement, a recent survey of the STRL demonstration project workforce showed 86% of respondents were either neutral, satisfied or very satisfied with their jobs and 89% were satisfied with management. (Science and Technology Reinvention Laboratory (STRL) Demonstration Project Summary of Evaluation Results for Fiscal Year Ending in 2019, Office of the Under Secretary of Defense—Research & Engineering (USD(R&E)) Office of Labs and Personnel (L&PO), October 2021). Early OPM evaluation reports indicate that acceptance of demonstration projects increases as time goes on, with some STRLs seeing acceptance increasing 40–50% in approximately eight years. Trust and confidence in supervisors also increased under several demonstration projects, as well as job satisfaction. (A Status Report on Personnel Demonstration Projects in the Federal Government, U.S. Office of Personnel Management, December 2006). Due to the mission of Army Futures Command, it is imperative to transform recruitment, hiring, and retention programs. The NSPS was a centrally operated personnel system that did not permit the flexibilities, direct hiring authorities, and focus on a highly technical workforce that are the signature elements of the STRL demonstration projects. NSPS was particularly criticized for its inflexibility and inability to change with lessons learned, whereas STRL demonstration projects provide flexibility and local authority to apply lessons learned to improve functionality. STRL demonstration projects are adaptable and responsive to workforce feedback. AFC STRL Mod Demo pay pools will be locally managed to facilitate equity within similar workforce elements. Importantly, AFC STRL Mod Demo will be evaluated within five years of implementation in accordance with 5 U.S.C. chapter 47. Data will be collected internally and externally based on standards and guidelines developed by the USD(R&E). Furthermore, AFC STRL Mod Demo will collect climate survey data throughout the life of the project. Results of evaluation data will be provided to the USD(R&E) and the AFC STRL Mod Demo workforce, as appropriate. Each year the AFC STRL Personnel Management Board (PMB) will review the STRL policies to determine if changes are needed. Unions or a neutral third party will be informed based on bargaining unit obligations. AFC is looking to become a workplace of choice and to adopt best practices by agencies such as the National Aeronautics and Space Agency, which is consistently recognized as one of the best places to work in the Federal government by the Partnership for Public Service.

Comment: Commenters expressed concern that the goals of the program do not have a baseline and that it is unclear how AFC STRL Mod Demo will demonstrate that a human resource system tailored to the mission and needs of the modernization workforce will facilitate more effective, efficient, and adaptable organizational systems. Commenters suggested that the stated STRL goal of increased permeability between the civil service and private industry will cause employees to lose privileges and rights in comparison to other Federal employees.

Response: No changes to the Notice were made based on these comments. AFC STRL Mod Demo will be evaluated based on standards and guidelines developed by the USD(R&E) and AFC STRL Mod Demo, including any applicable baseline data requirements. As stated in this Notice, ''All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded, and Merit System Principles will be maintained.'' Increasing permeability between the civil service and private industry is expected to have positive effects on employees rather than causing them to lose privileges. STRL flexibilities provide opportunities that attract and retain critical talent. The AFC STRL Mod Demo is designed to reflect different organizational mission requirements along with career progression for Science & Engineering (S&E) and Business and Technical (B&T) career paths and has been successfully implemented in other STRL demonstration projects.

E. Participating Organizations

Comment: Some commenters identified that the names of the Software Factory (SWF) and Network (NW CFT) should be changed to their current designations. Additionally, commenters recommended to delete ''a'' from the first sentence of the second paragraph.

Response: These changes have been made. The correct names and acronyms are Army Software Factory (ASWF) and Network Command Control Communications Integration (NC3I).

F. Personnel Management Board (PMB)

Comment: A commenter asked if the demographics of the PMB would be known to the workforce. The commenter was concerned about diversity on the PMB and recommended the inclusion of GS–13 and GS–14 representatives from the career fields represented within AFC STRL Mod Demo.

Response: No changes to the Notice were made based on these comments. PMB members will be appointed in accordance with this FRN and IOPs will include measures for ensuring a variety of perspectives are represented. The names of PMB members will be provided to the workforce.

Comment: Commenters recommended administrative changes to clarify position titles and references.

Response: The changes have been made.

G. Organizational Structure and Design

Comment: Commenters expressed various concerns about whether funding was available to implement AFC Mod Demo. More specifically, commenters inquired whether: (1) Employees will receive bonuses in fiscal year (FY) 23; (2) funds from the current FY23 bonus pool will be used to convert the workforce; (3) the STRL was included in the Program Objective Memorandum (POM); (4) unforecasted requirements take priority; (5) inflation impacted the budget; (6) civilian pay and benefits increases are impacted; (7) Army operating budgets and the number of civilian positions may be cut; (8) has funding to pay for step increase buy-ins, software costs, awards, hiring incentives; (9) the funding source has been identified for DA centrally funded interns; and (10) AFC STRL Mod Demo is revenue neutral. Lastly, commenters asked how AFC STRL Mod Demo makes sense based on the type of funding available to pay civilian employees.

Response: No changes to the Notice were made based on these comments. Implementation of AFC Mod Demo will not change the types of funding available for civilian pay, including locality pay, or the average rates used by the Army Budget Office to allocate this funding based on the number of civilian

positions. Annual performance awards and other monetary incentives for civilian employees will continue to be separately planned and executed as part of AFC's command budgeting process.

H. Pay Banding

Comment: Some commenters expressed concerns with the AFC STRL Mod Demo organizations use of control points. They inquired whether they will be published to the workforce prior to implementation. They also inquired whether they were needed, with one commenter suggesting that they will reduce the flexibility of the AFC STRL Mod Demo and cause it to resemble the General Schedule system.

Response: Section III.B.3 was changed to address these comments. Although the AFC Mod Demo will use a pay banding structure, not all positions have duties and responsibilities that warrant unconstrained salary progression through the entire range of the pay band. Control points within a pay band are a tool for managing organization workforce structure and pay to reward performance while ensuring employees are appropriately compensated. The following language has been added to section III.B.3: ''Control points may be used as a compensation strategy when management determines the duties and responsibilities of a position do not warrant unconstrained salary progression through the entire range of the pay band.''

Comment: A commenter stated that the 2210 occupational series under S&E was unclear and recommended clarifying language.

Response: The following language has been added to section III.B.1: ''This career path includes certain Information Technology (IT) (occupational series 2210) positions. It includes such positions that contribute to highly technical and/or scientific programs that reside in the research, development, or engineering domains, using offensive, and defensive cyber competencies, and directly support science and technology initiatives contributing to the development of cyber resilient Army transformation and readiness technologies. All other IT specialist positions will be included in the B&T career path.''

I. Classification

Comment: A commenter asked if the organizations that fall under the AFC STRL Mod Demo will have classification authority or if the authority will be at the AFC HQ level.

Response: No changes to the Notice were made based on these comments. AFC STRL Mod Demo organizations will have classification authority.

Comment: Commenters asked if, upon conversion or later in time, an employee's career path or occupational series may be changed even if the employee's qualification is appropriate to the employee's current job description and qualification requirement.

Response: No changes to the Notice were made based on these comments. Career Path (or pay plan) refers to Science & Engineering (DB), Business & Technical (DE), and Support (DK) instead of General Schedule (GS). As indicated in section IV.A, upon conversion, employees will be placed in a career path (*i.e.,* DB, DE, DK) based upon their occupational series, with no change to occupational series. Following conversion, employees who are qualified for vacant positions in another occupational series or career path may compete for the vacancy.

J. Pay-for-Performance Management System (PFP)

Comment: A commenter asked if the rating period would change under AFC STRL Mod Demo.

Response: No changes to the Notice were made based on these comments. The rating period will be determined by each AFC STRL Mod Demo organization, and it will be published in the IOPs.

Comment: Some commenters expressed concerns that the AFC STRL Mod Demo is using a minimum of four elements for performance instead of three elements like other demonstration projects and asked if benchmark standards will be developed and published. Commenters also requested AFC provide detailed hands-on training concerning PFP and specifically on the performance elements.

Response: No changes to the Notice were made based on these comments. The performance element provisions in this Notice were developed following examination of existing STRL Lab Demo Performance Management Systems. Eight performance elements, with a required four minimum elements, will enable organizations within the AFC STRL Mod Demo to select the appropriate performance criteria to meet their own individual, organizational needs, and mission requirements. Performance elements may evolve over time to ensure individual and organizational success. The PMB will review the performance elements annually and make any necessary changes prior to the start of a new rating period. Additionally, the performance management system's use of benchmark performance criteria establishes a common set of standards for evaluating performance and assigning ratings. The benchmark performance criteria will be published annually and whenever changes are made. Finally, the use of a pay pool panel and reconciliation process provides additional checks and balances to the evaluation process. Detailed training on all STRL programs and flexibilities will be provided to the workforce prior to conversion. Supervisors will also receive training on the performance management system and rating processes to support an accurate evaluation of performance.

Comment: One commenter recommended that the sentence, ''AFC STRL organizations will provide written notice to the workforce at the start of the rating cycle concerning the basis of the share assignment,'' be moved from III.D.8 Option A to the first paragraph in section III.D.8 and before Figure 3, because it applies to both Option A and B.

Response: This change has been made.

Comment: Commenters asked how factors will be used to determine if the employee will get a lower amount of money than what was received the previous year.

Response: No changes to the Notice were made based on these comments. Specific guidance addressing pay pool requirements and factors used to determine shares will be published annually and included in organization's respective IOPs.

Comment: A commenter recommended adding additional leadership wording to the Supervisor/Equal Employment Opportunity (EEO) performance element.

Response: Section III.D.2.8 was revised to add ''; and (7) Influences, motivates, and challenges others through adaptive leadership; takes charge of assigned effort(s); overcomes challenges to success; resolves personal and professional conflicts; and looks for opportunities to assist others to achieve success.''

Comment: A commenter recommended that the Awards section include added wording indicating employees cannot be compensated for the same contribution twice (*e.g.,* performance and incentive).

Response: No changes to the Notice were made based on these comments. This level of detail is more appropriate for AFC STRL Mod Demo organization IOPs.

Comment: Commenters asked why AFC STRL Mod Demo is concerned about information exchange with

industry and why that effects Government employee ratings.

Response: No changes to the Notice were made based on these comments. The AFC Mod Demo organizations comprise an STRL, which is a research and development (R&D) laboratory as defined in DoDI 3201.05. It is staffed with a scientific and engineering workforce principally involved in performing exploratory development or research work and conducts a substantial portion of R&D activities in-house using government personnel. It provides Army transformation solutions (integrated concepts, organizational designs, and technologies) in order to allow the Joint Force, employing Army capabilities, to achieve overmatch in the future operation environment. The STRL mission requires information exchange through collaboration with industry and academic partners to support the delivery of modernization solutions so the Army can make sure Soldiers have what they need, before they need it, to protect tomorrow. As a transformation and modernization organization, research and collaboration with industry and academic partners directly impacts an employee's ability to meet performance objectives and goals. This influences an employee's performance rating and the ability of the command to meet mission requirements.

Comment: Commenters stated that implementation of Mod Demo should be delayed pending completion of a Congressionally required study and further consideration by the Department and Congress.

Response: No changes to the Notice were made based on these comments. The Defense Business Board talent management study was completed and its recommendations provided to the Department for consideration.

Comment: Commenters asked about eligibility for raises based on tenure instead of performance, expressed concerns that the inability to receive step increases based on longevity would place employees at a disadvantage when compared to other employees in similar job series within the Federal Government and affect retirement calculations based on highest income earned, and suggested current GS employees be grandfathered for pay increases based on tenure. Commenters also questioned how employees would benefit without additional funds to incentivize performance and requested measurable baselines for the goals of the project and mechanisms for assessing contribution to ensure funds are divided equitably.

Response: No changes to the Notice were made based on these comments. AFC Mod Demo implements a PFP system that provides an effective, efficient, and flexible method for assessing, compensating, and managing the workforce. Employees will continue to receive the general pay increase in most circumstances. Moreover, employees have the opportunity to receive a base pay increase, a bonus, or a combination based on their level of performance during the appraisal year. Funds that were previously used for GS step increases, quality step increases, and promotions will be used to fund the performance increases. The goals of the AFC STRL Mod Demo are based on years of demonstration project experiences in other organizations as reported in, ''A Status Report on Personnel Demonstration Projects in the Federal Government'', U.S. Office of Personnel Management, December 2006, and ''Alternative Personnel Systems in Practice and a Guide to the Future,'' U.S. Office of Personnel Management, October 2005. The evaluation model, as described in this Notice, will identify elements critical to an evaluation of the effectiveness of the AFC STRL Mod Demo flexibilities.

Comment: Some commenters asked about the size of pay pools given that some organizations may have only 20 employees while others have hundreds. They expressed concern about the range of grades and salaries in the pay pools. Additionally, a commenter questioned having different pay pools for supervisors and non-supervisors. Lastly, commenters asked if all of AFC STRL Mod Demo organizations will be sharing pay pools and funding.

Response: No changes have been made to the Notice in response to these comments. Pay pools will be established in accordance with the IOP of each AFC STRL Mod Demo organization and the size may vary depending on the organization. AFC STRL Mod Demo organizations will thoroughly evaluate options and may use modeling, mock payout exercises, and other means of analysis to achieve optimal pay pool composition.

Comment: Some commenters asked about pay pool targets/caps that will limit how organizations can increase employee pay and asked if it will be similar to current awards. Additionally, commenters asked how conversion will work with Information Technology 2210 bonuses and if an employee is at the top of a pay band and currently receiving a 2210 bonus if it will place the employee in the next pay band.

Response: No changes to the Notice were made based on these comments. As stated in section III.D.7, annual pay pool limits for base pay increases and bonuses, also referred to as payout factors, will be established by the AFC STRL Mod Demo organizations. The funds used for base pay increases are those that would have been available from GS within-grade increases, quality step increases, and promotions. This amount will be defined based on historical data and set at no less than two percent of total adjusted base pay and no more than the maximum set by the AFC STRL Mod Demo organization. Award amount will be defined based on historical data and set at no less than one percent of total adjusted base pay and no more than the maximum set by the AFC STRL Mod Demo Commanding General (CG). AFC STRL organizations may continue to make full use of recruitment, retention, and relocation payments as currently provided for by OPM. This includes OPM hiring and pay flexibilities such as monetary incentives for targeted occupational specialties. Conversion guidance for all series will be in accordance with section IV of this FRN.

Comment: Commenters expressed concerns about supervisor responsibilities to notify employees of unsatisfactory performance and opportunities for such employees to improve performance.

Response: No changes to the Notice were made based on these comments. Employees and supervisors are expected to actively participate in discussions regarding expectations and potential obstacles to meeting employee performance goals. As stated in section III.D.5, ''Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor should immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance.'' Further, if an employee continues to perform at an unacceptable level or has received a Level 1 Rating of Record, the employee will be placed on a formal performance improvement plan (PIP). The supervisor will identify the actions that need to be corrected or improved, outline required time frames (no less than 30 days) to demonstrate such improvement and provide the employee with any available assistance as appropriate. Progress will be monitored during the PIP, and all counseling sessions will be documented.

Comment: A commenter asked what the equivalency was between the current rating system in MyBiz (*e.g.,* 1, 3, 5) and the new system.

Response: No changes to the Notice were made based on these comments. As stated in section III.D.8, AFC STRL Mod Demo will follow pattern H, as described in 5 CFR 430.208(d), which provides for 5 summary levels. An employee who receives a level 3 rating is considered to have performed successfully during the rating period.

Comment: A commenter asked whether an employee who gets a satisfactory level of evaluation may be placed in a lower pay band within the same career path or placed into a pay band in a different career path with a lower maximum base pay.

Response: No changes to the Notice were made based on these comments. Employees with a satisfactory rating may be voluntarily placed in a lower pay band or another career path with lower pay if they volunteer or request the change. Employees may be involuntarily placed in a lower pay band or another career path with lower pay for cause (*i.e.,* performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, placement actions resulting from RIF procedures). Involuntary actions will be executed using the applicable adverse action procedures in 5 U.S.C. chapter 43 or chapter 75.

Comment: Commenters criticized the pay banding system, suggesting it is designed by lawyers and human resource-oriented persons who focus too much on ''measurement'' rather than ''motivation'' and ''leadership.'' Additionally, commenters suggested that collaborative coaching styles of leadership are better at motivating people than formalized ''measurement'' systems which can serve as a demotivating factor.

Response: No changes to the Notice were made based on these comments. The purpose of the project is to demonstrate that the effectiveness of DoD organizations can be enhanced by allowing greater managerial control over personnel functions and, at the same time, expand the opportunities available to employees through a more responsive and flexible personnel system. Additionally, the pay-for-performance system provides an effective, efficient, and flexible method for assessing, compensating, and managing the AFC STRL Mod Demo workforce. It is essential for the development of a high performing workforce and to provide management at the lowest practical level, the authority, control, and flexibility to achieve a quality and collaborative relationship with employees to ensure the organization's mission requirements are met. Pay-for-performance allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for salary changes by linking pay and performance.

Comment: Commenters were concerned with the awards percentage in this document being below the percentage that has been mandated by OPM in the past two years and asked if OPM will accept a lower percentage for AFC STRL Mod Demo. Additionally, commenters asked whether the lower percentage is an effort to divert money to cover the base pay amounts. Furthermore, commenters asked about the source of funding for Extraordinary Achievement Rewards and whether they were part of the POM used to plan future funding. Lastly, commenters asked how budget management will work in AFC STRL Mod Demo.

Response: No changes to the Notice were made based on these comments. AFC STRL Mod Demo allows the STRL Director to establish limits on awards administered by the pay pool as part of the civilian pay budget. Extraordinary Achievement and other approved incentives will be administered separately as part of the command's overall annual budget.

K. Hiring and Appointment Authorities

Comment: Commenters questioned how an extended probationary period retains quality personnel and suggested it goes against progressive management practices for leading, motivating, recruiting, and retaining a quality workforce.

Response: No changes to the Notice were made based on these comments. Authority to adopt an extended probationary period is a flexibility that enables supervisors to have adequate time to fully evaluate an employee's ability to complete cycles of work and to fully assess an employee's contribution and conduct.

L. Internal Placement

Comment: Commenters recommended both competitive and non-competitive details; the option to extend temporary promotions be limited to one additional year; and the word ''affected'' be changed to ''effected'' in the fifth sentence.

Response: The third sentence in section III.G.5, Details and Expanded Temporary Promotions, was revised to address these comments.

Comment: Commenters asked how a promotion opportunity will be identified and what conditions and criteria are applicable when an employee is transferred to a lower pay band.

Response: No changes to the Notice were made based on these comments. Policies related to promotions and transfers to lower pay bands are documented in Section III.G.1 of this Notice. Additional processes and procedures will be documented in the IOP.

M. Pay Setting

Comment: A commenter stated that proposed Section III.H.7.a., under Supervisory and Team Leader Pay Adjustments, is confusing.

Response: Section III.H.7. was revised to remove proposed paragraph a. and relabel paragraphs b. and c. to a. and b.

Comment: Commenters stated that the last sentence in Section III.H.7.b., Supervisory and Team Leader Pay Adjustments, that describes how pay will be set for supervisory/team leader positions upon conversion into the project should be removed because employees will get a within grade increase (WGI) buy-in, as long as the employee is not at a step 10, or receiving a retained rate, on the day of implementation. Additionally, commenters asked what the word ''adjustment'' meant when referring to WGI equity.

Response: Section III.H.7.b, Supervisory and Team Leader Pay Adjustment, has been revised to remove, ''After conversion into the demonstration project, a career employee selected for a supervisory/team leader position may be considered for a pay adjustment into the same or substantially similar position, supervisors/team leaders will be converted at their existing base rate of pay and will not be eligible for a base pay adjustment.'' The word, ''adjustment,'' refers to increases in base pay upon conversion into Mod Demo, as described in Section IV.A.

Comment: Commenters asked about supplemental pay rates and whether an AFC STRL Mod Demo organization can decrease an employee's compensation.

Response: No changes to the Notice were made based on these comments. The supplemental pay flexibility permits AFC STRL Mod Demo to independently establish supplemental rates based on multiple factors, including rates offered by non-federal organizations and remoteness of the area, to help attract, recruit, and retain a high caliber workforce. AFC STRL Mod Demo organizations have an

ongoing responsibility to evaluate the need for continuing payment of the supplemental pay and shall terminate or reduce the amount if conditions warrant. Conditions to be considered are: changes in labor-market factors; the need for the services or skills of the employee has reduced to a level that makes it unnecessary to continue payment at the current level; or budgetary considerations make it difficult to continue payment at the current level. Additional guidance will be documented in the AFC STRL Mod Demo organization IOPs.

N. Voluntary Early Retirement (VERA) and Voluntary Separation Incentive Pay (VSIP)

Comment: A commenter expressed concerns with Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Pay (VSIP) and how the use of ''and'' in this section indicates the use of VERA and VSIP together and not separately. The commenter believes the section should make it clear that these authorities may be used independently.

Response: Section III.J, Voluntary Early Retirement Authority and Voluntary Separation Incentives Pay, has been revised to read, ''VERA and VSIP will be administered as described in this Notice. Both authorities are authorized and may be used together or separately.

O. Conversion

Comment: Commenters recommended changes to placement of some GS–14 employees into band III upon conversion. Additionally, commenters asked if the same rules for GS–14 employees apply to GS–13 or GS–12 employees who fall within Pay Band III.

Response: Section IV.A, Conversion into the Demonstration Project, has been revised to read, ''The placement of GS–14 employees will be in Pay Band IV during initial conversion into AFC STRL Mod Demo. Additional guidance will be included in Mod Demo IOPs, and conversion operations will be overseen by the PMB.'' This language clarifies that employees whose grade falls within two pay bands (*i.e.,* GS–14) will be placed in the higher pay band during conversion. Such guidance is not applicable to GS–13 and GS–12 grades which fall within Pay Band III.

Comment: A commenter asked if current employees hired under the Highly Qualified Expert authority will be converted to AFC STRL Mod Demo.

Response: No changes to the Notice were made based on these comments. Employees appointed using Highly Qualified Expert (HQE) authority will not convert into the AFC STRL Mod Demo.

Comment: A commenter expressed concern because Defense Civilian Intelligence Personnel System (DCIPS) employees are ineligible to convert to GS positions and asked whether AFC STRL Mod Demo employees will be eligible to apply for and convert to GS positions.

Response: No changes to the Notice were made based on these comments. Unlike DCIPS positions which are in the excepted service, AFC STRL Mod Demo positions are in the competitive service and employees are eligible to convert to other competitive service positions.

Comment: Commenters asked how conversion will work if an employee is already paid at the top of a pay scale (*e.g.,* GS–11 step 10) and will that employee be converted into the next pay band. Additionally, commenters asked how salary will be determined if a GS–13 and GS–14 converting in if both employees received the same rating, perform the same duties, and have the same responsibilities. Lastly, commenters asked whether an employee who is performing satisfactorily may be placed in a lower pay band within the same career path or placed into a pay band in a different career path with a lower pay.

Response: No changes to the Notice were made based on these comments. Employees will convert into the pay band that encompasses their current GS Grade. Positions in a higher pay band will have more complex duties and responsibilities and will have different performance objectives than similar positions in a lower pay band.

Comment: A commenter requested wording be added to address employee conversion from a current demo (ARL STRL and Acquisition Demonstration) into the AFC STRL Mod Demo.

Response: Section IV.A, Conversion into the Demonstration Project, was revised to address this comment by adding the following language, ''Organizational conversion to the AFC STRL Mod Demo occurs when a new organization or a group of employees convert into the demonstration project. Conversion from current GS grade or other pay banding system into AFC STRL Mod Demo will be accomplished during implementation of the demonstration project. Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate career path and pay band without loss of pay or earning potential.''

Comment: Commenters expressed myriad concerns about converting GS–14 positions to Pay Band III.

Response: Section IV.A has been revised to require conversion of all employees who are currently in GS–14 positions to pay band IV. All employees currently on GS–12 and GS–13 positions will move into pay band III. Section III.H.12, Accelerated Compensation for Developmental Positions section, has been revised to state, ''The AFC STRL Mod Demo organizations may authorize an increase to basic pay for employees participating in training programs, internships, or other development capacities. This may include employees in positions that cross bands within a career path (formally known as career ladder positions) or developmental positions within a band. ACDP will be used to recognize development of job-related competencies as evidenced by successful performance within AFC STRL Mod Demo. Additional guidance will be published in an IOPs.'' AFC researched and utilized best practices from organizations across DoD, including the AFC Enterprise organizations currently operating STRL demonstration projects. The pay band structure supports progression across journey level positions. The AFC STRL Mod Demo is designed to reflect different organizational mission requirements along with career progression for S&E and B&T career paths and has been successfully implemented in other STRL demonstration projects.

Section IV.A., Conversion into the Demonstration Project, has been revised to state, ''The placement of GS–14 employees will be in Pay Band IV during initial conversion into AFC STRL Mod Demo. After initial conversion, GS–14's will be assigned based on classification requirements. Additional guidance will be included in AFC STRL Mod Demo IOPs, and conversion operations will be overseen by the PMB.'' GS–14s in Pay Band IV will have competitive advantage based on the complexity of work and duties and responsibilities they are required to perform. There are multiple factors considered prior to moving a person from one position to another. An employee must compete for a higher banded position unless the employee meets the ''Exceptions to Competitive Procedures for Assignment to a Position'' listed in the FRN.

Comment: Commenters expressed concerns with grade and pay retention entitlements being eliminated at the time of conversion into the demonstration project.

Response: Section IV.A, Conversion into the Demonstration Project, has been revised to state, ''The project will eliminate retained grade under 5 U.S.C. 5362 and 5 CFR part 536. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the assigned permanent position of record, not the retained grade, and placed on pay retention. Pay retention will follow current law and regulations at 5 U.S.C. 5363 and 5 CFR part 536, except as modified in the Staffing Supplements section and waived in Section IX of this plan. Additionally, section III.H, Pay Setting, is revised to add section III.H.10., Grade and Pay Retention.

P. Demonstration Project Costs

Comment: A commenter asked if the cost numbers were adjusted for inflation in Figure 7 since the numbers appeared similar across fiscal years. The commenter further asked whether other costs associated with the demonstration project were adjusted for inflation.

Response: No changes to the Notice were made based on these comments. Inflation was considered in calculating the development costs in Figure 7.

Q. Appendix A: Occupational Series by Career Path

Comment: Some commenters expressed concerns about inaccuracies or inconsistencies in occupational series, career paths, position titles, and use of asterisks.

Response: All occupational series within AFC STRL Mod Demo organizations were reviewed and Appendix A has been revised to add missing occupational series and designate appropriate career paths. Additionally, asterisks were added for those occupational series that currently have employees assigned. The titles of positions were not changed. AFC STRL Mod Demo utilized the OPM classification standards for identification of the position title and occupational series. Based on the series determination(s), positions will be assigned to a specific career path, *i.e.,* Science & Engineering (Pay Plan DB), Business & Technical (Pay Plan DE), or Support (Pay Plan DK). The AFC STRL Mod Demo utilized OPM career occupation coverage as a guideline to assign series to each career path. Lastly, all current series for AFC and CFT employees will be included under AFC STRL Mod Demo and will cover the mission capabilities and validation requirements. The professional occupational career paths for AFC STRL Mod Demo are the same as the OPM Professional Career Occupational Coverage.

R. Other Comments

Comment: A commenter asked if conversion to the STRL would affect leave.

Response: No changes to the Notice were made based on these comments. Leave entitlements are not impacted by conversion into the AFC STRL Mod Demo.

Comment: Commenters cited high costs of living in Austin locality and inquired whether AFC STRL Mod Demo can address this if the control points within the pay bands mimic the GS pay system. Additionally, commenters asked how AFC STRL Mod Demo will cover the shortfall if this wasn't included in the POM for the conversion costs. Furthermore, commenters asked why AFC hasn't considered moving AFC HQ to another location that would be more cost effective.

Response: No changes to the Notice were made based on these comments. Locality pay for specific areas and the location of AFC HQ is beyond the scope of the AFC STRL Mod Demo Notice.

Comment: A commenter asked why Reduction in Force (RIF) information is not included in the FRN and asked how Mod Demo will implement a RIF.

Response: No changes to the Notice were made based on these comments. All DoD STRLs follow the RIF guidance at 87 FR 58334. Organization-specific RIF policies will be documented in AFC STRL Mod Demo organization IOPs.

Comment: A commenter asked for data that shows the changes to employees' career tracks and how that may negatively affect employees. Additionally, commenters stated the goals of the program have no baseline and asked what privileges or rights will be lost in comparison to other Federal employees.

Response: No changes to the Notice were made based on these comments. AFC STRL Mod Demo will not change employee career tracks. The pay band system provides more opportunities for advancement. There are more hiring and pay flexibilities under AFC STRL Mod Demo than the current GS system.

Comment: A commenter stated if civilians are covered by pay bands, then military members should be as well, to align civilian and military rank structure.

Response: No changes to the Notice were made based on these comments. The Notice implements STRL authorities to expeditiously hire and retain highly qualified civilian employees.

Comment: Commenters asked about bargaining unit negotiations, pay structure, and other decisions that are part of the bargaining process and specifically whether bargaining unit members would convert if the union does not agree to the project.

Response: No changes to the Notice were made based on these comments. Bargaining unit employees will not convert into the AFC STRL Mod Demo until any applicable labor obligations have been met.

Comment: Commenters asked if an employee with performance issues could lose their annual general pay increase (*i.e.,* cost of living increase) and whether the locality pay adjustment could be denied.

Response: No changes to the Notice were made based on these comments. As stated in section III.D.12., ''Employees, who are on a performance improvement plan and/or receive a Level 1 rating of record at the time pay determinations are made, may be denied performance payouts or the general pay increase.'' When the employee has performed at an acceptable level for at least 90 days, the general pay increase (GPI) will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment. Employees remain entitled to the locality pay adjustment no matter the rating received. AFC STRL Mod Demo is moving away from the GS pay system to ensure employees are rewarded based on performance.

Comment: Commenters asked what was meant by ''shall be as defined under applicable U.S. OPM operating rules and regulations.'' Additionally, a commenter asked if current job descriptions from the GS system will be changed for any or all employees.

Response: No changes to the Notice were made based on these comments. AFC STRL Mod Demo will exercise authorities that are not specifically addressed in the Notice pursuant to applicable OPM and DoD regulations. Employees converting to Mod Demo will be reassigned to new Mod Demo position descriptions.

Comment: Some commenters expressed a need to evaluate AFC STRL Mod Demo in future years to ensure continued fairness and equity and to verify that the STRL is still beneficial to the AFC mission and organizations and questioned whether unions or a neutral third party would be involved in the evaluation. Commenters also expressed a need to value years of experience and offset supervisors' biases and perceptions. Additionally, commenters suggested providing guaranteed increases and bonuses on top of the base

pay for those performing well to promote retention.

Response: No changes to the Notice were made based on these comments. Selection of candidates and other personnel actions will continue to be based on merit system principles. AFC STRL Mod Demo has incorporated an EEO/diversity, equity, and inclusion element as one of the mandatory supervisor performance objectives. Additionally, AFC STRL Mod Demo will provide supervisor and leadership training to develop capabilities and skills to better engage employees. AFC STRL Mod Demo will evaluate the project within five years of implementation of the project in accordance with 5 U.S.C. chapter 47. Data will be collected internally and externally based on standards and guidelines developed by the USD(R&E). Furthermore, AFC STRL Mod Demo will collect climate survey data. Results of evaluation data will be provided to the USD(R&E) and the AFC STRL Mod Demo workforce, as appropriate. Each year the PMB will review the STRL policies to determine if changes are needed. Each organization will work with its respective union to ensure bargaining union requirements are met and union input is captured appropriately.

Comment: Commenters questioned expanding the scope of the career fields covered by AFC STRL Mod Demo from scientific and technical career fields to include administrative and other professional areas.

Response: No changes to the Notice were made based on these comments. STRLs are not just pursuing scientific and engineering talent, but all talent, ensuring there are always qualified administrative and other professional staff to support the STEM mission.

Comment: A commenter suggested the use of direct hire authorities is inconsistent with merit system principles for promoting transparent, fair, and open competition and that direct hire is often a closed, virtually non-competitive program that promotes the hiring of friends and acquaintances and allows use of other than merit-based factors in selecting employees and candidates.

Response: No changes to the Notice were made based on these comments. The Department has a long history of successfully using direct hire authorities, consistent with merit system principles, to meet its critical national security workforce needs. Innovative research is critical to preparing DoD to meet the challenges of the future.

Table of Contents

I. Executive Summary

AFC leads a continuous transformation of Army modernization in order to provide future warfighters with the concepts, capabilities, and organizational structures they need to dominate a future battlefield. AFC is the newest Army Command, established in 2018 when the Army consolidated many of its laboratories, concepts development centers, and innovation elements under one command structure.

Although the organizations comprising the AFC STRL share the same overarching modernization mission, their specific alignments, structures, and workforces differ dramatically. The organizations include two large headquarters elements, two analysis centers, multiple cross functional teams, and two concepts and capabilities development organizations. They all share the urgent need for a high-quality, contemporary, flexible personnel management system to attract, motivate, train, and retain a top-performing science, technology, and modernization workforce.

The goal of the AFC STRL Mod Demo is to make AFC STRL a premier employer with growth opportunities, competitive pay, and management flexibilities to take care of both employees and the mission. The AFC STRL Mod Demo features pay banding, performance-based compensation, flexible hiring, and a modern approach to career progression and assignments.

II. Introduction

A. Purpose

The purpose of STRL personnel demonstration project is to demonstrate that the effectiveness of DoD STRLs can be enhanced by expanding opportunities available to employees and by allowing greater managerial control over personnel functions through a more responsive and flexible personnel system. A top-tier workforce is essential to the AFC STRL's efforts towards achieving technological innovation and modernization for the Army. AFC STRL needs a contemporary, flexible personnel management system to attract, motivate, train, and retain a top-performing science, technology, and modernization workforce. The goal of this project is to ensure AFC STRL remains a premiere employer with growth opportunities, appropriate pay, and management flexibility to take care of both employees and the mission.

While many aspects of a demonstration project were once considered experimental, many have been implemented in various DoD laboratories for several years, including other STRLs within AFC. Modifications to the initial project plans have been made based on the implementation experience of these laboratories, best practices, and formative evaluation efforts. Additional modifications may be needed from time to time, as additional experience is gained and based on evaluations of how the system is working to meet the goals and objectives of the personnel demonstration project.

B. Problems With the Present System

The current Civil Service GS system has 15 grades with 10 levels each and involves lengthy, narrative, individual position descriptions, which must be classified by complex 5 CFR classification standards. Base pay is set at one of those fifteen grades and the ten interim steps within each grade. The Classification Act of 1949 rigidly defines types of work by occupational series and grade, with very precise

qualifications for each job. This system does not quickly or easily respond to new ways of designing work and changes in the work itself. Changes to the classification and pay system would enable greater management control to create new types of jobs that respond to the fast-changing world of modernization work in which AFC STRL is engaged.

In addition to classification issues, the GS system's approach to career flexibility, progression, and changing work assignments is rigid, slow, and designed for industrial-era employees who entered Civil Service and remained until retirement. Modern employees expect careers that include frequent company changes, new challenges, and work-life balance fluctuations that do not require staying with a single employer. Allowing employees to move in and out of Civil Service while minimizing career impact would give AFC STRL access to an additional pool of scientists, engineers, and technical personnel, even when they have changing life circumstances. It would also increase information exchange between AFC STRL and industry.

The speed with which new science, technology, and engineering concepts emerge demands the ability to quickly re-shape work assignments, re-train employees, and maximize the potential of the existing workforce. Internal reassignments and promotions under the GS system are also rigid, and limitations on training further hamper efforts to respond to the rapid changes in the modernization mission.

C. Changes Required/Expected Benefits

The primary benefit expected from this demonstration project is greater organizational effectiveness through increased employee satisfaction. The long-standing Department of the Navy ''China Lake'' and subsequent demonstration projects have produced impressive statistics on increased job satisfaction and quality of employees versus that of the Federal workforce in general. Similar results have been demonstrated in more recent STRL demonstration projects and other alternative personnel systems implemented in the DoD and other agencies.

This project will demonstrate that a human resource system tailored to the mission and needs of the modernization workforce will facilitate:

(1) Increased quality in the workforce;

(2) More effective, efficient, and adaptable organizational systems;

(3) Improved timeliness of key personnel processes;

(4) Increased retention of excellent performers;

(5) Increased success in recruitment of personnel with critical skills;

(6) Increased information exchange between AFC STRL and industry;

(7) Increased permeability between Civil Service and industry; and

(8) Increased workforce satisfaction and engagement.

D. Participating Organizations

AFC STRL currently has employees located in twenty-one states and several countries. Just over half are spread across Aberdeen Proving Ground (Maryland), Austin (Texas), and White Sands Missile Range (New Mexico), with most of the remaining employees in Kansas, Virginia, Oklahoma, Georgia, Missouri, Alabama, Michigan, and other parts of Texas.

AFC STRL is comprised of multiple AFC organizations; the remaining AFC organizations are covered by independent STRL personnel demonstration projects. The AFC STRL is comprised of the organizations listed below (hereinafter referred to as ''AFC STRL organizations,'' and their components.

(1) AFC Headquarters and Headquarters Components (AFC HHC), which includes AFC Headquarters (HQ), AFC Support Battalion (AFCSB), Army Software Factory (ASWF), Artificial Intelligence Integration Center (AI2C), Army Applications Lab (AAL), and Acquisition & Systems (A&S) Directorate.

(2) AFC Cross Functional Teams (AFC CFTs), which includes Long Range Precision Fires (LRPF CFT); Next Generation Combat Vehicle (NGCV CFT); Future Vertical Lift (FVL CFT); Network Command Control Communications Integration (NC3I); Assured Positioning, Navigation and Timing/Space (APNT/S CFT); Air and Missile Defense (AMD CFT); Soldier Lethality (SL CFT); and Synthetic Training Environment (STE CFT).

(3) The Research and Analysis Center (TRAC).

(4) Futures and Concepts Center (FCC), which includes Joint Modernization Command (JMC) and the Capability Development Integration Directorates (CDIDs).

(5) Combat Capabilities Development Command (CCDC) Headquarters (also known as DEVCOM Headquarters).

(6) The DEVCOM Analysis Center (DAC).

E. Participating Employees and Union Representation

This demonstration project will cover civilian employees appointed under Title 5 U.S.C. in the occupations listed in Appendix A. Additional employees and other occupations may be added after implementation of the project. The project plan does not cover members of the Senior Executive Service (SES), Senior Level (SL) employees, Scientific and Professional (ST) employees, Federal Wage System employees, and employees presently covered by the Defense Civilian Intelligence Personnel System or Physicians and Dentists Pay Plan.

Department of the Army (DA), Army Command centrally funded, local interns, and Pathways Program employees may be converted to the demonstration project if assigned to an AFC STRL organization. Additional guidance will be included in the Mod Demo IOPs.

Sixteen local and/or national unions, from American Federation of Government Employees (AFGE), Laborer's International Union of North America (LIUNA), National Federation of Federal Employees (NFFE), National Association of Government Employees (NAGE), and National Association of Independent Labor (NAIL), cover approximately 30% of employees in the AFC STRL. A full list of the local unions is provided at Appendix B. AFC STRL organizations will continue to fulfill their obligations to consult and/or negotiate with all labor organizations in accordance with 5 U.S.C. 4703(f) and 7117 for bargaining unit participation.

F. Project Design

The AFC CG/AFC STRL Director leveraged the knowledge of experienced and tenured STRL leaders within the greater AFC organization to finalize the AFC STRL Mod Demo project plan. In consultation with members of the Laboratory Quality Enhancement Program Personnel Subpanel, other DoD laboratories, Army G1, Army Civilian Human Resources Agency, and a host of other knowledgeable agencies and personnel, the AFC STRL operational planning team conducted a comprehensive review of personnel flexibilities used in existing DoD laboratories and other government agencies. It also analyzed organizational needs and considered innovative personnel practices used outside of the federal government to develop proposed flexibilities for the AFC STRL Mod Demo.

AFC STRL employed an executive Board of Directors comprised of leaders from across the AFC STRL to accommodate the differing needs of AFC STRL organizations, and a Council of Champions led by the AFC CG/AFC STRL Director to ensure all proposals

support AFC STRL's strategic needs. Collaboration and oversight by Army and DoD ensured alignment with Departmental goals.

The resulting project design for Mod Demo will be overseen by the AFC CG/AFC STRL Director. It will be implemented through six organization-specific Internal Operating Procedures (IOPs) and a single Mod Demo Personnel Management Board (PMB). Each of the AFC STRL organizations listed in Paragraph D will have its own IOP. Authority to draft, modify, implement, negotiate, and approve each IOP shall rest with these organizations. A review of these Mod Demo IOPs will be completed by the servicing legal office prior to approval. The IOP will be distributed to the workforce for information, prior to STRL implementation.

Any responsibilities and authorities normally associated with STRL Directors that are not specifically defined in this Notice shall be as defined under applicable U.S. OPM operating rules and regulations. Additional information on delegated authorities and the project structure are included in Section III.

G. Personnel Management Board (PMB)

AFC STRL will create a Mod Demo PMB to oversee and monitor the fair and equitable implementation of the provisions of the demonstration project, including establishment of internal controls and accountability. The board will consist of the AFC Executive Deputy to the Commanding General (EDCG), as PMB Chair, and officials from the AFC STRL organizations listed in Paragraph D. PMB members will be appointed in accordance with this **Federal Register** Notice and IOPs will include measures for ensuring a variety of perspectives are represented. The names of PMB members will be provided to the workforce. The AFC EDCG may delegate membership, add, remove, or change the membership of the PMB, in accordance with the evolution of the AFC STRL Mod Demo. The PMB may also include experts in Human Resources, Resource Management, or other relevant areas, as appointed by the AFC EDCG.

Based on guidance and consistent interaction with the AFC EDCG, the board will execute the following:

(1) Oversee the implementation guidance and procedures in all aspects of the Mod Demo program in accordance with the direction given by the AFC CG/AFC STRL Director;

(2) Issue top-level guidelines for AFC STRL organizations to establish and implement pay pools;

(3) Review pay pool results for equity and conformance, on an annual basis;

(4) Resolve administrative pay pool disputes that are not resolved through other means;

(5) Establish guidelines for the use of retention counteroffers;

(6) Review and approve the assignment of new occupational series to a pay band, if necessary;

(7) Establish guidelines for exceptions to base pay increases, such as Extraordinary Achievement Rewards and Distinguished Contribution Allowances;

(8) Establish guidelines for the Voluntary Emeritus/Expert Program;

(9) Modify the Standard Performance Elements, as needed;

(10) Establish guidelines for the use of subject matter expert qualifications for exceptional experience;

(11) Approve any performance-based rules created and administered by AFC STRL organizations, prior to their implementation;

(12) Assess the need for changes to demonstration project procedures and policies and provide leadership for efforts to modify this FRN;

(13) Promote collaboration and best practices within Mod Demo;

(14) Review Mod Demo IOPs for equity and conformance;

(15) Track personnel cost changes and recommend adjustments, if required;

(16) Conduct formative evaluations of the project, including those directed by DoD.

In executing these duties and responsibilities, the board will keep in close contact and consultation with the AFC EDCG to ensure policies and procedures are executed consistently throughout Mod Demo and are aligned with AFC STRL strategic objectives.

H. Organizational Structure and Design

To optimize the effectiveness and efficiency of the AFC STRL during the adoption of the new personnel demonstration system, the AFC STRL may review and realign the organization structure to best meet mission needs and requirements. Realignment may include removing limitations in terms of supervisory ratios consistent with 10 U.S.C. 4121, and the alignment and organization of the workforce required to accomplish the mission of the AFC STRL.

In general, the AFC CG/AFC STRL Director will manage the STRL's workforce strength, structure, positions, and compensation without regard to any limitation on appointments, positions, or funding in a manner consistent with the budget available in accordance with 10 U.S.C. 4091.

I. Funding Levels

The Under Secretary of Defense (Personnel & Readiness) may adjust the minimum funding levels to consider factors such as the Department's fiscal condition, guidance from the Office of Management and Budget, and equity in circumstances when funding is reduced or eliminated for GS pay raises or awards.

III. Personnel System Changes

A. Levels of Authority and Responsibility

Due to the unique structural design of this demonstration project, certain responsibilities that are typically reserved for STRL lab directors are assigned to other AFC STRL officials. Such designations are referenced throughout this Notice using the definitions in this section. No responsibilities, authorities, or delegations in this Notice are intended to replace or override command authorities.

Definitions. The following terminology is used throughout this Notice to refer to management and other officials in the AFC STRL.

(1) AFC STRL Director. This term refers to the AFC CG.

(2) AFC STRL organization approval authority. This term refers to the following positions in their respective organizations: AFC EDCG for AFC HQ; AFC Principal Deputy CG for CFT; FCC CG for FCC; Director, TRAC for TRAC; DEVCOM CG for DEVCOM HQ; and Director, DAC for DAC.

(3) PMB Member. This term refers to a member of the PMB, as defined in Section II.G. of this Notice.

(4) Pay Pool Manager. This term refers to the individual who approves the total performance ratings, reviews the ratings of employees within the pay pool for consistency and fairness, resolves any rating issues, and makes final decisions on ratings and payouts.

(5) Pay Pool Panel/Reconciliation Board. This term refers to the group of supervisors/managers who reconcile ratings and payouts for the employees in each pay pool.

B. Pay Banding

The design of the AFC STRL Mod Demo pay band system takes advantage of the exhaustive studies performed by DA and DoD of pay band systems currently practiced in the Federal sector, including those practiced by the Navy's ''China Lake'' experiment and the National Institute of Standards and Technology. The pay band system will replace the current GS structure. Currently, the fifteen grades of the GS

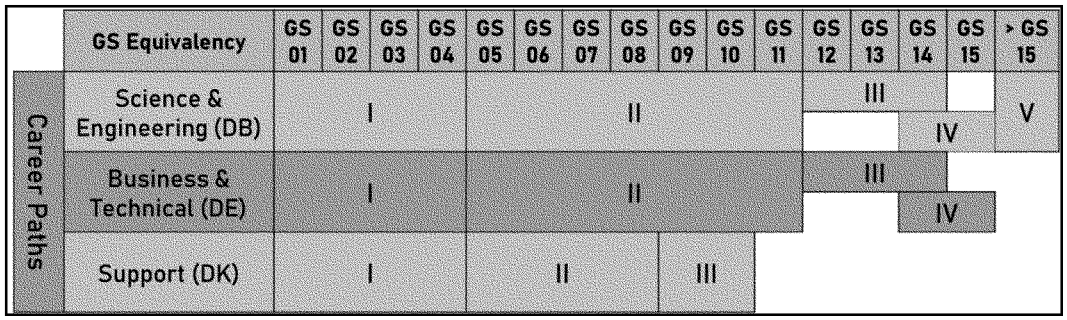
are used to classify positions and, therefore, to set pay. The GS covers most civilian white-collar Federal employees in professional, technical, administrative, and clerical positions. Changes in this rigid structure are required to allow flexibility in hiring, developing, retaining, and motivating the workforce.

1. Career Paths and Pay Bands

Occupations with similar characteristics will be grouped together into one of three career paths with pay bands designed to facilitate pay progression. Each career path will be composed of pay bands corresponding to recognized advancement and career progression expected within the occupations. Each career path will be divided into three to five pay bands with each pay band covering the same pay range now covered by one or more GS grades. The upper and lower pay rate for base pay of each pay band is defined by the minimum and maximum GS rate for the grade as indicated in Figure 1, except for Level V of the S&E career path. Comparison to the GS grades was used in setting the upper and lower base pay dollar limits of the pay bands. However, once employees are moved into the demonstration project, GS grades will no longer apply.

The occupational series listed in Appendix A served as guidelines in the development of the following three career paths:

Figure 1



Science and Engineering (S&E) (Pay Plan DB): This career path includes technical professional positions, such as engineers, physicists, chemists, mathematicians, operations research analysts, and computer scientists. This career path also includes certain Information Technology (IT) (occupational series 2210) positions. It includes such positions that contribute to highly technical and/or scientific programs that reside in the research, development, or engineering domains, using offensive, and defensive cyber competencies. These positions will directly support science and technology initiatives contributing to the development of cyber resilient Army transformation and readiness technologies. These positions include highly skilled and high demand cybersecurity positions such as certified vulnerability assessment blue team and/or National Security Agency certified red team subject matter experts. All other IT specialists will be included in the B&T career path. Specific course work or educational degrees are required for these occupations (except cyber-IT). Five pay bands have been established for the S&E career path:

a. Pay Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

b. Pay Band II is a developmental track covering GS–5, step 1 through GS–11, step 10.

c. *Pay Band III includes GS–12, step 1 through GS–14, step 10.

d. *Pay Band IV includes GS–14, step 1 through GS–15, step 10.

e. Pay Band V covers Senior Scientific Technical Manager (SSTM) positions which are described in further detail in paragraph 2 of this section.

* Pay Bands III and IV overlap at the end and start points. These two pay bands have been designed following a feature used by the Navy's ''China Lake'' project. Prior to implementation, personnel decisions regarding the overlap will be defined in Mod Demo IOPs in accordance with the PMB-approved classification guidance.

Business & Technical (B&T) (Pay Plan DE): This career path includes such positions as computer specialist, equipment specialist, quality assurance specialist, telecommunications specialist, engineering and electronics technicians, procurement coordinators, finance, accounting, administrative computing, and management analyst. Employees in these positions may or may not require specific course work or educational degrees. Four pay bands have been established for the B&T career path:

a. Pay Band I is a student trainee track covering GS–1, step 1 through GS–4, step 10.

b. Pay Band II includes GS–5, step 1 through GS–11, step 10.

c. *Pay Band III includes GS–12, step 1 through GS–14, step 10.

d. *Pay Band IV includes GS–14, step 1 through GS–15, step 10.

*Pay Bands III and IV overlap at the end and start points. These two levels have been designed following a feature used by the Navy's ''China Lake'' project. Prior to implementation, personnel decisions regarding the overlap will be defined in the Mod Demo IOPs in accordance with the PMB-approved classification guidance.

Support (Pay Plan DK): This career path consists of clerical and assistant positions for which specific course work or educational degrees are not required. Clerical work usually involves the processing and maintaining of records. Assistant work requires knowledge of methods and procedures within a specific administrative area.

a. Pay Band I include entry-level positions covering GS–1, step 1 through GS–4, step 10.

b. Pay Band II includes full-performance positions covering GS–5, step 1 through GS–8, step 10.

c. Pay Band III includes senior technicians/assistants/secretaries covering GS–9, step 1 through GS–10, step 10.

2. Senior Scientific Technical Managers (SSTM)

AFC STRL Mod Demo will include a category of SSTM positions, as directed by 10 U.S.C. 4091 and described in 79 FR 43722. S&E Pay Band V will apply

exclusively to positions designated as SSTMs.

The SSTM program will be managed and administered by the AFC EDCG unless delegated in writing to an AFC STRL organization approval authority. These SSTM positions are managed separately from SES, ST, and SL positions. The primary functions of SSTM positions are (a) to engage in research and development in the physical, biological, medical, or engineering sciences, or another field closely related to the mission of such STRL; and (b) to carry out technical supervisory responsibilities. The number of such positions is limited in accordance with 10 U.S.C. 4091. This authority is expected to provide an opportunity for career development and expansion of a pool of experienced, prominent technical candidates meeting the levels of proficiency and leadership essential to create and maintain a DoD state-of-the-art scientific, engineering, and technological capability.

Positions may be filled: (a) On a temporary, term, or permanent basis utilizing appropriate internal and/or external competitive recruitment procedures; (b) through accretion-of-duties promotions; or (c) using a direct hire authority. Positions may also be filled temporarily using non-competitive procedures (*e.g.,* detail and temporary promotions). The AFC CG has the discretion to select the recruitment and staffing method most appropriate based on the specialized position requirements and available candidate pool. However, the recruitment and staffing methodology must include: (a) An internal process which incorporates an impartial, rigorous, and demanding assessment of candidates to evaluate the breadth of their technical expertise; (b) an external recruitment process; (c) creation of panels to assist in filling positions; or (d) other comparable recruitment and/or staffing mechanisms.

Panels will be created to assist in the review of candidates for SSTM positions. Panel members typically will be SES members, ST employees, and those employees designated as SSTMs. In addition, General Officers and recognized technical experts from outside AFC STRL may serve, as appropriate. The panel will apply criteria developed largely from the OPM Research Grade Evaluation Guide for positions exceeding the GS–15 level and other OPM guidance related to positions exceeding the GS–15 level. The purpose of the panel is to ensure impartiality and a rigorous and demanding review.

3. Position Control Points

Control points may be used as a compensation strategy when management determines the duties and responsibilities of a position do not warrant unconstrained salary progression through the entire range of the pay band. If used, control points will be documented on the classified position description. Increasing an employee's salary beyond a control point, if established or used, will require review of both the position and performance of the employee. Advancement across a control point may not occur without approval of the AFC STRL organization approval authority, unless further delegated in the applicable IOP. Additional guidance will be included in the AFC STRL organization specific IOP.

C. Classification

1. Occupational Series

The present GS classification system has over 400 occupational series, which are divided into 23 occupational groupings. AFC STRL currently has positions in 84 occupational series as indicated in Appendix A. Additional occupational series may be added to the AFC STRL Mod Demo, as needed.

2. Classification Standards and Position Description

AFC STRL will utilize OPM classification standards for the identification of proper series and occupational titles of positions within the demonstration project. The grading criteria in those standards will be used as a framework to develop new, simplified, and equitable standards for the purpose of pay band determinations. The objective is to include in the position description the essential criteria for each pay band within each career path by stating the characteristics of the work, the responsibilities of the position, and the competencies required. The classification standard for each career path and pay band will serve as an important component to update existing position descriptions, which will include position-specific information, and provide data element information pertinent to the job. The computer-assisted process will produce information necessary for position descriptions. The new descriptions will be easier to prepare, minimize the amount of writing time, and make the position description a more useful and accurate tool for other personnel management functions.

Specialty work and/or competency codes with corresponding narrative descriptions will be used in position descriptions to further differentiate types of work and the competencies required for positions within a career path and pay band. Each code represents a specialization or type of work within the occupation.

3. Fair Labor Standards Act (FLSA)

FLSA exemption and non-exemption determinations will be consistent with criteria found in 5 CFR part 551. All employees are covered by the FLSA unless their position meets the criteria for exemption. The duties and responsibilities outlined in the classification standards for each pay band will be compared to the FLSA criteria. Generally, the FLSA status can be matched to career path and pay band as indicated in Figure 2. For example, positions classified in pay band I of the S&E career path are typically nonexempt, meaning they are covered by the overtime entitlements prescribed by the FLSA. An exception to this guideline includes supervisors/managers at pay band I or II whose primary duties meet the definitions outlined in the OPM GS Supervisory Guide. Therefore, supervisors/managers in any of the career paths who meet the foregoing criteria generally are exempt from the FLSA. The AFC STRL classification authorities will make the determinations on a case-by-case basis by comparing assigned duties and responsibilities to the classification standards for each career path and the 5 CFR part 551 FLSA criteria. Additionally, the advice and assistance of the servicing personnel office will be obtained in making determinations. The position descriptions will not be the sole basis for the determination. Basis for exemption will be documented and attached to each position description. Exemption criteria will be narrowly construed and applied only to those employees who clearly meet the spirit of the exemption. Changes will be documented and provided to the servicing personnel office.

Figure 2

Pay Band	I	II	III	IV	V
Science and Engineering (DB)	N	N/E	E	E	E
Business and Technical (DE)	N	N/E	E	E	
Support (DK)	N	N	E		
N - Non-Exempt from FLSA; E - Exempt from FLSA; and N/E - Exemption status determined on a case-by-case basis.					

Note: Although typical exemption status under the various pay bands is shown in the above table, actual FLSA exemption determinations are made on a case-by-case basis.

4. Classification Authority

The AFC STRL organizations will have classification authority and may delegate this authority in writing to appropriate levels. Any individual with delegated classification authority must complete required training. Position descriptions will be developed to assist in exercising delegated position classification authority.

Classification authorities will identify the career path, job series, functional code, specialty work and/or competency code, pay band, and other critical information. Human Resources professionals will provide ongoing consultation and guidance to managers and supervisors throughout the classification process. These decisions will be documented in the position description.

5. Classification Appeal

Classification appeals under this demonstration project will be processed using the following procedures: An employee may appeal the determination of career path, occupational series, position title, and pay band of the position at any time. An employee must formally raise the area of concern to supervisors in the immediate chain of command, in writing. If the employee is not satisfied with the supervisory response, the employee may then appeal to the AFC STRL organization PMB representative. An appeal may then be made to the AFC EDCG. If the employee is not satisfied with the AFC EDCG's response to the appeal, a final appeal may then be made to the DoD appellate level. The appeal process will be defined in each Mod Demo IOP. Classification appeals are not accepted on positions which exceed the equivalent of a GS–15 level. Time periods for cases processed under 5 CFR part 511 apply.

The evaluation of classification appeals under this demonstration project are based upon the demonstration project classification criteria. Case files will be forwarded for action through the servicing personnel office and will include copies of appropriate demonstration project criteria.

D. Pay-for-Performance Management System (PFP)

1. Overview

The purpose of the PFP system is to provide an effective, efficient, and flexible method for assessing, compensating, and managing the AFC STRL modernization workforce. It is essential for the development of a high performing workforce and to provide management at the lowest practical level, the authority, control, and flexibility needed to achieve a quality organization and meet mission requirements. PFP allows for more employee involvement in the assessment process, strives to increase communication between supervisor and employee, promotes a clear accountability of performance, facilitates employee career progression, and provides an understandable and rational basis for salary changes by linking pay and performance.

The PFP system uses annual performance payouts that are based on the employee's total performance score rather than within-grade increases, quality step increases, and performance awards. The normal rating period will be one year. The minimum rating period will be 90 days. PFP payouts can be in the form of increases to base pay and/or bonuses that are not added to base salary but rather are given as a lump sum payment. Other awards, such as special acts and time-off awards, will be administered separately from the PFP payouts.

The AFC STRL Mod Demo PFP system may be modified by the PMB, if necessary, as more experience is gained under the project. Each AFC STRL organization will publish the details of its PFP system rules and available funding limits in its IOP and/or annual PFP guidance.

2. Performance Elements

Performance elements define common performance characteristics that will be used to evaluate the employee's success in accomplishing performance objectives. The use of common characteristics for scoring purposes helps to ensure comparable scores are assigned while accommodating diverse individual objectives. The PFP system will utilize those performance elements as described in this FRN. AFC STRL organizations can determine which elements are critical. A critical performance element is defined as an attribute of job performance that is of sufficient importance that performance below the minimally acceptable level requires remedial action and may be the basis for removing employees from their positions. Each of the performance elements will be assigned a two-digit weight between 0 and 1 rounding two significant digits, which reflects its importance in accomplishing an individual's performance objectives. A minimum weight is set for each performance element. The sum of the weights for all the elements must equal 1.0. Rules for setting weights will be defined in Mod Demo IOPs.

A single set of performance elements will be used for evaluating the annual performance of all AFC STRL personnel covered by this Mod Demo plan. This set of performance elements may evolve over time, based on experience gained during each rating cycle. This evolution is essential to capture the critical characteristics the organization encourages in its workforce toward meeting individual and organizational objectives. This is particularly true in an

environment where technology and work processes are changing at an increasingly rapid pace. The PMB may adjust the elements annually.

The initial set of performance elements and basic definitions for the AFC STRL Mod Demo are listed below. On an annual basis, AFC STRL organizations will select at least four elements based on mission requirements. Additionally, the Supervision/EEO element is mandatory, and may be updated as needed, for all employees whose assigned duties which meet the definition of Supervisor, outlined in the OPM GS Supervisory Guide. AFC STRL organizations will publish more specific element definitions and benchmark performance standards that describe performance associated with each score level in their IOPs.

(1) Technical Competence—The extent to which an employee demonstrates the technical knowledge, skills, abilities, and initiative to produce the quality and quantity of work as defined in individual performance objectives and assigned tasks.

(2) Mission Impact—The extent to which an employee demonstrates individual performance against strategic goals and initiatives as defined in individual performance objectives and assigned tasks.

(3) Customer Satisfaction—The extent to which an employee delivers high levels of service to internal and external customers/stakeholders. Maintains quality customer/stakeholder relationship(s).

(4) Management of Time and Resources—The extent to which an employee demonstrates ability to manage time and resources.

(5) Teamwork—The extent to which an employee encourages and facilitates cooperation, collaboration, pride, trust, and group identity; fosters commitment and esprit-de-corps; works with others to achieve goals.

(6) Communication—The extent to which an employee demonstrates ability to communicate orally and in writing to achieve mutual understanding or desired results.

(7) Management/Leadership—The extent to which an employee influences, motivates, and challenges others; adapts leadership styles to a variety of situations.

(8) Supervision/EEO—The extent to which a supervisor: (1) Ensures compliance with applicable laws, regulations and policies including Merit System Principles and Prohibited Personnel Practices; (2) Attracts and retains a high-caliber workforce and acts in a responsible and timely manner on all steps in the recruitment and hiring process; (3) Provides opportunities for orientation and tools for enabling employees to successfully perform during the probationary period and beyond; (4) Completes all performance management tasks in a timely manner including clearly communicating performance expectations throughout the appraisal period, holding employees accountable, making meaningful distinctions in performance and rewarding excellent performance, promoting employee development and training, and promptly addressing performance and conduct issues; (5) Ensures that EEO principles are adhered to throughout the organization and promptly addresses allegations of discrimination, harassment, and retaliation; (6) Upholds high standards of integrity and ethical behavior, including: ensuring appropriate internal controls to prevent fraud, waste or abuse; safeguarding assigned property/resources; maintaining a safe work environment and promptly addressing allegations of noncompliance; and supporting the Whistleblower Protection Program by responding constructively to employees who make protected disclosure under 5 U.S.C. 2302(b)(8), taking responsible and appropriate actions to resolve any such disclosure, and creating an environment in which employees feel comfortable making such disclosures; and (7) Influences, motivates, and challenges others through adaptive leadership; takes charge of assigned effort(s); overcomes challenges to success; resolves personal and professional conflicts; and looks for opportunities to assist others to achieve success.

3. Performance Objectives

Performance objectives define a target level of activity, expressed as a tangible, measurable objective, against which actual achievement can be compared. These objectives will specifically identify what is expected of the employee during the rating period and will typically consist of three to ten results-oriented statements. The employee and the supervisor will jointly develop the employee's performance objectives at the beginning of the rating period. If there is a disagreement between the employee and supervisor concerning these performance objectives, the employee's supervisor will render the final decision on the disagreement after fully considering the employee's comments. Objectives are to be reflective of the employee's duties/responsibilities and pay band along with the mission/organizational goals and priorities. Objectives will be reviewed annually and revised upon changes in salary reflecting increased responsibilities commensurate with salary increases. Performance objectives are intended to define an individual's specific responsibilities and expected accomplishments. In contrast, performance elements will identify common performance characteristics, against which the accomplishment of objectives will be measured. As a part of this demonstration project, training focused on overall organizational objectives, and the development of performance objectives will be held for both supervisors and employees. Performance objectives may be jointly modified, changed, or deleted as appropriate during the rating cycle. Generally, performance objectives should only be changed when circumstances outside the employee's control prevent or hamper the accomplishment of the original objectives. It is also appropriate to change objectives when mission or workload shifts occur.

4. Performance Feedback and Formal Ratings

The most effective means of communication is person-to-person discussion between supervisors and employees of requirements, performance goals, and desired results. Employees and supervisors alike are expected to actively participate in these discussions for optimum clarity regarding expectations and identify potential obstacles to meeting goals. In addition, employees should explain (to the extent possible) what they need from their supervisor to support goal accomplishment. The timing of these discussions will vary based on the nature of work performed but will occur at least at the mid-point and end of the rating period. The supervisor and employee will discuss job performance and accomplishments in relation to the performance objectives and elements. At least one review, normally the mid-point review, will be documented as a formal progress review. More frequent task-specific discussions may be appropriate. In cases where work is accomplished by a team, team discussions regarding goals and expectations may be appropriate.

The employee will provide a written list of accomplishments to the supervisor at both the mid-point and end of the rating period. An employee may elect to provide self-ratings on the performance elements and/or solicit input from team members, customers, peers, supervisors in other units, subordinates, and other sources which will permit the supervisor to fully

evaluate accomplishments during the rating period.

At the end of the rating period, following a review of the employee's accomplishments, the supervisor will rate each of the performance elements by assigning a score between 0 and 50. Benchmark performance standards will be developed by the AFC STRL organization to describe the level of performance associated with a score. Supervisors will use the benchmark performance standards to determine appropriate ratings for each performance element. These scores will not be discussed with the employee or considered final until all scores are reconciled and approved by the designated Pay Pool Manager. The element scores will then be multiplied by the element-weighting factor to determine the weighted score expressed to two decimal points. The weighted scores for each element will then be totaled to determine each employee's overall appraisal score and rounded to a whole number as follows: if the digit to the right of the decimal is between five and nine, it should be rounded to the next higher whole number; if the digit to the right of the decimal is between one and four, it should be dropped.

A total score of 10 or below will result in a Level 1 rating of record. A score of 10 or below in a single element will also result in a Level 1 rating of record with zero shares and no GPI, and requires the employee be placed on a Performance Improvement Plan (PIP). A new rating of record will be issued if the employee's performance improves to an acceptable level at the conclusion of the PIP.

5. Unacceptable Performance

Informal feedback is an effective way to provide clarity to the employee and in-the-moment coaching. Additionally, informal discussions serve several purposes. For example, such discussions provide feedback for a specific job, set and reset goals, reinforce good habits, and discuss areas for improvement. Informal employee performance discussions will be a continuous process so that corrective action, including placing an employee on a PIP, may be taken at any time during the rating cycle. Whenever a supervisor recognizes an employee's performance on one or more performance elements is unacceptable, the supervisor should immediately inform the employee. Efforts will be made to identify the possible reasons for the unacceptable performance.

If the employee continues to perform at an unacceptable level or has received a Level 1 Rating of Record, written notification outlining the unacceptable performance will be provided to the employee. At this point an opportunity to improve will be structured in a PIP. The supervisor will identify the actions that need to be corrected or improved, outline required time frames (no less than 30 days) to demonstrate such improvement and provide the employee with any available assistance as appropriate. Progress will be monitored during the PIP, and all counseling sessions will be documented.

If the employee's performance is acceptable at the conclusion of the PIP, a new rating of record will be issued. If a PIP ends prior to the end of the annual performance cycle and the employee's performance improves to an acceptable level, the employee is appraised again at the end of the annual performance cycle.

If the employee fails to improve during the PIP, the employee will be given written notice of proposed action. This action can include removal from the Federal service, placement in a lower pay band with a corresponding reduction in pay (demotion), reduction in pay within the same pay band, or change in position or career path. For the most part, employees with a Level 1 rating of record will not be permitted to remain at their current salary and may be reduced in pay band.

Note: Nothing in this subsection will preclude action under 5 U.S.C. chapter 75, when appropriate.

All relevant documentation concerning a reduction in pay or removal based on unacceptable performance will be preserved and made available for review by the affected employee or a designated representative. As a minimum, the record will consist of a copy of the notice of proposed personnel action, the employee's written reply, if provided, or a written summary when the employee makes an oral reply. Additionally, the record will contain the written notice of decision and the reasons therefore along with any supporting material (including documentation regarding the opportunity afforded the employee to demonstrate improved performance).

If the employee's performance deteriorates to an unacceptable level, in any element, within two years from the beginning of a PIP, follow-on actions may be initiated with no additional opportunity to improve. If an employee's performance is at an acceptable level for two years from the beginning of the PIP and performance once again declines to an unacceptable level, the employee will be given an additional opportunity to improve before management proposes follow-on actions.

Additional details will be outlined in Mod Demo IOPs.

6. Reconciliation Process

At the end of the rating cycle and following the initial scoring of each employee by the supervisor, a panel of rating officials and supervisors, known as the pay pool panel, will meet in a structured review and reconciliation process managed by the Pay Pool Manager. In this step, each employee's performance objectives, accomplishments, preliminary scores and/or shares, and pay are discussed. Through discussion and consensus building, consistent and equitable ratings and/or shares are reached. There will not be a prescribed distribution of total scores. IOPs will further define this process.

7. Pay Pools

Employees within the AFC STRL Mod Demo will be placed into pay pools. Pay pools are combinations of organizational elements (*e.g.,* Directorates, Divisions, Branches, and Offices) that are defined for the purpose of determining performance payouts under the PFP system. The guidelines in the next paragraph are provided for determining pay pools. These guidelines will normally be followed. However, an AFC STRL Mod Demo pay pool manager may deviate from the guidelines if there is a compelling need to do so, and the rationale is documented in writing.

The AFC STRL organizations will establish pay pools within their respective organizations. Typically, pay pools will have between 35 and 300 employees. A pay pool should be large enough to encompass a reasonable distribution of ratings but not so large as to compromise rating consistency. Supervisory personnel will be placed in a pay pool separate from subordinate non-supervisory personnel. Neither the Pay Pool Manager nor supervisors within a pay pool will recommend or set their own individual pay. Decisions regarding the amount of the performance payout are based on the established formal payout calculations.

Annual pay pool limits for base pay increases and bonuses, also referred to as payout factors, will be established by the AFC STRL organizations. Funds for performance payouts are divided into two components: base pay increases and bonuses. The funds used for base pay increases are those that would have been available from GS within-grade increases, quality step increases, and promotions. This amount will be defined based on historical data and set

at no less than two percent of total adjusted base pay and no more than the maximum set by the AFC STRL organization. The funds available to be used for awards are funded separately within the constraints of the organization's overall award budget. This amount will be defined based on historical data and set at no less than one percent of total adjusted base pay and no more than the maximum set by the AFC STRL organization. The sum of these two factors is referred to as the Pay Pool Payout Factor and is determined by the AFC STRL organization within the above constraints. The PMB will annually review the pay pool funding formulas used by AFC STRL organizations and recommend adjustments to ensure cost discipline over the life of the demonstration project. AFC STRL organizations may reallocate the amount of funds assigned to each pay pool as necessary to ensure equity and to meet unusual circumstances.

8. Performance Payout Determination

Employee's Rating of Record levels will be determined by the Score Ranges as shown in Figure 3 below. The Rating of Record levels follow the Summary level rating patterns associated with 5 CFR 430.208, Pattern H. Mod Demo IOPs may designate descriptive titles for Level 1 through Level 5 ratings of record. The score ranges will be used as a guide to determine the number of shares the employee is assigned in the pay pool process. An employee will receive a performance payout as a percentage of the employee's salary at the end of the rating cycle, based on the number of shares assigned. AFC STRL organizations will use one of two methods for converting scores to shares. Score ranges and share option changes must be approved by the Mod Demo PMB. IOPs must state which method the AFC STRL organization will use, and Mod Demo employees will receive specific training covering this topic. AFC STRL organizations will provide written notice to the workforce at the start of the rating cycle concerning the basis of the share assignment.

Figure 3

Rating of Record	Score Range
Level 5	41-50
Level 4	31-40
Level 3	21-30
Level 2	11-20
Level 1	10 or less

Shares values will be assigned between 0 and 4 using any increment of shares for a given Score Range as shown in Figure 4. The pay pool panel will determine the shares based on the employee's score range. When selecting the share value, the pay pool panel may consider any of the following: the employee's salary relative to other employees in the same range, the employee's performance above and beyond expectations, the supervisor's recommendation, and how close the employee is to the top of the pay band.

Figure 4

Score Range	Share Options
41-50	3 or 3.5 or 4
31-40	2 or 2.5 or 3
21-30	1 or 1.5 or 2
11-20	0
10 or less	0 and/or no GPI

Shares will be awarded as decimal numbers, rounded to the nearest tenth, based on the employee's score. Fractional shares will be awarded for scores that fall in between these scores, in accordance with Figure 5. For example: a score of 38 will equate to 1.8 shares, and a score of 44 will equate to 2.4 shares.

Figure 5

Score Range	Share Options
41-50	2.1 – 3.0
31-40	1.1 – 2.0
21-30	0.1 – 1.0
11-20	0
10 or less	0 and/or no GPI

Regardless of whether Option A or Option B is implemented, the value of a share cannot be exactly determined until the rating and reconciliation process is completed and all scores are finalized. The formula that computes the value of each share is based on (1) the payout factors, (2) the employee's pay, and (3) the number of shares awarded to each employee in the pay pool. This formula, shown in Figure 6, assures that each employee within the pool receives a share amount equitable to all others in the same pool who are at the same rate of basic pay and receive the same score and shares. The exact Pay Pool Payout Factor will be determined by the AFC Mod STRL organization, in accordance with paragraph 7 above.

Figure 6. Share Value Formula

$$Share\ Value = \frac{F * \sum_{i=1\ to\ n} Basic\ Pay}{\sum_{i=1\ to\ n} (Basic\ Pay * Shares)}$$

Where:

F = Pay Pool Payout Factor, determined by AFC STRL

Pay Pool Managers are accountable for staying within pay pool funding limits. The Pay Pool Manager makes final decisions on pay increases and/or bonuses to individuals based on rater recommendation, the final score, the pay pool funds available, and the employee's salary at the end of the rating cycle.

In addition, the designated pay pool manager may nominate employees for Extraordinary Achievement Recognition. Such recognition grants a base pay increase and/or bonus to an employee that is higher than the one generated by the compensation formula for that employee. The funds available for an Extraordinary Achievement Recognition are separately funded within the constraints of the organization's budget.

9. Base Pay Increases and Bonuses

An employee's shares will be paid out as a base pay increase, a bonus, or a combination. To continue to provide performance incentives while also ensuring cost discipline, base pay increases may be limited or capped. Certain employees will not be able to receive base pay increases due to base pay caps. Base pay is capped when an employee reaches the maximum rate of pay in an assigned pay band or when a performance-based rule applies (see paragraph 10 below). Employees affected by base pay caps and those receiving retained pay will receive the entire performance payout in the form of a bonus.

If the AFC STRL organization deems it appropriate, the Pay Pool Manager may re-allocate a portion (up to the maximum possible amount) of the unexpended base pay funds for capped employees to uncapped employees. Any dollar increase in an employee's projected base pay increase will be offset, dollar for dollar, by an accompanying reduction in the employee's projected bonus payment. Thus, the employee's total performance payout is unchanged.

PFP bonuses and salary increases must be effective within 120 days of the end of the appraisal cycle.

10. Performance-Based Rules

As a compensation management tool, AFC STRL organizations may establish performance-based rules to manage pay progression by career path, pay band, geographic location, or any other grouping. If established, such performance-based rules must be approved by the PMB and published to the workforce prior to implementation. In addition, the process for obtaining an exception to such rules must be documented in the IOP. Once established, performance-based rules may be used in the pay pool process to manage performance salary increases. Examples of performance-based rules include rules similar to a Mid-Point Rule. For example, to provide added performance incentives as an employee progresses through a pay band, a mid-point rule may be used to determine base pay increases. The mid-point rule dictates that employees must receive a score of 30 or higher for their base pay to cross the salary midpoint of their pay band. Also, once an employee's base pay exceeds the salary midpoint of their pay band, the employee must receive a score of 30 or higher to receive any

additional base pay increases. Any amount of an employee's performance payout, not paid in the form of a base pay increase because of the mid-point rule, would be paid as a bonus. This rule effectively raises the standard of performance expected of an employee once the salary midpoint of a pay band is crossed. This rule would apply to all employees in every career path and pay band.

11. Awards

To provide additional flexibility in motivating and rewarding individuals and groups, some portion of the performance award budget may be reserved for special acts and other categories as they occur. Awards may include, but are not limited to special acts, patents, suggestions, on-the-spot, and time-off. The funds available to be used for awards are separately funded within the constraints of the organization's overall award budget.

While not directly linked to the PFP system, this additional flexibility is important to encourage outstanding accomplishments and innovation in accomplishing the diverse modernization missions of the AFC STRL organizations participating in Mod Demo. Additionally, to foster and encourage teamwork among its employees, organizations may give group awards.

12. General Pay Increase (GPI)

All employees will receive a GPI, except as described below.

Employees, who are on a PIP and/or receive a Level 1 rating of record at the time pay determinations are made, may be denied performance payouts or the GPI. Such employees will not receive RIF service credit until such time as their performance improves to the satisfactory level and remains so for at least 90 days. When the employee has performed at an acceptable level for at least 90 days, the GPI will not be retroactive but will be granted at the beginning of the next pay period after the supervisor authorizes its payment.

These actions may result in a base salary that is identified in a lower pay band. This occurs because the minimum rate of basic pay in a pay band increases as the result of the GPI (5 U.S.C. 5303). This situation (a reduction in pay band with no reduction in pay) will not be considered an adverse action, nor will pay band retention provisions apply.

After 90 days of acceptable performance the employee is granted GPI and the employee will be returned to the employee's previous pay band.

13. Grievances and Disciplinary Actions

An employee may grieve the performance rating/score or shares received under the PFP system. Non-bargaining unit employees, and bargaining unit employees covered by a negotiated grievance procedure that does not permit grievances over performance ratings, must file under administrative grievance procedures when choosing to pursue a grievance. Whereas, bargaining unit employees whose negotiated grievance procedures cover performance-rating grievances must file under those negotiated procedures when choosing to pursue a grievance.

Except where specifically waived or modified in this plan, adverse action procedures under 5 CFR part 752, remain unchanged.

E. Hiring and Appointment Authorities

Competitive service positions will be filled through Merit Staffing, direct-hire authority, Delegated Examining, or other non-competitive hiring authorities. Direct-hire authority will be exercised in accordance with the requirements of the delegation of authority.

1. Qualifications

A candidate's basic qualifications will be determined using OPM's Qualification Standards Handbook for General Schedule Positions. Candidates must meet the minimum standards for entry into the pay band, unless waived by other flexibilities within the STRL. For example, if the pay band includes positions in grades GS–5 and GS–7, the candidate must meet the qualifications for positions at the GS–5 level. Specialized experience/education requirements will be determined based on whether a position to be filled is at the lower or higher end of the pay band. Selective placement factors can be established in accordance with the OPM Qualification Handbook, when judged to be critical to successful job performance. These factors will be communicated to all candidates for position vacancies and must be met for basic eligibility.

2. Delegated Examining

Under Delegated Examining when there are no more than 15 qualified applicants and no preference eligible, all eligible applicants are immediately referred to the selecting official without rating and ranking. Rating and ranking may occur when the number of qualified candidates exceeds 15 or there is a mix of preference and non-preference applicants. Category rating may be used to provide for a more streamlined and responsive hiring system to increase the number of eligible candidates referred to selecting officials. This provides for the grouping of eligible candidates into quality categories and the elimination of consideration according to the ''rule of three.'' This includes the coordination of recruitment and public notices, the administration of the examining process, the administration of veterans' preference, the certification of candidates, and selection and appointment consistent with merit principles.

Statutes and regulations covering veterans' preference will be observed in the selection process when rating and ranking are required. Veterans with preference will be referred ahead of non-veterans with the same score/category.

3. Direct Hire

AFC STRL will use the direct hire authorities authorized by 10 U.S.C. 4091, and published in 79 FR 43722 and 82 FR 29280; and the direct hire authorities published in 85 FR 78829, as appropriate, to appoint the following:

a. Candidates with advanced degrees to scientific and engineering positions;

b. Candidates with bachelor's degrees to scientific and engineering positions;

c. Veteran candidates to scientific, technical, engineering, and mathematics positions (STEM), including technicians;

d. Student candidates enrolled in a program of instruction leading to a bachelors or advanced degree in a STEM discipline; and

e. Candidates for any position: (i) involving 51 percent or more of time in direct support of the STRL mission; (ii) identified by the STRL as hard to fill; (iii) having a history of high turnover; or (iv) requiring a unique, laboratory-related skillset.

Direct hire appointments may be made on a permanent, term or temporary basis. Requirements for how positions qualify for this usage of direct hire authorities will be documented in IOPs.

In addition, other direct hire authorities, documented in FRNs and available to all DoD STRL laboratories, may be utilized, once requested, and adopted, as appropriate.

4. Legal Authority

For actions taken under the auspices of the demonstration project, the first legal authority code (LAC)/legal authority Z2U will be used. The second LAC/legal authority may identify the authority utilized (*e.g.,* Direct Hires). The nature of action codes and legal

authority codes prescribed by OPM, DoD, or DA will be used.

5. Hiring Demonstrated Exceptional Talent for S&E Positions

As provided by OPM General Schedule Qualification Standards, paragraph 4.g., in the ''Application of Qualification Standards'' section, ''Educational and Training Provisions or Requirements'' subsection, AFC STRL may consider an S&E position candidate's demonstrated exceptional experience or a combination of experience and education in lieu of OPM individual occupational qualification requirements. The AFC STRL may use one SME, instead of a panel of at least two, to conduct a comprehensive evaluation of an applicant's entire background, with full consideration given to both education and experience, to determine a candidate's qualifications. In addition, the unique nature of AFC STRL interdisciplinary positions allows for an AFC STRL manager with direct knowledge of the mission and position requirements, regardless of his or her occupational series or military occupation code, to serve as a SME to represent the needs of the organization.

Demonstrated exceptional experience is defined as experience that reflects significant accomplishment directly applicable to the position to be filled. This is evidenced through a substantial record of experience, achievement, and/or publications that demonstrate expertise in an appropriate professional/scientific field. A written analysis by the SME will document the candidate's experience, achievements, and publications used for qualification determination.

Documentation justifying the employee's qualifications will be placed in the employee's electronic official personnel file (e-OPF) to ensure the employee is considered qualifying for the specific occupational series in the future.

6. Official Transcripts

The requirement to have official transcripts prior to entrance-on-duty (EOD) is waived. AFC STRL servicing personnel offices may use unofficial transcripts or a letter from a registrar or dean to make qualification determinations, thus eliminating several days or weeks from the current hiring timeline. Official transcripts must be received within 30 calendar days after EOD.

Once unofficial transcripts or a letter from a registrar or dean is received, the servicing personnel office will review qualifications and begin the onboarding process. Applicants will be asked to request and submit official transcripts to the servicing personnel office, but an EOD may be established prior to receipt. Applicants will sign a statement of understanding (SOU) as part of their pre-employment paperwork. The SOU will include language stipulating that if official transcripts are not provided or fail to show proof that individuals meet the qualification requirements, individuals may be subject to adverse actions up to and including removal, as determined by specific circumstances by applicable regulations. The SOU will regulate the applicants who do not have the degrees required for the positions or who may have been dishonest during the hiring process, lowering risk for the Command.

The SOU will be maintained in the employee's e-OPF. Once official transcripts have been received by the servicing personnel office, they will be verified in the personnel system and uploaded into the employee's e-OPF.

7. Use of USAJobs Flyers

AFC STRL will have authority to determine when to utilize USAJobs flyers to solicit for AFC STRL positions. Applications may be submitted directly to the servicing personnel office. Candidates may apply through the link or email address found in the flyer. Postings may be open to internal Government employees and external U.S. citizen candidates. All candidates will be asked to submit supporting documentation, including a resume and official or unofficial transcripts. Flyers will include the following (a) open/close dates, (b) compensation, (c) appointment type and work schedule, (d) duty location, (e) duties, (f) position information, (g) conditions of employment, (h) qualification requirements, (i) education requirements, (j) how candidates will be evaluated, (k) benefits, (l) how to apply, (m) an equal employment opportunity statement, and (n) any additional information determined necessary by the lab.

Positions may be filled through direct hire authorities on a temporary, term, or permanent basis or through reassignment utilizing the USAJobs flyer.

8. Security Eligibility

AFC STRL has the authority to appoint individuals to Critical-Sensitive (CS) and Special-Sensitive positions prior to a final favorable eligibility determination at the Top Secret/SCI level. Processes and pre-employment waiver requirements for CS positions will be applied in these situations. For the purposes of STRLs, an emergency or national interest that necessitates an appointment prior to the completion of the investigation and adjudication process includes a lab's inability to meet mission requirements. Each applicant's Standard Form 86, ''Questionnaire for National Security Positions,'' fingerprints, and prescreening questionnaire will be reviewed, and a favorable pre-screening eligibility determination will be made prior to any individual being given a final job offer and EOD. Also, each lab will provide the written documentation needed to support a waiver decision to the appointing authority, who will document the reason for the appointment, and ensure the justification is sufficient before a final offer of employment is made.

Individuals will perform duties and occupy a location permitted by their current security eligibility (interim or final), but not higher than Top Secret. The applicant will be required to sign a statement of understanding that documents that the pre-appointment decision was made based on limited information and that continued employment depends upon the completion of a personnel security investigation (tier 3 or 5) and favorable adjudication of the full investigative results.

9. Term Appointments

F. Flexible Length and Renewable Term Technical Appointments (FLRTTA)

1. AFC STRL organizations may use the FLRTTA workforce shaping tool to appoint qualified candidates who are not currently DoD civilian employees, or are currently DoD term employees, into any scientific, technical engineering, and mathematic positions, including technicians, for a period of more than one year but not more than six years. The appointment of any individual under this authority may be extended without limit in up to six-year increments at any time during any term of service under conditions set forth in Mod Demo IOPs.

2. Use of the FLRTTA authority must be consistent with merit system principles.

3. Current DoD employees who are not DoD term employees may not be appointed to positions under this authority.

4. Initial appointments must be more than one year, but not to exceed six years in duration.

5. Individuals appointed under this authority may be eligible for noncompetitive conversion to a permanent appointment if the job

opportunity announcement clearly stated the possibility of being made permanent.

6. Positions may be filled utilizing noncompetitive hiring authorities. Positions appointed noncompetitively will not be eligible for conversion or extension. This is not a hiring authority and STRLs must compete or use a direct hire or other non-competitive hiring authority to appoint candidates under this appointment authority.

7. Unless otherwise eligible for a noncompetitive hiring authority, positions filled under this authority must be competed. Job opportunity announcements must clearly identify the type of appointment and the expected duration of initial appointment (up to six years). A statement will be included in the announcement that the position may be extended, without limit, in up to six-year increments, to enable extensions beyond the initial term of appointment. Furthermore, the position can be made permanent without further competition.

8. Appointees will be afforded equal eligibility for employee programs and benefits comparable to those provided to similar employees on permanent appointments within the AFC STRL, including opportunities for professional development and eligibility for award programs.

9. Appointees will be afforded the opportunity to apply for vacancies that are otherwise limited to ''status'' candidates. Appointees applying to other Federal service positions utilizing this authority must submit a copy of their Flexible Length and Renewable Term Technical appointment SF–50, Notification of Personnel Action, which will contain a remark identifying this provision, with their application/resume for the vacancy to which they are applying. The SF–50 will serve as notification to the servicing Human Resources Office for the vacancy that the individual is eligible for consideration as a status candidate.

10. Promotions. Individuals appointed under this hiring authority may be promoted while serving on a term appointment, provided they meet the qualifications and eligibility requirements for the higher level to which they will be promoted.

11. Extension of appointments. The appointment of an individual appointed to a term appointment under this authority may be extended, without limit, in up to six-year increments. The original recruitment notice must have identified the opportunity for an extension beyond the initial term of appointment. Extensions will be documented via a personnel action using nature of action code 765/Extension of Term Appt NTE and the same legal authority code used for the appointment that is being extended.

12. Expiration. Term appointments expire upon the not-to-exceed date, unless extended.

13. Probationary/Trial Period. The trial period specified in this FRN will apply to individuals appointed under the Flexible Length and Renewable Term Appointment.

14. Tenure. For those appointed under the Flexible Length and Renewable Term Technical Appointment authority or converted from a term or modified term to a Flexible Length and Renewable Term Technical Appointment and later converted to a career or career-conditional appointment, the time spent on both appointments will count toward career tenure.

15. Documenting Personnel Actions. Personnel actions for qualified candidates are documented citing the first legal authority code (LAC)/legal authority as Z2U, if appointed to a broad-banded position. A remark for the personnel action will be created to state the appointment is designated as a ''status'' appointment for the purposes of eligibility for applying for positions in the federal service.

G. Flexible Length and Renewable Term Appointments for Support Positions (FLRTA)

1. AFC STRL organizations are authorized to use FLRTA to appoint qualified candidates, whose positions involve 51 percent or more of time spent in direct support of STRL activities, for a period of more than one year but not more than six years. The appointment of any individual under this authority may be extended without limit in up to six-year increments at any time during any term of service under conditions set forth in Mod Demo IOPs. The FLRTTA provisions described above also apply to appointments made under this authority.

2. Term appointments, for the purposes of this authority, are non-status appointments to a position in the competitive service for a specified period of more than one year; however, incumbents may compete as ''status candidates'' for the purpose of eligibility for positions in the Federal service.

3. Qualified candidates are defined as individuals who meet the minimum qualification standards for the position as published in the OPM Qualification Standard or Mod Demo qualification standards specific to the position to be filled.

1. Extended Probationary or Trial Period

At the discretion of the AFC STRL organizations, the probationary period for DoD employees may be extended to three years for all newly hired permanent career-conditional employees, and trial periods for term appointments may also be extended to three years, as documented in Mod Demo IOPs. The purpose of extending the probationary period is to allow supervisors adequate time to fully evaluate an employee's ability to complete cycles of work and to fully assess an employee's contribution and conduct. Other than described herein, the probationary period will apply to employees as stated in 5 CFR part 315.

Aside from extending the time period, all other features of the current probationary or trial period are retained, including the requirements for determining creditable service as described in 5 CFR 315.802(c), and the potential to remove an employee without providing the full substantive and procedural rights afforded a non-probationary employee when the employee fails to demonstrate proper conduct, competency, and/or adequate contribution during the extended probationary period. When terminating probationary or trial employees, AFC STRL organizations will provide employees with written notification of the reasons for their separation and effective date of the action.

Probationary employees may be terminated when they fail to demonstrate proper conduct, technical competency, and/or acceptable performance for continued employment, and for conditions arising before employment.

2. Supervisory Probationary Periods

Supervisory probationary periods will be consistent with 5 CFR part 315, subpart I. Existing Federal employees who are competitively selected or reassigned to a supervisory position will be required to complete a supervisory probationary period for initial appointment to a supervisory position. At the discretion of the AFC STRL organizations, the probationary period for supervisory employees may be up to two years. Additional requirements will be outlined in Mod Demo IOPs.

3. Reemployment of Annuitants

AFC STRL will use the authorities provided by 5 U.S.C. 9902(g) to appoint reemployed annuitants, as appropriate. In addition, AFC STRL organizations may approve the appointment of reemployed annuitants and determine the salary of an annuitant reemployed

under this authority, including whether the annuitant's salary will be reduced by any portion of the annuity received, up to the amount of the full annuity, as a condition of reemployment.

a. AFC STRL organizations will apply the authority to appoint annuitants in accordance with this FRN, DoDI 1400.25–V300 and Army guidance, except as stated above. Use of the authority must be consistent with merit system principles.

b. Documenting Personnel Actions. For actions taken under the auspices of the demonstration project, the first legal authority code (LAC)/legal authority Z2U. The second LAC/legal authority may identify the authority utilized (*e.g.,* Direct Hires). The nature of action codes and legal authority codes prescribed by OPM, DoD, or DA will be used.

c. AFC STRL organizations will publish implementing guidance and procedures on the use of this reemployed annuitant flexibility in Mod Demo IOPs.

d. Annuitants retired under 5 U.S.C. 8336(d)(1) or 8414(b)(1)(A) who are reemployed will retain the rights provided in accordance with 5 U.S.C. 9902(g)(2)(A).

4. Student Loan Repayment

AFC STRL may provide student loan repayment options authorized in 85 FR 78829 that are in line with current tuition costs and may be adjusted based on inflation without higher level approval. This authority provides the AFC STRL the ability to repay all, or part of, an outstanding qualifying student loan or loans previously taken out by a current AFC STRL Mod Demo employee or candidate to whom an offer of employment has been made. The amount of student loan repayment benefits provided by an AFC STRL organization is subject to both of the following limits:

a. Up to $25,000 per employee per calendar year.

b. Up to $125,000 per employee.

The USD(R&E) may increase these amounts when deemed necessary to stay competitive with private industry and academia. Eligibilities, conditions, qualifying student loans, and required service agreements remain the same as found in 5 CFR part 537. Loan payments made by an AFC STRL organization under this part do not exempt an employee from his or her responsibility and/or liability for any loan(s) the individual has taken out. The employee is responsible for any income tax obligations resulting from the student loan repayment benefit.

F. Volunteer Emeritus and Expert Program (VEP)

AFC STRL will have the authority to offer voluntary assignments to former Federal employees who have retired or separated from the Federal service and U.S. citizens who are retired, separated, or on sabbatical from private or public sector organizations. Volunteer emeritus will ensure continued quality research while reducing the overall salary line by allowing higher paid individuals to accept retirement incentives with the opportunity to retain a presence in the scientific community. Volunteer experts will bring commercial sector or public sector knowledge and experience into AFC STRL. Volunteers will not be used to replace any government personnel or interfere with their career opportunities. Volunteers may not be used to replace or substitute for work performed by government personnel occupying positions required to perform the AFC STRL's mission. Volunteer assignments are not considered ''employment'' by the Federal government (except as indicated below).

To be accepted as a volunteer, an individual must be a U.S. citizen and must be recommended by an AFC STRL manager to the AFC STRL organization approval authority. No one is entitled to participate in the program, and an application to the program does not guarantee acceptance into the program or assignment at AFC STRL. AFC STRL organizations must clearly document the decision process and decision rationale for each volunteer applicant (regardless of whether the applicant is accepted or rejected from the program) and must retain this documentation throughout the assignment (for accepted applicants), or for two years (for rejected applicants). Volunteer participants will not be permitted to perform any inherently governmental function or to participate in any contracts or solicitations for which the participant has a conflict of interest. Volunteer participants are not permitted to participate in contract source selections, nor are they permitted to have access to contractor bid or proposal information or source selection information, or to data or information that is protected by the Trade Secrets Act (18 U.S.C. 1905) without a written agreement between the volunteer and the owner of the data or information.

To ensure success and encourage participation, the volunteer Emeritus' Federal retirement pay (whether military or civilian) will not be affected while serving in a volunteer capacity. Retired or separated Federal employees may accept an emeritus position without a break or mandatory waiting period.

An agreement will be established between the volunteer and the AFC STRL organization. The agreement will be reviewed by the servicing legal office. The agreement must be finalized before the assumption of duties and will include:

(1) A statement that the voluntary assignment does not constitute an appointment in the civil service and is without compensation, and any and all claims against the Government (because of the voluntary assignment) are waived by the volunteer;

(2) A statement that the volunteer will be considered a Federal employee solely for the purpose of:

- 18 U.S.C. 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913;
- 31 U.S.C. 1343, 1344, and 1349(b);
- 5 U.S.C. chapters 73 and 81;
- The Ethics in Government Act of 1978;
- 41 U.S.C. chapter 21;
- 28 U.S.C. chapter 171 (tort claims procedure), and any other Federal tort liability statute;
- 5 U.S.C. 552a (records maintained on individuals)

(3) The volunteer's work schedule;

(4) The length of the agreement (defined by length of project or time defined by weeks, months, or years);

(5) The support to be provided by the AFC STRL organization (travel, administrative, office space, supplies);

(6) The volunteer's duties;

(7) A provision allowing either party to void the agreement with at least two working days' written notice;

(8) A provision that states no additional time will be added to a volunteer's service credit for such purposes as retirement, severance pay, and leave as a result of being a participant in the VEP;

(9) The level of security access required (any security clearance required by the assignment will be managed by the AFC STRL organization while the participant is a member of the VEP);

(10) A provision that any written products prepared for publication that are related to VEP participation will be submitted to the AFC STRL organization for review and must be approved prior to publication;

(11) A statement that the volunteer accepts accountability for loss or damage to Government property occasioned by the volunteer's negligence or willful action;

(12) A statement that the activities of the volunteer on the premises will conform to the regulations and requirements of the organization;

(13) A statement that the volunteer will not improperly use or disclose any non-public information, including any pre-decisional or draft deliberative information related to DoD programming, budgeting, resourcing, acquisition, procurement, or other matter, for the benefit or advantage of the volunteer or any non-Federal entities. Volunteers will handle all non-public information in a manner that reduces the possibility of improper disclosure;

(14) A statement that the volunteer agrees to disclose any inventions made in the course of work performed for AFC STRL. AFC STRL will have the option to obtain title to any such invention on behalf of the U.S. Government. Should the AFC CG elect not to take title, AFC will retain a non-exclusive, irrevocable, paid up, royalty-free license to practice or have practiced the invention worldwide on behalf of the U.S. Government;

(15) A statement that the volunteer must complete either a Confidential or Public Financial Disclosure Report, whichever applies; a disqualification statement prohibiting the volunteer from working on matters related to his or her former employer; and ethics training in accordance with Office of Government Ethics regulations prior to implementation of the written agreement; and

(16) A statement that the volunteer must receive post-government employment advice from a DoD ethics counselor at the conclusion of program participation. Volunteers are deemed Federal employees for purposes of post-government employment restrictions.

A written Memorandum of Agreement (MOA) between the AFC STRL organization and the volunteer is required and must include all items above, regardless of format used. The use and wording of the MOA will be provided in the IOPs of the AFC STRL organizations.

G. Internal Placement

1. Promotion

A promotion is the movement of an employee to a higher pay band in the same career path or to another career path, wherein the pay band in the new career path has a higher maximum base pay than the pay band from which the employee is moving. Positions with known promotion potential to a specific pay band within a career path will be identified when they are filled. Movement from one career path to another will depend upon individual competencies, qualifications, and the needs of the organization. Salary progression within a pay band is not considered a promotion and not subject to the provisions of this section. Except as specified below, promotions will be processed under competitive procedures in accordance with Merit System Principles and requirements of the local merit promotion plan.

To be promoted competitively or non-competitively from one pay band to the next, an employee must meet the minimum qualifications for the job and may not have a Level 1 rating of record. If an employee does not have a current performance rating, the employee will be treated the same as an employee with a Level 2 rating of record as long as there is no documented evidence of unacceptable performance.

2. Reassignment

A reassignment is the movement of an employee from one position to a different position within the same career path and pay band or to another career path and pay band wherein the pay band in the new career path has the same maximum base pay. The employee must meet the qualification requirements for the career path and pay band.

3. Placement in a Lower Pay Band or Grade

An employee may be placed in a lower pay band within the same career path or placement into a pay band in a different career path with a lower maximum base pay. This change may be voluntary based on a request from the employee or involuntary, for cause (performance or conduct) or for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, placement actions resulting from RIF procedures). Involuntary actions will be executed using the applicable adverse action procedures in 5 U.S.C. chapter 43 or chapter 75.

4. Simplified Assignment Process

Today's environment of remote work and fluctuating budgets, workforce and workload require that the organization have maximum flexibility to assign duties and responsibilities to individuals. Pay banding can be used to address this need, as it enables the organization to have maximum flexibility to assign an employee with no change in base pay, within broad descriptions, consistent with the needs of the organization and the individual's qualifications, and level. Subsequent assignments to projects, tasks, or functions anywhere within the organization requiring the same level, area of expertise, and qualifications would not constitute an assignment outside the scope or coverage of the current position description. For instance, a Research Psychologist could be assigned to any project, task, or function requiring similar expertise. Likewise, a manager/supervisor could be assigned to manage any similar function or organization consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system. Execution of such actions may require fulfilling labor obligations, where applicable.

5. Details and Expanded Temporary Promotions

Employees may be detailed to a position at the same or similar level (position in a pay band with the same maximum salary). Additionally, employees may be temporarily promoted to a position in a pay band with a higher maximum salary. Details and temporary promotions may be competitive or non-competitive under the AFC STRL Mod Demo and may last up to one year, with the option to extend an additional year. Employees selected non-competitively for details and temporary promotions may only serve in those assignments for a total of two years out of every thirty months. An employee may be detailed to a position without a change in pay or may be provided a base pay increase when the detail significantly increases the complexity of the duties, level of responsibility, or authority, or for other compelling reasons. Such an increase is subject to the specific guidelines established by AFC STRL organizations as published in their IOP's. Details and temporary promotions may be determined by a competitive or a non-competitive process.

6. Exceptions to Competitive Procedures for Assignment to a Position

The following actions are excepted from competitive procedures:

a. Re-promotion to a position which is in the same pay band or GS equivalent and career path as the employee previously held on a permanent basis within the competitive service.

b. Promotion, reassignment, change to lower pay band, transfer, or reinstatement to a position having promotion potential no greater than the potential of a position an employee currently holds or previously held on a permanent basis in the competitive service.

c. A position change permitted by RIF procedures.

d. Promotion without current competition when the employee was

appointed through competitive procedures to a position with a documented career ladder.

e. A temporary promotion, or detail to a position in a higher pay band, of two years or less.

f. A promotion due to the reclassification of positions based on accretion (addition) of duties.

g. A promotion resulting from the correction of an initial classification error or the issuance of a new classification standard.

h. Consideration of a candidate who did not receive proper consideration in a competitive promotion action.

H. Pay Setting

1. General

Pay administration policies will be established by the AFC STRL organizations. These policies will be exempt from Army Regulations or local pay fixing policies. Employees whose performance is acceptable will receive the full annual GPI and the full locality pay. AFC STRL organizations shall have delegated authority to make full use of recruitment, retention, and relocation payments as currently provided for by OPM.

2. Pay and Compensation Ceilings

A demonstration project employee's total monetary compensation paid in a calendar year may not exceed the base pay of Level I of the Executive Schedule consistent with 5 U.S.C. 5307 and 5 CFR part 530 subpart B, except employees placed in an SSTM position. In addition, each pay band will have its own pay ceiling, just as grades do in the GS system. Base pay rates for the various pay bands will be directly tied to the GS rates, except as noted for S&E Level V (SSTMs). Other than where a retained rate applies, base pay will be limited to the maximum base pay payable for each pay band.

The minimum basic pay for SSTM positions is 115 percent of the minimum rate of basic pay for GS–15. Maximum SSTM basic pay with locality pay is limited to Executive Level III (EX–III), and maximum salary without locality pay may not exceed EX–IV. SSTMs are eligible for pay retention as described in 79 FR 43727.

3. Pay Setting for Appointment

For initial appointments to Federal service, the individual's pay may be set at the lowest base pay in the pay band or anywhere within the pay band consistent with the special qualifications of the individual, specific organizational requirements, the unique requirements of the position, or other compelling reasons. These special qualifications may be in the form of education, training, experience, or any combination thereof that is pertinent to the position in which the employee is being placed. Guidance on pay setting for new hires will be documented in IOPs.

4. Pay Setting for Promotion

The minimum base pay increase upon promotion will be six percent or the minimum base pay rate of the new pay band, whichever is greater. The maximum amount of a pay increase for a promotion may be up to the top of the pay band consistent with the special qualifications of the individual, specific organizational requirements, the unique requirements of the position, or other compelling reason. Additional criteria will be specified in the IOPs. For employees assigned to occupational categories and geographic areas covered by special rates, the minimum base pay is the minimum rate in the pay band or the corresponding special rate or locality rate, whichever is greater. For employees covered by a staffing supplement as described in Paragraph III.G.9 below, the demonstration staffing supplement adjusted pay is considered base pay for promotion calculations.

When a temporary promotion is terminated, the employee's pay entitlements will be re-determined based on the employee's position of record, with appropriate adjustments to reflect pay events during the temporary promotion, subject to the specific policies and rules established in Mod Demo IOPs. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay range maximum base pay rate.

5. Pay Setting for Reassignment

A reassignment may be made without a change in the employee's base pay. However, up to ten percent base pay increase may be granted where a reassignment significantly increases the complexity, responsibility, authority, or for other compelling reasons subject to the specific guidelines established in Mod Demo IOPs. In no case may those adjustments increase the base pay for the position of record beyond the applicable pay range maximum base pay rate.

6. Pay Setting for Change to Lower Pay Band

Employees subject to an involuntarily change to lower pay band for cause (performance or conduct) or voluntary change to lower pay band (request or selection to new position) are not entitled to pay retention and may receive a decrease in base pay. Employees subject to an involuntary change to a lower pay band for reasons other than cause (*e.g.,* erosion of duties, reclassification of duties to a lower pay band, or placement actions resulting from RIF procedures) may be entitled to pay retention in accordance with the provisions of 5 U.S.C. 5363, 5 CFR part 536, and DoDI 1400.25 Vol 536, except as waived or modified in section IX of this plan.

7. Supervisory and Team Leader Pay Adjustments

Supervisory and team leader pay adjustments may be approved based on the rules established in Mod Demo IOPs, to compensate employees with supervisory or team leader responsibilities. Supervisory and team leader pay adjustments are a tool that may be implemented at the discretion of the AFC STRL organization and are not to be considered an employee entitlement due solely to his/her position as a supervisor or team leader. Only employees in supervisory or team leader positions as defined by the OPM GS Supervisory Guide or GS Leader Grade Evaluation Guide may be considered for the pay adjustment. Pay adjustments are increases to base pay, ranging up to 10 percent of that pay rate for supervisors and for team leaders, and are subject to the constraint that the adjustment may not cause the employee's base pay to exceed the maximum of the pay band. Pay adjustments are funded separately from performance pay pools.

A supervisory/team leader pay adjustment may be considered under the following conditions:

a. A career employee selected for a supervisory/team leader position may be considered for a base pay adjustment. If a supervisor/team leader is already receiving a base pay adjustment and is subsequently selected for another supervisor/team leader position, then the base pay adjustment will be re-determined.

b. The supervisory/team leader pay adjustment will be reviewed annually, or more often as needed, and may be increased or decreased by a portion or by the entire amount of the supervisory/team leader pay adjustment based upon the employee's performance appraisal score. If the entire portion of the supervisory/team leader pay adjustment is to be decreased, the initial dollar amount of the supervisory/team leader pay adjustment will be removed. A decrease to the supervisory/team leader pay adjustment as a result of the annual review or when an employee voluntarily

leaves a position is not an adverse action and is not subject to appeal.

All personnel actions involving a supervisory/team leader pay adjustment will require a statement signed by the employee acknowledging that the pay adjustment may be terminated or reduced at the discretion of the organization or will cease when an employee leaves a supervisory position. The cancellation of the adjustment is not an adverse action and is not appealable.

8. Supervisory/Team Leader Pay Differentials

Supervisory and team leader pay differentials may be used to provide an incentive and reward supervisors and team leaders. Supervisory and team leader pay differentials are a tool that may be implemented at the discretion of the AFC STRL organization and are not entitlements due to employees based on their position. A pay differential is a cash incentive that may range up to 10 percent of base pay for supervisors and for team leaders. It is paid on a pay period basis with a specified not-to-exceed (NTE) of one year or less and is not included as part of the base pay. Criteria to be considered in determining the amount of the pay differential will be identified in the AFC organization IOP. Pay differentials are not funded from performance pay pools.

For SSTM personnel, this incentive may range up to five percent of base pay (excluding locality pay). The SSTM supervisory pay differential is paid on a pay period basis with a specified not-to-exceed date up to one year and may be renewed as appropriate.

The supervisory pay differential may be considered, either during conversion into or after initiation of the AFC STRL Mod Demo. The differential must be terminated if the employee is removed from a supervisory position, regardless of cause, or no longer meets established eligibility criteria.

All personnel actions involving a supervisory/team leader differential will require a statement signed by the employee acknowledging that the differential may be terminated or reduced at the discretion of the organization. The termination or reduction of the supervisory differential is not considered an adverse action under 5 U.S.C. chapter 75 and is not subject to appeal with the Merit Systems Protection Board.

9. Staffing Supplements

Employees assigned to occupational categories and geographic areas covered by special rates will be entitled to a staffing supplement if the maximum adjusted rate for the banded GS grades to which assigned is a special rate that exceeds the maximum GS locality rate for the banded grades. The staffing supplement is added to the base pay, much like locality rates are added to base pay. For employees being converted into the demonstration project, total pay immediately after conversion will be the same as immediately before, but a portion of the total pay will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process, as there will be no change in total salary. Specific provisions will be described in Mod Demo IOPs.

10. Grade and Pay Retention

Grade retention provisions under 5 U.S.C. 5362 and 5 CFR part 536 will not be applicable to the AFC STRL Mod Demo. For purposes of actions within the AFC STRL Mod Demo that provide entitlement to pay retention, the provisions of 5 U.S.C. 5363 and 5 CFR part 536 apply, except as waived or modified in section IX of this FRN. Wherever the term ''grade'' is used in the law or regulation, the term ''pay band'' will be substituted. The AFC STRL Mod Demo organizations may grant pay retention to employees who meet general eligibility requirements, but do not have specific entitlement by law, provided they are not specifically excluded.

11. Distinguished Contribution Allowance (DCA) the Distinguished Contribution

Allowance may be used by AFC STRL organizations to provide an increased capability to recognize and incentivize employees who are:

(a) Consistently extremely high-level performers, and

(b) Paid at the top of their pay band level.

Eligibility for DCA is open to employees in all career paths. A DCA, when added to an employee's pay (including locality pay and any supervisory differential), may not exceed the rate of basic pay for Executive Level I. DCA is paid on either a bi-weekly basis or as a lump sum following completion of a designated performance period, or combination of these. DCA is not an entitlement and is used at the discretion of AFC STRL organization to reward and retain high performing employees. DCA is not base pay for any purpose, such as retirement, life insurance, severance pay, promotion, or any other payment or benefit calculated as a percentage of base pay. Employees may receive a DCA for up to five years but not more than 10 cumulative years over an employee's entire career. The DCA will be reviewed on an annual basis for continuation or termination. Further details will be published in Mod Demo IOPs.

12. Accelerated Compensation for Developmental Positions (ACDP)

The AFC STRL Mod Demo organizations may authorize an increase to basic pay for employees participating in training programs, internships, or other development capacities. This may include employees in positions that cross bands within a career path (formally known as career ladder positions) or developmental positions within a band. ACDP will be used to recognize development of job-related competencies as evidenced by successful performance within AFC STRL Mod Demo. Additional guidance will be published in an IOP.

13. Supplemental Pay

AFC STRL organizations may establish supplemental pay rates to be paid bi-weekly, as other pay, for those positions which warrant higher compensation than that provided by the established pay band salary ranges, STRL staffing supplements or differentials, or other recruitment or retention authorities. AFC STRL organizations may establish supplemental pay rates by occupational series, specialty, competency, pay band level, and/or geographical area. In establishing such rates, AFC STRL organizations may consider: Rates of pay offered by non-Federal or other alternative pay system employers that are considerably higher than rates payable by the AFC STRL organization; the remoteness of the area or location involved; the undesirability of the working conditions or nature of the work involved; evidence that the position is of such a specialized nature that very few candidates exist; numbers of employees who have voluntarily left positions; evidence to support a conclusion that recruitment or retention problems likely will develop (if such problems do not already exist) or will worsen; consideration of use of other pay flexibilities as well as the use of non-pay solutions; or any other circumstances the AFC STRL organization considers appropriate. Documentation of the determination will be maintained by the AFC STRL organization.

This supplemental pay is in addition to any other pay, such as locality-based comparability payments authorized under 5 U.S.C. 5304 and may result in compensation above Level IV of the

Executive Schedule but may not exceed Level I of the Executive Schedule.

The AFC STRL organizations have an ongoing responsibility to evaluate the need for continuing payment of the supplemental pay and shall terminate or reduce the amount if conditions warrant. Conditions to be considered are: changes in labor-market factors; the need for the services or skills of the employee has reduced to a level that makes it unnecessary to continue payment at the current level; or budgetary considerations make it difficult to continue payment at the current level. The reduction or termination of the payment is not considered an adverse action and may not be appealed or grieved. The applicant or employee will sign a statement of understanding outlining that the supplement may be reduced or terminated at any time based on conditions as determined by the AFC STRL organization. The documentation of the determination will be maintained by the AFC STRL organization.

14. Retention Counteroffers

The AFC STRL organizations may offer a retention counteroffer to retain high performing employees in scientific, technical, or administrative positions who present evidence of an alternative employment opportunity (Federal or non-Federal organizations) with higher compensation. Such employees may be provided increased base pay (up to the ceiling of the pay band) and/or a one-time cash payment that does not exceed 50 percent of one year of base pay. This flexibility addresses the expected benefits described in paragraph II.C, particularly ''increased retention of high-quality employees.'' Retention allowances, either in the form of a base pay increase and/or a bonus, count toward the Executive Level I aggregate limitation on pay consistent with 5 U.S.C. 5307, and 5 CFR part 530, subpart B. Further details will be published in Mod Demo IOPs.

I. Employee Development

1. Training for Degrees

Degree training is an essential component of an organization that requires continuous acquisition of advanced and specialized knowledge. Degree training in the academic environment of laboratories is also a critical tool for recruiting and retaining employees with critical skills. Constraints under current law and regulation limit degree payment to shortage occupations. In addition, current government-wide regulations authorize payment for degrees based only on recruitment or retention needs. Degree payment is currently not permitted for non-shortage occupations involving critical skills.

AFC STRL organizations may expand the authority to provide degree training for purposes of meeting critical skill requirements, to ensure continuous acquisition of advanced and specialized knowledge essential to the organization, or to recruit and retain personnel critical to the present and future requirements of the organization. It is expected that the degree payment authority will be used primarily for attainment of advanced degrees. AFC STRL organizations will document guidelines and rules for using this authority in Mod Demo IOPs.

2. Sabbaticals

AFC Mod STRL organizations may grant paid sabbaticals to career employees to permit them to engage in study or uncompensated work experience that will contribute to their development and effectiveness. Each sabbatical should benefit AFC as well as increase the employee's individual effectiveness. Examples are as follows: advanced academic teaching, study, or research; self-directed (independent) or guided study; and on-the-job work experience with a public, private, or nonprofit organization. Each recipient of a sabbatical must sign a continued service agreement and agree to serve a period equal to at least three times the length of the sabbatical. AFC STRL organizations will document guidelines and rules for using this authority in their IOPs.

J. Voluntary Early Retirement (VERA) and Voluntary Separation Incentive Pay (VSIP)

AFC STRL will use the authorities provided by 5 U.S.C. 9902(f) to offer VERA and VSIP, as appropriate. The AFC CG may:

(1) Approve the use of voluntary early retirement and separation pay incentives;

(2) Determine which categories of employees should be offered such incentives; and

(3) Determine the amount of voluntary separation incentive payments.

AFC STRL organization IOPs will contain procedures to validate and document that payment of an incentive to an employee is fully warranted and will judiciously ensure that eligibility factors specified in DoDI 1400.25, Volume 1702, ''DoD Civilian Personnel Management System: Voluntary Separation Programs,'' other than those waived in this FRN, are applied.

Before authorizing the use of VERA and VSIP incentives, the AFC CG must determine that the use of such incentives is necessary to shape the laboratory workforce to better fulfill mission requirements and achieve the optimum workforce balance. If the laboratory workforce is being downsized, incentives may be used to minimize the need for involuntary separations under RIF procedures. In this downsizing scenario, early retirement and/or separation incentive pay may be offered to surplus employees who would otherwise be separated through RIF or to non-surplus employees whose positions could then be used to avert the involuntary RIF separation of surplus employees.

VERA and VSIP incentives may also be used to restructure the laboratory workforce without reducing the number of assigned personnel. In this restructuring scenario, incentives may be offered for the purpose of creating vacancies that will be reshaped to align with mission objectives. Restructuring incentives are helpful in situations such as correcting an imbalance of skills or for delayering an organization.

VERA and VSIP will be administered as described in this Notice. Both authorities are authorized and may be used together or separately.

(1) Par. 2.a.(6)(b) is waived to the extent that AFC STRL organizations may utilize the vacancy to correct a skills mismatch without restructuring the position.

(2) Par. 2.a.(7) is waived to the extent that AFC STRL organizations may offer VSIP in an amount set by the AFC CG annually, without regard to the amount of severance pay employees would receive under 5 U.S.C. 5595(c) if the employees were entitled to severance pay. AFC STRL organizations will document their rationale for determining payment amounts.

(3) Par. 2.b.(3)(d) is waived to the extent that a waiver is not required for employees occupying positions defined as ''hard to fill.''

(4) Par. 2.c. is waived to the extent that AFC STRL organization approval authorities may approve voluntary separation incentives for Senior Scientific Technical Managers (SSTMs). The SSTM position need not be abolished and may be restructured to meet mission requirements.

(5) Par. 2.g.(1) is waived to the extent that the AFC STRL organizations may pay up to an amount approved by the AFC CG for VSIP from appropriations or accounts available for such purposes to avoid an involuntary separation or to affect a restructuring action.

AFC STRL organizations will establish implementing guidance and procedures in their IOPs.

IV. Conversion

A. Conversion Into the Demonstration Project

Organizational conversion to the AFC STRL Mod Demo occurs when a new organization or a group of employees convert into the demonstration project. Conversion from current GS grade or other pay banding system into AFC STRL Mod Demo will be accomplished during implementation of the demonstration project. Initial entry into the demonstration project will be accomplished through a full employee-protection approach that ensures each employee an initial place in the appropriate career path and pay band without loss of pay or earning potential.

Employees are converted into a career path (*i.e.,* DB, DE, DK) based upon their occupational series and in a pay band that includes their current grade/band. The GS–14 grade occurs in two pay bands of the S&E and B&T career paths, which are pay band III and pay band IV. The conversion of GS–14 employees will be in Pay Band IV during initial conversion into AFC STRL Mod Demo. After initial conversion, former GS–14 employees will be assigned based on classification requirements. Additional guidance will be included in AFC STRL Mod Demo IOPs, and conversion operations will be overseen by the PMB.

Under the GS pay structure, employees progress through their assigned grade in step increments. Since this system is being replaced under the demonstration project, employees will be awarded that portion of the next higher step they have completed up until the effective date of conversion.

Rules governing Within Grade Increases (WGIs) will continue in effect until conversion. Adjustments to the employee's base salary for WGI equity will be computed as of the effective date of conversion. WGI equity will be acknowledged by increasing base pay by a prorated share based upon the number of full weeks an employee has completed toward the next higher step. Payment will equal the value of the employee's next WGI multiplied by the proportion of the waiting period completed (weeks completed in waiting period/weeks in the waiting period) at the time of conversion. Employees at step 10, or receiving retained rates, on the day of implementation will not be eligible for WGI equity adjustments since they are already at or above the top of the step scale. Employees serving on retained grade will receive WGI equity adjustments provided they are not at step 10 or receiving a retained rate.

Employees serving under temporary and term appointments will be converted and may continue their temporary and term appointments up to their established, current NTE date. Extensions of temporary appointments after conversion may be extended based on original appointment and Temporary and Term guidance identified in this FRN.

Employees on a PIP will remain in their current system until the conclusion of the PIP and a decision is rendered.

Conversion rules will apply to employees who did not convert initially or who are in positions that are involuntarily reassigned to the AFC STRL Mod Demo. If conversion into the demonstration project is accompanied by a geographic move, the employee's GS pay entitlements in the new geographic area must be determined before performing the pay conversion.

The project will eliminate retained grade under 5 U.S.C. 5362 and 5 CFR part 536. At the time of conversion, an employee on grade retention will be converted to the career path and broadband level based on the assigned permanent position of record, not the retained grade, and if eligible will be placed on pay retention. Pay retention will be administered using the provisions at 5 U.S.C. 5363 and 5 CFR part 536, except as modified in the Staffing Supplements section and waived in Section IX of this plan.

Initial probationary period. Employees who have completed an initial probationary period prior to conversion will not be required to serve a new or extended initial probationary period. Employees who are serving an initial probationary period upon conversion from GS will serve the time remaining on their initial probationary period.

Supervisory probationary period. Employees who have completed a supervisory probationary period prior to conversion will not be required to serve a new or extended supervisory probationary period while in their current position. Employees who are serving a supervisory probationary period upon conversion will serve the time remaining on their supervisory probationary period.

B. Conversion or Movement From a Project Position to a General Schedule Position

If a demonstration project employee is moving to a GS position not under the demonstration project, or if the project ends and each project employee must be converted back to the GS system, the following procedures will be used to convert the employee's project career path and pay band to a GS-equivalent grade and the employee's project rate of pay to GS equivalent rate of pay.

The converted GS grade and GS rate of pay must be determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral reassignments, the converted GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For employee movement from within DoD (transfers), promotions, and other actions, the converted GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.,* promotion rules, highest previous rate rules, pay retention rules), as if the GS converted grade and rate were in effect immediately before the employee left the demonstration project.

1. Grade Setting Provisions

An employee in a pay band corresponding to a single GS grade is converted to that grade. An employee in a pay band corresponding to two or more grades is converted to one of those grades according to the following rules:

a. The employee's adjusted rate of basic pay under the demonstration project (including any locality payment or staffing supplement) is compared with step four rates on the highest applicable GS rate range. (For this purpose, a ''GS rate range'' includes a rate in (1) the GS base schedule, (2) the locality rate schedule for the locality pay area in which the position is located, or (3) the appropriate special rate schedule for the employee's occupational series, as applicable.) If the series is a two-grade interval series, odd-numbered grades are considered below GS–11.

b. If the employee's adjusted project rate equals or exceeds the applicable step four rate of the highest GS grade in the band, the employee is converted to that grade.

c. If the employee's adjusted project rate is lower than the applicable step four rate of the highest grade, the adjusted rate is compared with the step four rate of the second highest grade in the employee's pay band. If the employee's adjusted rate equals or exceeds step four rate of the second

highest grade, the employee is converted to that grade.

d. This process is repeated for each successively lower grade in the pay band until a grade is found in which the employee's adjusted project rate equals or exceeds the applicable step four rate of the grade. The employee is then converted at that grade. If the employee's adjusted rate is below the step four rate of the lowest grade in the pay band, the employee is converted to the lowest grade.

e. *Exception:* An employee will not be converted to a lower grade than the grade held by the employee immediately preceding a conversion, lateral reassignment, or transfer from within DoD into the project, unless since that time the employee has undergone a reduction in pay band or accepted a lower pay band position.

If an employee is retaining a rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her pay band.

2. Equivalent Increase Determinations

Service under the AFC STRL Mod Demo is creditable for WGI purposes upon conversion back to the GS pay system. Performance pay increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a WGI waiting period under 5 CFR 531.405(b).

3. Termination of Coverage Under the Demonstration Project Pay Plans

In the event employees' coverage under the AFC STRL Mod Demo pay plan is terminated, employees move with their position to another system applicable to AFC STRL employees. The grade of their demonstration project position in the new system will be based upon the position classification criteria of the gaining system. Employees may be eligible for pay retention under 5 CFR part 536 when converted to their positions classified under the new system, if applicable.

All personnel laws, regulations, and guidelines not waived by this plan will remain in effect. Basic employee rights will be safeguarded, and Merit System Principles will be maintained.

- S&E Level V Employees

S&E Pay Band V Employees: An employee in Level V of the S&E occupational family will convert out of the demonstration project at the GS–15 level. Procedures will be documented in IOPs to ensure that employees entering Level V understand that if they leave the demonstration project and their adjusted base pay under the demonstration project exceeds the highest applicable GS–15, step 10 rate, there is no entitlement to retained pay. However, consistent with 79 FR 43722, July 28, 2014, pay retention may be provided, under criteria established by Mod Demo IOPs, to SSTM members who are impacted by a reduction in force, work realignment, or other planned management action that would necessitate moving the incumbent to a position in a lower pay band level within the STRL. Pay retention may also be provided under such criteria when an SES or ST employee is placed in a SSTM position as a result of reduction in force or other management action. SSTM positions not entitled to pay retention above the GS–15, step 10 rate will be deemed to be the rate for GS–15, step 10. For those Level V employees paid below the adjusted GS–15, step 10 rate, the converted rates will be set in accordance with the grade setting provisions.

V. Implementation Training

Critical to the success of the demonstration project is the training developed to promote understanding of the broad concepts and finer details needed to implement and successfully execute Mod Demo. Training will be tailored to address employee concerns and to encourage comprehensive understanding of the demonstration project. Training will be required both prior to implementation and at various times during the life of the demonstration project.

A training program will begin prior to implementation and will include modules tailored for employees, supervisors, and administrative staff. Typical modules are:

(1) An overview of the demonstration project personnel system,

(2) How employees are converted into and out of the system,

(3) Career paths and pay banding,

(4) The PFP system,

(5) Defining performance objectives,

(6) How to assign weights to performance elements,

(7) Assessing performance and giving feedback,

(8) New position descriptions,

(9) Demonstration project administration and formal evaluation.

Various types of training are being considered, including videos, video-teleconference tutorials, and train-the-trainer concepts. To the extent possible, materials developed by other STRLs will be utilized when appropriate to reduce implementation cost and to maintain consistency in application of similar procedures across laboratories.

VI. Project Maintenance and Changes

Many aspects of a Demonstration Project are experimental. Minor modifications to Mod Demo may be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. Flexibilities published in this FRN shall be available for use by all STRLs, if they wish to adopt them.

VII. Evaluation Plan

A. Overview

Title 5 U.S.C. chapter 47 requires that an evaluation be performed to measure the effectiveness of the demonstration project and its impact on improving public management. A comprehensive evaluation plan for the entire STRL demonstration program, originally covering 24 DoD laboratories, was developed by a joint OPM/DoD Evaluation Committee in 1995. This plan was submitted to the then-Office of Defense Research & Engineering and was subsequently approved. The main purpose of the evaluation is to determine whether the waivers granted result in a more effective personnel system and improvements in ultimate outcomes (*i.e.,* organizational effectiveness, mission accomplishment, and customer satisfaction). That plan, while useful, is dated and does not fully afford the laboratories the ability to evaluate all aspects of the demonstration project in a way that fully facilitates assessment and effective modification based on actionable data. Therefore, in conducting the evaluation, AFC will ensure USD(R&E) evaluation requirements are met in addition to applying knowledge gained from other DoD laboratories and their evaluations to ensure a timely, useful evaluation of the demonstration project.

B. Evaluation Model

An evaluation model for the AFC STRL Mod Demo will identify elements critical to an evaluation of the effectiveness of the flexibilities. However, the main focus of the evaluation will be on intermediate outcomes, *i.e.,* the results of specific personnel system changes which are expected to improve human resources management. The ultimate outcomes are defined as improved organizational effectiveness, mission accomplishment, and AFC customer satisfaction.

C. Method of Data Collection

Data from a variety of different sources will be used in the evaluation. Information from existing management information systems supplemented with

perceptual survey data from employees will be used to assess variables related to effectiveness. Multiple methods provide more than one perspective on how the AFC STRL Mod Demo is working. Information gathered through one method will be used to validate information gathered through another. Confidence in the findings will increase as they are substantiated by the different collection methods. The following types of qualitative and/or quantitative data may be collected as part of the evaluation: (1) Workforce data; (2) personnel office data; (3) employee attitudes and feedback using surveys, structured interviews, and focus groups; (4) local activity histories; and/or, (5) core measures of laboratory effectiveness.

VIII. Demonstration Project Costs

A. Cost Discipline

An objective of the demonstration project is to ensure in-house cost discipline. A baseline will be established at the start of the project and labor expenditures will be tracked yearly. Implementation costs (including project development, automation costs, step buy-in costs, and evaluation costs) are considered one-time costs and will not be included in the cost discipline. The Personnel Management Board will track personnel cost changes and recommend adjustments if required to achieve the objective of cost discipline.

B. Developmental Costs

Costs associated with the development of the personnel demonstration project include software automation, training, and project evaluation. All funding will be provided through the organization's budget. The projected annual expenses are summarized in Figure 7. Project evaluation costs are not expected to continue beyond the first five years unless the results warrant further evaluation. Additional cost may be incurred as a part of the implementation and operation of the project.

Figure 7 - Projected Developmental Costs (In thousands of dollars)

	FY23	FY24	FY25	FY26	FY27
Automation	250K	171K	171K	171K	171K
Project Evaluation	0K	0K	10K	10K	10K
Total	250K	171K	181K	181K	181K

IX. Required Waivers to Laws and Regulations

The following waivers and adaptations of certain 5 U.S.C. and 5 CFR provisions are required only to the extent that these statutory provisions limit or are inconsistent with the actions contemplated under this demonstration project. Nothing in this plan is intended to preclude the demonstration project from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this demonstration project.

A. Waivers to Title 5, United States Code

Chapter 5, section 552a: Records. Waived to the extent required to clarify that volunteers under the Voluntary Emeritus and Expert Program are considered employees of the Federal government for purposes of this section.

Chapter 31, section 3104: Employment of Specially Qualified Scientific and Professional Personnel. Waived to allow SSTM authority.

Chapter 31, section 3132: The Senior Executive Service: Definitions and exclusions. Waived as necessary to allow for the Level V SSTM authority of the S&E pay band.

Chapter 33, Subchapter I: Examination, Certification, and Appointment. Waived except for sections 3302, 3321, and 3328 to the extent necessary to allow direct hire authority for qualified candidates whose positions involve 51 percent or more of time spent in direct support of STRL activities, are identified by AFC STRL organizations as hard to fill, have a history of high turnover, or require unique, laboratory-related skillsets; and to the extent necessary to allow employees appointed on flexible-length and renewable-term appointments to apply for Federal positions as status candidates.

Chapter 33, section 3308: Competitive Service; Examinations; Educational Requirements Prohibited; Exceptions. Waived to the extent necessary to allow the qualification determination as described in 85 FR 78829 and this FRN.

Chapter 33, section 3317(a): Competitive Service; certification from registers. Waived insofar as ''rule of three'' is eliminated under the demonstration projects.

Chapter 33, section 3318(a): Competitive Service, selection from certificate. Waived to the extent necessary to eliminate the requirement for selection using the ''Rule of Three'' and other limitations on recruitment list.

Chapter 33, section 3321: Competitive Service; Probationary Period. This section is waived only to the extent necessary to replace ''grade'' with ''pay band'' and to allow for probationary periods of three years.

Chapter 33, section 3324–3325: Appointments to Scientific and Professional Positions. Waived in its entirety to fully allow for positions above GS–15 and allow SSTMs.

Chapter 33, section 3341: Waived in its entirety, to extend the time limits for details.

Chapter 35, section 3522: Agency VSIP Plans; Approval. Waived to remove the requirement to submit a plan to OPM prior to obligating any resources for voluntary separation incentive payments.

Chapter 35, section 3523(b)(3): Related to voluntary separation incentive payments. Waived to the extent necessary to utilize the authorities authorized in this FRN.

Chapter 41, section 4107(a)(1), (2), (b)(1), and *(3):* Pay for Degrees. Waived to the extent required to allow AFC to pay for all courses related to a degree program approved by the AFC STRL organizations.

Chapter 41, section 4108(a)–(c): Employee agreements; service after training. Waived to the extent necessary to require the employee to continue in the service of AFC for the period of the required service and to the extent necessary to permit the AFC STRL to waive in whole or in part a right of recovery.

Chapter 43, section 4301–4305: Related to performance appraisal. These sections are waived to the extent necessary to allow provisions of the performance management system as described in this FRN.

Chapter 51, section 5101–5112: Classification. Waived as necessary to allow for the demonstration project pay banding system.

Chapter 53, section 5301–5307: Related to Pay Comparability System, Special Pay Authority, and General Schedule Pay Rates. Waived to the extent necessary to allow demonstration project employees, including SSTM employees, to be treated as GS employees, and to allow base rates of pay under the demonstration project to be treated as scheduled rates of pay. SSTM pay will not exceed EX–IV and locality adjusted SSTM rates will not exceed E–III. Waived in its entirety to allow for staffing supplements.

Chapter 53, section 5331–5336: General Schedule Pay Rates. Waived in its entirety to allow for the demonstration project's pay banding system and pay provisions.

Chapter 53, section 5361–5366: Grade and pay retention. Waived to the extent necessary to allow pay retention provisions described in this FRN and to allow SSTMs to receive pay retention as described in 79 FR 43722.

Chapter 53, section 5379(a)(1)(A) and *(b)(2):* Student Loan Repayment. Waived to the extent necessary to define agency as STRL and to allow provisions of the student loan repayment authority as described in this FRN.

Chapter 55, section 5545(d): Hazardous duty differential. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Level V of the S&E pay band.

Chapter 57, section 5753–5755: Recruitment and relocation, bonuses, retention allowances, and supervisory differentials. Waived to the extent necessary to allow: (a) employees and positions under the demonstration project to be treated as employees and positions under the GS, (b) employees in Level V of the S&E pay band to be treated as ST and/or GS employees as appropriate, (c) previsions of the retention counteroffer and incentives as described in this FRN, and (d) to allow SSTMs to receive supervisory pay differentials as described in 79 FR 43722.

Chapter 75, section 7501(1), 7511(a)(1)(A)(ii), and *7511(a)(1)(C)(ii):* Adverse actions—definitions. Waived to the extent necessary to allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference. Waived to the extent necessary to allow for two-year supervisory probationary periods and to permit re-assignment of supervisors during the probationary period without adverse action procedures for those employees serving in a supervisory probationary period.

Chapter 75, section 7512(3): Adverse actions. Waived to the extent necessary to replace ''grade'' with ''pay band.''

Chapter 75, section 7512(4): Adverse actions. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) reductions in pay due to the removal of a supervisory or team leader pay adjustment/differential upon voluntary movement to a non-supervisory or non-team leader position or (2) decreases in the amount of a supervisory or team leader pay adjustment/differential during the annual review process.

Chapter 99, section 9902(f): Related to Voluntary Separation Incentive Payments. Waived to the extent necessary to utilize the authorities in this FRN.

B. Waivers to Title 5, Code of Federal Regulations

Part 212, section 212.301: Competitive Status Defined. Waived to the extent necessary to allow individuals on flexible-length and renewable term appointments to be considered status candidates as defined in this FRN.

Part 300–330: Employment (General). Other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in 79 FR 43722, 82 FR 29280, and 85 FR 78829; direct hire authority for qualified candidates whose positions involve 51 percent or more of time spent in direct support of STRL activities, are identified by the STRLs as hard to fill, have a history of high turnover, or require unique, laboratory-related skillsets.

Part 300, section 300.601–300.605: Time-in-Grade Restrictions. Waived to eliminate time-in-grade restrictions in the demonstration project.

Part 315, section 315.201(b): Waived to the extent necessary to allow Flexible Length and Renewable Term Technical Appointments to be considered non-temporary employment for the purposes of determining creditable service toward career tenure.

Part 315, section 315.801(a), 315.801(b)(1), (c), and *(e),* and *315.802(a)* and *(b):* Probationary period and length of probationary period. Waived to the extent necessary to (1) allow for up to a three-year probationary period and to permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference and (2) to the extent necessary to allow for supervisory probationary periods to permit reassignment during the supervisory probationary period without using adverse action procedures for employees serving a probationary period.

Part 315, section 315.803(b): Agency Action during probationary period (general). Waived to allow for termination during an extended probationary period without using adverse action procedures under subpart D of part 752, 5 U.S.C.

Part 315, section 315.804: Termination of probationers for unsatisfactory performance or conduct. Waived to the extent necessary to reduce a supervisor who fails to successfully complete a supervisory probationary period to a lower grade/pay band.

Part 315, section 315.805: Termination of Probationers for Conditions Arising before Appointment. Waived to the extent necessary to permit termination during the extended probationary period without using adverse procedures.

Part 315, section 315.901–315.909: Statutory requirement. Waived to the extent necessary to

(1) Replace ''grade'' with ''pay band;''

(2) Establish a two-year supervisory probationary period; and

(3) Allow the movement of a newly hired supervisor who fails to meet requirements to a lower grade/pay band.

Part 316, section 316.301, 316.303, and *316.304:* Term employment. Waived to the extent necessary to allow modified term appointments and FLRTTA as described in this FRN. Waived to the extent necessary to allow Flexible Length and Renewable Term Technical Appointments to count toward competitive status. Waived to allow a two-year trial period under the Flexible Length and Renewable Term Technical Appointment.

Part 330, section 330.103–330.105: Requirement for Vacancy Announcements. Waived to the extent necessary to allow an STRL to determine information to be published in a USAJobs flyer.

Part 332 and 335: Related to competitive examination and agency promotion programs. Waived to the extent necessary to:

(1) Allow employees appointed on a Flexible Length and Renewable Term Technical Appointment to apply for federal positions as status candidates;

(2) Allow no rating and ranking when there are 15 or fewer qualified applicants and no preference eligible candidates;

(3) Allow the hiring and appointment authorities as described in this FRN;

(4) Eliminate the ''rule of three'' requirement or other procedures to limit recruitment lists; and

(5) To extend the length of details and temporary promotions without requiring competitive procedures as described in 85 FR 78829 and this FRN.

Part 335, section 335.103: Agency Promotion Programs. Waived to the extent necessary to extend the length of details and temporary promotions without requiring competitive procedures or numerous short-term renewals.

Part 337, section 337.101(a): Rating applicants. Waived to the extent necessary to allow referral without rating when there are 15 or fewer qualified candidates and no qualified preference eligible candidates.

Part 338, section 338.301: Competitive Service Appointment. Waived to the extent necessary to allow demonstrated exceptional experience or a combination of experience and education in lieu of meeting OPM individual occupational qualification requirements for S&E positions as described in 85 FR 78829 and this FRN.

Part 340, Subparts A–C: Other than full-time career employment. These subparts are waived to the extent necessary to allow a Voluntary Emeritus Corps and Voluntary Expert Program.

Part 351, Subparts B, D, E, F, and *G:* Waived to the extent necessary to allow the provisions of RIF.

Part 359, section 359.705: Related to SES Pay. Waived to allow demonstration project rules governing pay retention to apply to a former SES or ST placed on an SSTM position or Level IV position.

Part 410, section 410.308(a–e): Training to obtain an academic degree. Waived to the extent necessary to allow provisions described in this FRN.

Part 410, section 410.309: Agreements to Continue in Service. Waived to the extent necessary to allow the AFC STRL organizations to determine requirements related to continued service agreements, including employees under the Student Educational Employment Program who have received tuition assistance.

Part 430, Subpart B: Performance appraisal for GS, prevailing rate, and certain other employees. Waived to the extent necessary to be consistent with the demonstration project's pay-for-performance system.

Part 432, section 432.102–432.106: Performance based reduction in grade and removal actions. Waived to the extent necessary to allow provisions described in the FRN.

Part 511: Classification under the general schedule. Waived to the extent necessary to allow classification provisions outlined in this FR, including the list of issues that are neither appealable nor reviewable, the assignment of series under the project plan to appropriate career paths; and to allow appeals to be decided by the AFC EDCG. If the employee is not satisfied with the AFC EDCG's response to the appeal, he/she may then appeal to the DoD appellate level.

Part 530, Subpart C: Special Rate Schedules for Recruitment and Retention. Waived in its entirety to allow for staffing supplements, if applicable.

Part 531, Subparts B, D, and *E:* Determining the Rate of Basic Pay. Waived to the extent necessary to allow for pay setting and pay-for-performance under the provisions of the demonstration project. Within-Grade Increases and Quality Step Increases. Waived in its entirety.

Part 531, Subpart F: Locality-based comparability payments. Waived to the extent necessary to allow (1) demonstration project employees, except employees in Level V of the S&E pay band, to be treated as GS employees; and (2) base rates of pay under the demonstration project to be treated as scheduled annual rates of pay.

Part 531, section 531.604: Determining an Employee's Locality Rate. Waived to the extent required to allow for routine or permanent telework employees to receive the higher of locality rates based on either their official worksite as documented on the SF 50 or the official duty site for AFC where the employee is employed from.

Part 536: Grade and pay retention. Waived to the extent necessary to

(1) Replace ''grade'' with ''pay band;''

(2) Provide that pay retention provisions do not apply to conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and to reductions in pay due solely to the removal of a supervisory pay adjustment upon voluntarily leaving a supervisory position;

(3) Allow demonstration project employees to be treated as GS employees;

(4) Provide that pay retention provisions do not apply to movements to a lower pay band as a result of not receiving the general increase due to an annual performance rating of record of ''Level 1;''

(5) Provide that an employee on pay retention whose rating of record is ''Level 1'' is not entitled to 50 percent of the amount of the increase in the maximum rate of base pay payable for the pay band of the employee's position;

(6) Ensure that for employees of Pay Band V in the S&E career path, pay retention provisions are modified so that no rate established under these provisions may exceed the rate of base pay for GS–15, step 10 (*i.e.,* there is no entitlement to retained rate); and

(7) Provide that pay retention does not apply to reduction in base pay due solely to the reallocation of demonstration project pay rates in the implementation of a staffing supplement. This waiver applies to ST employees only if they move to a GS-equivalent position within the demonstration project under conditions that trigger entitlement to pay retention.

Part 536, section 536.306(a): Limitation on retained rates. Waived to the extent necessary to allow SSTMs to receive pay retention as described in 79 FR 43727.

Part 537: Repayment of Student Loans. Waived to the extent necessary to define agency as STRL and to allow provisions of the student loan repayment authority.

Part 550, section 550.902: Definitions. Waived to the extent necessary to allow demonstration project employees to be treated as GS employees. This waiver does not apply to employees in Level V of the S&E pay band.

Part 575, Subparts A–D: Recruitment incentives, relocation incentives, retention incentives, and supervisory differentials. Waived to the extent necessary to allow

(1) Employees and positions under the demonstration project covered by pay banding to be treated as employees and positions under the GS system,

(2) SSTMs to receive supervisory pay differentials as described in 73 FR 43727, and

(3) The Director to pay an offer up to 50 percent of basic pay of either a base pay and/or a cash payment to retain quality employees; and to the extent necessary to allow SSTMs to receive supervisory pay differentials. Criteria for retention determination and preparing written service agreements will be as prescribed in 5 U.S.C. 5754 and as waived herein.

Part 591, Subpart B: Cost-of-Living Allowances and Post Differential—Non-

Foreign Areas. Waived to the extent necessary to allow demonstration project employees covered by broad banding to be treated as employees under the GS.

Part 752, section 752.101, 752.201, 752.301, and *752.401:* Principal statutory requirements and coverage. Waived to the extent necessary to

(1) Allow for up to a three-year probationary period;

(2) Permit termination during the extended probationary period without using adverse action procedures for those employees serving a probationary period under an initial appointment except for those with veterans' preference;

(3) Allow for supervisory probationary periods and to permit reassignment during the supervisory probationary period without use of adverse action procedures for those employees serving a probationary period under a supervisory probationary period;

(4) Replace ''grade'' with ''pay band;'' and

(5) Provide that a reduction in pay band is not an adverse action if it results from the employee's rate of base pay being exceeded by the minimum rate of base pay for that pay band. Waived to the extent necessary to provide that adverse action provisions do not apply to (1) conversions from GS special rates to demonstration project pay, as long as total pay is not reduced, and (2) reductions in pay due to the removal of a supervisory or team leader pay adjustment/differential upon voluntary movement to a non-supervisory or non-team leader position or decreases in the amount of a supervisory or team leader pay adjustment based on the annual review.

Part 1400, section 1400.202(a)(2): Waivers and Exceptions to Pre-appointment Investigative Requirements.

(1) To the extent necessary, waive the pre-employment investigative requirements thereby enabling STRLs to make a final job offer and establish an EOD prior to a favorable eligibility determination at the Top Secret/SCI level.

(2) For positions designated as Top Secret/Special-Sensitive and Critical-Sensitive, apply the same waiver requirements for pre-appointment investigations IAW 5 CFR 1400.202(a)(2)(ii) for Critical-Sensitive positions with the following changes:

(a) An emergency or a national interest necessitating a pre-employment investigation waiver would include an STRL's inability to meet mission requirements.

(b) An agency or agency head would be defined as an STRL to allow for the provisions regarding security eligibility as described in 85 FR 78829.

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Appendix A. Occupational Series by Career Path

[The series in S&E are from OPM's definition of Scientists and Engineers in the Introduction to Classification Standards, https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/positionclassificationintro.pdf. The series in Support are one-grade interval series. The B&T are the rest.]

Series marked with an * are those in which AFC STRL currently has employees. Additional occupational series may be added as needed to support mission requirements.

Occupational Series in the Science & Engineering Career Path (DB)		
0170 History*	0638 Recreation/Creative Arts Therapist	0896 Industrial Engineer*
0180 Psychology*	0639 Educational Therapist	1220 Patent Administrator
0401 General Biological Scientist*	0644 Medical Technologist	1221 Patent Adviser
0403 Microbiologist	0660 Pharmacist	1223 Patent Classifier
0405 Pharmacologist	0662 Optometrist	1224 Patent Examiner
0408 Ecologist	0665 Speech Pathologist and Audiologist	1226 Design Patent Examiner
0410 Zoologist	0668 Podiatrist	1301 General Physical Scientist*
0413 Physiologist*	0680 Dental Officer	1306 Health Physicist*
0414 Entomologist	0690 Industrial Hygienist*	1310 Physicist*
0415 Toxicologist	0696 Consumer Safety Officer	1313 Geophysicist
0430 Botanist	0701 Veterinarian	1315 Hydrologist
0434 Plant Pathologist	0801 General Engineer*	1320 Chemist*
0435 Plant Physiologist	0803 Safety Engineer*	1321 Metallurgist
0437 Horticulturalist	0804 Fire Protection Engineer	1330 Astronomer
0440 Geneticist	0806 Materials Engineer*	1340 Meteorologist
0454 Rangeland Manager	0807 Landscape Architect	1350 Geologist

Occupational Series in the Science & Engineering Career Path (DB)		
0457 Soil Conservationist	0808 Architect	1360 Oceanographer
0460 Forester	0810 Civil Engineer	1370 Cartographer
0470 Soil Scientist	0819 Environmental Engineer*	1372 Geodesist
0471 Agronomist	0830 Mechanical Engineer*	1373 Land Surveyor
0480 Fish and Wildlife Administrator	0840 Nuclear Engineer	1380 Forest Products Technologist
0482 Fish Biologist	0850 Electrical Engineer*	1382 Food Technologist
0485 Wildlife Refuge Manager	0854 Computer Engineer*	1384 Textile Technologist
0486 Wildlife Biologist	0855 Electronics Engineer*	1386 Photographic Technologist
0487 Animal Scientist	0858 Biomedical Engineer*	1501 General Mathematician*
0601 General Health Scientist	0861 Aerospace Engineer*	1510 Actuary
0602 Medical Officer	0871 Naval Architect	1515 Operations Research Analyst*
0610 Nurse*	0880 Mining Engineer	1520 Mathematician*
0630 Dietitian and Nutritionist	0881 Petroleum Engineer	1529 Mathematical Statistician*
0631 Occupational Therapist	0890 Agricultural Engineer	1530 Statistician*
0633 Physical Therapist	0892 Ceramic Engineer	1550 Computer Scientist*
0635 Kinesiotherapist	0893 Chemical Engineer*	1560 Data Scientist*
0637 Manual Arts Therapist	0894 Welding Engineer	2210 Information Technology - See Section III.B.1.*

Occupational Series in the Business & Technical Career Path (DE)		
0018 Safety and Occupational Health Specialist*	0671 Health System Specialist*	1176 Building Manager*
0060 Chaplain	0685 Public Health Specialist	1210 Copyright Specialist
0080 Security Administrator*	0802 Engineering Technical*	1222 Patent Attorney*
0142 Workforce Development	0856 Electronics Technical*	1311 Physical Science Technician*
0201 Human Resources Specialist*	0901 General Legal*	1410 Librarian*
0260 Equal Employment Specialist*	0905 General Attorney*	1412 Technical Information Services Specialist*
0301 Miscellaneous Admin and Program*	0950 Paralegal Specialist*	1521 Mathematics Technician
0306 Government Information Specialist*	1001 General Arts and Information*	1640 Facility Manager*
0340 Program Manager*	1035 Public Affairs*	1670 Equipment Services Specialist*
0341 Administrative Officer*	1040 Language Specialist	1701 General Education and Training Specialist*
0343 Management and Program Analyst*	1060 Photographer*	1712 Training Instructor
0346 Logistics Manager*	1071 Audiovisual Production Specialist	1801 General Inspector and Investigator*
0391 Telecommunications*	1082 Writer/Editor	1910 Quality Assurance Specialist
0501 Financial Specialist*	1083 Technical Writer*	2001 Supply Specialist*
0505 Financial Manager*	1084 Visual Information Specialist	2003 Supply Program Manager*
0510 Accountant*	1101 General Business and Industry*	2101 Transportation Specialist*
0511 Auditor*	1102 Contracting Specialist*	2130 Traffic Management Specialist
0560 Budget Analyst*	1103 Industrial Property Manager	2150 Transportation Operations Specialist
0603 Physician's Assistant	1104 Property Disposal Specialist	2152 Air Traffic Controller*
0669 Medical Record Administrator	1170 Realty Specialist*	2210 Information Technology Specialist*

Occupational Series in the Support Career Path (DK)		
0019 Safety Technician	0309 Correspondence Clerk	0361 Equal Opportunity Assistant
0085 Security Guard	0318 Secretary*	0404 Biological Science Technician
0086 Security Clerk*	0319 Closed Microphone Reporter*	0986 Legal Assistant*
0181 Psychology Aid and Technician*	0322 Clerk Typist	1105 Purchasing Agent
0186 Social Services Aid and Assistant	0326 Office Automation Clerk*	2005 Supply Technician*
0203 Human Resources Assistant	0335 Computer Clerk and Assistant*	
0303 Miscellaneous Clerk and Assistant*	0342 Support Services Administrator*	
0304 Information Receptionist	0344 Management Clerk*	
0305 Mail and File Clerk*	0356 Data Transcriber	

Appendix B. List of Local Unions.

ORG	BUS	Bargaining Unit Description	Location
FCC	AR1914	AFGE_COMBAT READ CTR, AVIATION WARFIGHTING CTR, ET AL FORT RUCKER, AL AFGE 1815	FORT RUCKER
FCC	AR2578	AFGE_US ARMY MVR CTR OF EXC, IMCOM, MICC, NETC, SEC COOP, BENNING, GA AFGE 54	FORT BENNING
FCC	AR2592	AFGE_US ARMY SIG CTR DEEAMC CL LAB, USACC, DENTAC, FORT GORDON, GA AFGE 2017	FORT GORDON
FCC	AR2844	AFGE_CAC FT LEAVENWORH, DGSC, MEDCOM, FIREFIGHTERS, AARTS, KS AFGE 738	FORT LEAVENWORTH
TRAC	AR2844	AFGE_CAC FT LEAVENWORH, DGSC, MEDCOM, FIREFIGHTERS, AARTS, KS AFGE 738	FORT LEAVENWORTH

ORG	BUS	Bargaining Unit Description	Location
DEVCOM HQ	AR2927	NFFE_NFFE/178	ABERDEEN PROVING GROUND
FCC	AR3016	AFGE_ARMY MANEUVER SPT CTR FT LEONARD WOOD MED AND DENT NONPROF AFGE LOCAL 908	FORT LEONARD WOOD
FCC	AR3017	AFGE_ARMY MANUEVER SPT CTR FT LEONARDWOOD AFGE LOCAL 908	FORT LEONARD WOOD
DAC	AR3080	NFFE_NFFE/2049 - (AR3080)	WHITE SANDS, NM
FCC	AR3138	NFFE_NFFE/273 - (AR3138)	FORT SILL
FCC	AR3249	LIUNA_MED CMD, NEC, IMCOM FT SAM HOUSTON LIUNA LOCAL 28	FORT SAM HOUSTON
FCC	AR3351	NAGE_HQ TRADOC; USACIMT; USMICC FDO; USAFC FCC AT FT EUSTIS VA & NAGE/SEIU	FORT EUSTIS
JMC (incl JTE)	AR3351	NAGE_HQ TRADOC; USACIMT; USMICC FDO; USAFC FCC AT FT EUSTIS VA & NAGE/SEIU	FORT EUSTIS
TRAC	AR3626	AFGE_AFGE/1178 - (AR3626)	FORT LEE

ORG	BUS	Bargaining Unit Description	Location
FCC	AR3809	AFGE_USA COMB ARMS SPT CMD, SUSTMNT CTR OF EXC, FT LEE, VA; AFGE 1178 (PROF)	FORT LEE
FCC	AR3810	AFGE_USA COMB ARMS SPT CMD, SUSTMNT CTR OF EXC, FT LEE, VA; AFGE 1178 (NONPROF)	FORT LEE

Dated: February 16, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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