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Monday, March 4, 2024

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0453; Project Identifier MCAI–2024–00068–R; Amendment 39–22689; AD 2024–04–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH (AHD) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T2, EC135T3, and EC635T2+ helicopters. This AD was prompted by a report of a separated tail rotor (T/R) blade due to a crack which was caused by intergranular corrosion. This AD requires repetitively inspecting certain part-numbered T/R blades for a crack and, depending on the results, removing any cracked T/R blade from service. This AD also prohibits installing certain T/R blades on any helicopter unless certain requirements are met. These actions are specified in a European Union Aviation Safety Agency (EASA) emergency 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 19, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 19, 2024.

The FAA must receive comments on this AD by April 18, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0453; 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 EASA emergency AD, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For EASA material identified in this final rule, contact Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*
- You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. The EASA material is also available at *regulations.gov* under Docket No. FAA–2024–0453.

Other Related Service Information: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; phone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *airbus.com/en/products-services/helicopters/hcare-services/airbusworld.* You may also view this service information at the FAA contact information under *Material Incorporated by Reference* above.

FOR FURTHER INFORMATION CONTACT: Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *william.mccully@faa.gov.*

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0453; Project Identifier MCAI–2024–00068–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *william.mccully@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD

2024–0028–E, dated January 25, 2024 (EASA AD 2024–0028–E), to correct an unsafe condition on Airbus Helicopters Deutschland GmbH Model EC135 P1, EC135 P2, EC135 P2+, EC135 P3, EC135 T1, EC135 T2, EC135 T2+, EC135 T3, EC635 P2+, EC635 P3, EC635 T1, EC635 T2+, and EC635 T3 helicopters.

This AD was prompted by a report of increased vibrations of the T/R which was the result of a separated T/R blade due to a crack on the T/R assembly. Further investigation determined that the affected parts can be subject to intergranular corrosion, possibly leading to cracks. The FAA is issuing this AD to detect and address cracks in the affected T/R blades. The unsafe condition, if not addressed, could result in separation of a T/R blade assembly and subsequent reduced control of the helicopter.

You may examine the EASA AD in the AD docket at *regulations.gov* under Docket No. FAA–2024–0453.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0028–E, which specifies procedures for repetitively inspecting affected T/R blades for a crack and if a crack is detected, replacing the affected T/R blade with a serviceable part as defined in EASA AD 2024–0028–E. EASA AD 2024–0028–E also specifies that installing an affected part is allowed provided that it is a serviceable part as defined in EASA AD 2024–0028–E. Lastly, EASA AD 2024–0028–E also specifies that replacing an affected T/R blade assembly with an eligible T/R blade assembly that is not an affected part constitutes terminating action for certain repetitive inspections.

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

Other Related Service Information

The FAA also reviewed Airbus Helicopters Emergency Alert Service Bulletin No. EC135–64–11–0001, Issue 001, dated January 25, 2024. This service information specifies procedures for inspecting the T/R blade for any crack and replacing the T/R blade if necessary. This service information also specifies sending an affected T/R blade along with certain information to Airbus Helicopters.

FAA's Determination

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 EASA emergency AD referenced above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type designs.

AD Requirements

This AD requires accomplishing the actions specified in EASA AD 2024–0028–E, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this AD and the EASA AD.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2024–0028–E is incorporated by reference in this FAA final rule. This AD, therefore, requires compliance with EASA AD 2024–0028–E in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2024–0028–E does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2024–0028–E. Service information referenced in EASA AD 2024–0028–E for compliance will be available at *regulations.gov* under Docket No. FAA–2024–0453 after this final rule is published.

Differences Between This AD and the EASA AD

EASA AD 2024–0028–E applies to Airbus Helicopters Model EC635 P2+, EC635 P3, EC635 T1, and EC635 T3 helicopters, whereas this AD does not because these models are not FAA type-certificated.

The service information referenced in EASA AD 2024–0028–E specifies inspecting for cracks by performing either a dye-penetrant inspection, eddy current inspection, or fluorescent penetrant inspection, whereas this AD does not. Instead, this AD requires inspecting for cracks using a fluorescent penetrant inspection or eddy current inspection, performed by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

Where the service information referenced in EASA AD 2024–0028–E specifies reporting certain information and returning an unserviceable part to Airbus Helicopter, this AD does not require these actions.

Interim Action

The FAA considers that this AD is an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Justification for Immediate Adoption and Determination of the Effective Date

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*) authorizes agencies to dispense with notice and comment procedures for rules when the agency, for ''good cause,'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without providing notice and seeking comment prior to issuance. Further, section 553(d) of the APA authorizes agencies to make rules effective in less than thirty days, upon a finding of good cause.

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because each T/R blade is critical to the control of a helicopter and the FAA also has no information pertaining to how quickly a cracked T/R blade may propagate to failure. Additionally, affected T/R blades are installed on high usage helicopters, which could increase the likeliness of occurrence of a failure. In light of this, the initial action required by this AD must be accomplished before further flight or within 10 hours time-in-service for some helicopters, which is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in

less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (RFA) do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without prior notice and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 363 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting an affected T/R blade assembly for any crack takes up to 3 work-hours and parts cost approximately $50 for an estimated cost of up to $3,050 per helicopter (there may be up to 10 affected T/R blades per helicopter) and up to $1,107,150 for the U.S. fleet, per inspection cycle. Replacing a T/R blade takes approximately 3 work-hours and parts cost approximately $4,900 for an estimated cost of $5,155 per T/R blade.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–04–10 Airbus Helicopters Deutschland GmbH (AHD): Amendment 39–22689; Docket No. FAA–2024–0453; Project Identifier MCAI–2024–00068–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 19, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH (AHD) Model EC135P1, EC135P2, EC135P2+, EC135P3, EC135T1, EC135T2, EC135T2+, EC135T2, EC135T3, and EC635T2+ helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6410, Tail Rotor Blades.

(e) Unsafe Condition

This AD was prompted by a report of a separated tail rotor (T/R) blade due to a crack which was caused by intergranular corrosion. The FAA is issuing this AD to detect and address cracks in affected T/R blades. The unsafe condition, if not addressed, could result in separation of a T/R blade assembly and subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) Emergency AD 2024–0028–E, dated January 25, 2024 (EASA AD 2024–0028–E).

(h) Exceptions to EASA AD 2024–0028–E

(1) Where EASA AD 2024–0028–E states ''flight hours (FH)'' and ''FH;'' for this AD, replace that text with ''hours time-in-service (TIS).''

(2) Where EASA AD 2024–0028–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2024–0028–E states ''Before an affected part exceeds 685 FH since first installation on a helicopter, or within 10 FH after the effective date of this AD, whichever occurs later;'' for this AD, replace that text with ''Before an affected part, as defined in EASA AD 2024–0028–E, accumulates 685 total hours TIS, or within 10 hours TIS after the effective date of this AD, whichever occurs later, and if the total hours TIS accumulated on an affected part, as defined in EASA AD 2024–0028–E, is unknown, before further flight after the effective date of this AD.''

(4) Where paragraph (2) of EASA AD 2024–0028–E states ''following the installation of an affected part, having accumulated 685 FH or more since first installation on a helicopter, inspect that affected part in accordance with the instructions of the ASB within the interval as defined in Table 2 of this AD, as applicable. Thereafter, that affected part must be inspected as required by paragraph (1) of this AD;'' for this AD, replace that text with ''do not install an affected part, as defined in EASA AD 2024–0028–E, unless that affected part has been inspected in accordance with the instructions of the ASB as specified in paragraph (h)(4)(i) or (ii) of this AD, as applicable.

(i) For an affected part that has accumulated 685 or more total hours TIS since first installation on any helicopter, before further flight after the effective date of this AD, inspect that affected part unless already done within the interval as defined in Table 2 of EASA AD 2024–0028–E, as applicable, and thereafter inspect that affected part within the interval as defined in Table 1 of EASA AD 2024–0028–E, as applicable.

(ii) For an affected part that has accumulated an unknown number of total hours TIS, before further flight after the effective date of this AD, inspect that affected part and thereafter inspect that affected part within the interval as defined in Table 1 of EASA AD 2024–0028–E, as applicable.''

(5) Instead of complying with paragraph (3) of EASA AD 2024–0028–E, for this AD, comply with the following: ''As a result of an inspection required by paragraphs (1) or (2) of EASA AD 2024–0028–E, if there is a crack, before further flight, remove the affected part, as defined in EASA AD 2024–0028–E, from service and replace it with a serviceable part, as defined in EASA AD 2024–0028–E, by following the instructions of the ASB.''

(6) Where the service information referenced in EASA AD 2024–0028–E

specifies ''Examine the TRB (1) within the AFFECTED AREA (2) for cracks with one of the following methods;'' for this AD, replace that text with ''Examine the TRB (1) within the AFFECTED AREA (2) for any crack by following Method C or Method D.''

Note 1 to paragraph (h)(6): This note applies to paragraphs (h)(6) and (7) of this AD. Advisory Circular 65–31B contains examples of FAA-acceptable Level II and Level III qualification standards criteria for inspection personnel doing nondestructive test inspections.

(7) Where the service information referenced in EASA AD 2024–0028–E specifies performing an eddy current inspection or a fluorescent penetrant inspection (FPI), this AD requires an eddy current inspection or FPI performed by a Level II or Level III inspector certified in the FAA-acceptable standards for nondestructive inspection personnel.

(8) This AD does not adopt the ''Remarks'' section of EASA AD 2024–0028–E.

(i) No Reporting or Return of Parts

Although the service information referenced in EASA AD 2024–0028–E specifies to submit certain information and send removed parts to the manufacturer, this AD does not include those actions.

(j) 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 (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

For more information about this AD, contact Dan McCully, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (303) 342–1080; email *william.mccully@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2024–0028–E, dated January 25, 2024.

(ii) [Reserved]

(3) For EASA AD 2024–0028–E, contact Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find the EASA material on the EASA website *ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Parkway, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 23, 2024.

Caitlin Locke,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2024–04589 Filed 2–29–24; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2099; Airspace Docket No. 23–AWP–31]

RIN 2120–AA66

Modification of Class D Airspace & Establishment of Class E Airspace; Camp Pohakuloa, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace and establishes Class E airspace extending upward from 700 feet above the surface at Bradshaw Army Airfield, Camp Pohakuloa, HI. Additionally, this action updates the airport's Class D airspace legal description. These actions support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

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

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

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class D airspace and establishes Class E airspace to support IFR and VFR operations at Bradshaw Army Airfield, HI.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–2099 in the **Federal Register** (88 FR 82282; November 24, 2023), proposing to modify Class D airspace and establish Class E airspace at Bradshaw Army Airfield, HI. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E5 airspace designations are published in paragraphs 5000 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by modifying the Class D airspace and establishing Class E airspace extending upward from 700 feet above the surface at Bradshaw Army Airfield, Camp Pohakuloa, HI.

A northwest extension to the Class D lateral boundary is added to appropriately contain the point at which an arriving aircraft is expected to descend to below 1,000 feet above the surface when conducting the Area Navigation (Global Positioning System) Runway (RWY) 9 approach.

A southwest extension to the Class D lateral boundary is added to appropriately contain aircraft from the surface until reaching the next adjacent airspace when departing on the RWY 9 obstacle departure procedure.

Class E airspace extending upward from 700 feet above the surface is established within a 6-mile radius of the airport and within a westward extension to that radius to appropriately contain IFR operations below 1,500 feet above the surface and departing IFR operations until they reach 1,200 feet above the surface at the airport. This Class E airspace excludes any portion that overlaps Restricted Area-3103 when it is active.

Lastly, the Class D airspace legal description is modified. The city name on line one of the Class D legal description text header is updated to read ''Camp Pohakuloa'' to match the FAA's database. The airport name on line two of the Class D legal description text header is updated to read ''Bradshaw Army Airfield, HI'' to match the FAA's database. The geographic coordinates located on line three of the Class D legal description text header are updated to match the FAA's database. The Class D legal description body is modified to include verbiage that excludes any portion of the Class D airspace that overlaps Restricted Area-3103 when it is active. The legal description body is also updated to replace the outdated use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directory.'' These phrases now read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to align with the FAA's current nomenclature.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP HI D Camp Pohakuloa, HI [Amended]

Bradshaw Army Airfield, HI
(Lat. 19°45′36″ N, long. 155°33′14″ W)

That airspace extending upward from the surface to and including 8,700 feet MSL within a 4.3-mile radius of the airfield, within 2.5 miles each side of the airfield's 116° bearing extending from the 4.3-mile radius to 5.9 miles southeast of the airfield, and within 0.7 miles north and 1.4 miles south of the airfield's 299° bearing extending from the 4.3-mile radius to 4.9 miles northwest of the airfield, excluding that airspace within restricted area R–3103 when active. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AWP HI E5 Camp Pohakuloa, HI [New]

Bradshaw Army Airfield, HI
(Lat. 19°45′36″ N, long. 155°33′14″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the airfield and within 2.6 miles north and 1.8 miles south of the airfield's 281° bearing extending from the 6-mile radius to 6.3 miles west of the airfield, excluding that airspace within restricted area R–3103 when active.

* * * * *

Issued in Des Moines, Washington, on February 28, 2024.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2024–04476 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1830; Airspace Docket No. 23–ASW–06]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends United States Area Navigation (RNAV) Routes Q–33 and Q–66 in the eastern United States. The FAA is taking this action to support the Little Rock, AR (LIT), Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) Relocation Project and continued Next Generation Air Transportation System (NextGen) efforts providing a modern RNAV route structure to improve the efficiency of the National Airspace System (NAS).

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a NPRM for Docket No. FAA–2023–1830 in the **Federal Register** (88 FR 68514; October 4, 2023), proposing to amend RNAV Routes Q–33 and Q–66 due to the planned Little Rock, AR (LIT), VORTAC Relocation Project and the FAA's continued NextGen efforts to provide a modern RNAV route structure. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

United States Area Navigation routes (Q-routes) are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by amending RNAV Routes Q–33 and Q–66 to support the Little Rock, AR (LIT), VORTAC Relocation Project and the NextGen program efforts. The RNAV route actions are described below.

Q–33: Prior to this final rule, Q–33 extended between the DHART, AR, Fix and the PROWL, MO, waypoint (WP). The route is extended southward to the Humble, TX (IAH), VORTAC and overlays Jet Route J–180 between the DHART Fix and the Humble VORTAC. Additionally, the Little Rock, AR (LIT), VORTAC route point is replaced with the LITTR, AR, WP and the DHART Fix route point is removed from the route description since it is no longer a route endpoint and does not reflect a turn point of one degree or more in the extended route. As amended, the route is changed to now extend between the Humble VORTAC and the PROWL WP.

Q–66: Prior to this final rule, Q–66 extended between the Little Rock, AR (LIT), VORTAC and the ALEAN, VA, WP. The Little Rock VORTAC route point is replaced with the LITTR, AR, WP and the CIVKI, AR, WP; RICKX, AR, WP; TROVE, TN, WP; BAZOO, TN, WP; and MXEEN, TN, WP are removed from the route description since they do not reflect a turn point of one degree or more in the route. As amended, the route is changed to now extend between the LITTR WP and the ALEAN WP.

Regulatory Notices and Analyses

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

Environmental Review

The FAA has determined that this action of amending United States RNAV Routes Q–33 and Q–66, due to the Little Rock, AR (LIT), VORTAC Relocation Project and NextGen program efforts, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points); and paragraph 5–6.5b, which categorically excludes from further environmental impact review actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, Designation of jet routes and VOR Federal airways) . . .''. As such, this airspace action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–33 HUMBLE, TX (IAH) TO PROWL, MO [AMENDED]

Humble, TX (IAH)	VORTAC	(Lat. 29°57′24.90″ N, long. 095°20′44.59″ W)
Daisetta, TX (DAS)	VORTAC	(Lat. 30°11′22.96″ N, long. 094°38′41.94″ W)
Sawmill, LA (SWB)	VOR/DME	(Lat. 31°58′23.50″ N, long. 092°40′37.52″ W)
LITTR, AR	WP	(Lat. 34°40′39.90″ N, long. 092°10′49.26″ W)
PROWL, MO	WP	(Lat. 37°02′00.00″ N, long. 091°15′00.00″ W)

* * * * *

Q–66 LITTR, AR TO ALEAN, VA [AMENDED]

LITTR, AR	WP	(Lat. 34°40′39.90″ N, long. 092°10′49.26″ W)
METWO, TN	WP	(Lat. 36°04′22.44″ N, long. 085°18′38.04″ W)
ALEAN, VA	WP	(Lat. 36°43′54.67″ N, long. 081°37′26.18″ W)

* * * * *

Issued in Washington, DC, on February 28, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–04470 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31533; Amdt. No. 4102]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 4, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 2024.

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

For Examination

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

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

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

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

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

Availability

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

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

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on February 16, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

** * *Effective Upon Publication*

AIRAC date	State	City	Airport name	FDC No.	FDC date	Procedure name
3/21/24	IA	Des Moines	Des Moines Intl	4/0273	2/1/24	RNAV (GPS) RWY 5, Amdt 4.
3/21/24	AK	Nome	Nome	4/0822	2/8/24	VOR RWY 28, Amdt 3.
3/21/24	AK	Nome	Nome	4/0823	2/8/24	ILS Z OR LOC Z RWY 28, Amdt 5.
3/21/24	AK	Nome	Nome	4/4979	2/14/24	RNAV (GPS) RWY 28, Amdt 2.
3/21/24	IL	Peoria	General Downing—Peoria Intl.	4/6884	1/23/24	RNAV (GPS) RWY 31, Amdt 1E.
3/21/24	AK	Iliamna	Iliamna	4/7327	1/25/24	RNAV (GPS) RWY 8, Amdt 4.
3/21/24	AK	Iliamna	Iliamna	4/7328	1/25/25	NDB RWY 36, Amdt 2A.
3/21/24	AK	Iliamna	Iliamna	4/7329	1/25/24	RNAV (GPS) RWY 36, Amdt 3.
3/21/24	AK	Iliamna	Iliamna	4/7330	1/25/24	RNAV (GPS) RWY 26, Amdt 2.
3/21/24	AZ	Fort Huachuca Sierra Vista.	Sierra Vista Muni-Libby Aaf.	4/7351	1/26/24	RNAV (GPS) RWY 26, Orig–A.
3/21/24	MI	Newberry	Luce County	4/7774	1/26/24	RNAV (GPS) RWY 29, Orig–A.
3/21/24	MI	Newberry	Luce County	4/7776	1/26/24	RNAV (GPS) RWY 11, Orig–C.
3/21/24	WI	Stevens Point	Stevens Point Muni	4/7837	1/25/24	ILS OR LOC RWY 21, Amdt 1A.
3/21/24	WI	Stevens Point	Stevens Point Muni	4/7842	1/25/24	RNAV (GPS) RWY 21, Amdt 1B.
3/21/24	WI	Stevens Point	Stevens Point Muni	4/7843	1/25/24	RNAV (GPS) RWY 3, Orig–C.
3/21/24	FL	Miami	Miami Intl	4/9806	2/2/24	RNAV (GPS) Z RWY 8R, Amdt 1C.
3/21/24	FL	Miami	Miami Intl	4/9807	2/2/24	ILS OR LOC RWY 8R, Amdt 30D.

[FR Doc. 2024–04364 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31532; Amdt. No. 4101]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 4, 2024. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 2024.

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

For Examination

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

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

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

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

Availability

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

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

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on February 16, 2024.

Thomas J. Nichols,

Manager, Aviation Safety, Flight Standards Service, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 21 March 2024

Batesville, AR, BVX, RNAV (GPS) RWY 8, Amdt 1E
Clarksville, AR, H35, RNAV (GPS) RWY 9, Orig–D
Malvern, AR, M78, RNAV (GPS) RWY 22, Orig–D
Key West, FL, EYW, RADAR 1, Amdt 5A, CANCELED
Ankeny, IA, IKV, RNAV (GPS) RWY 18, Amdt 2A
Forest City, IA, FXY, RNAV (GPS) RWY 33, Orig–D
Perry, IA, KPRO, RNAV (GPS) RWY 14, Orig–B
Perry, IA, PRO, RNAV (GPS) RWY 14, Orig, SUSPENDED
Perry, IA, KPRO, RNAV (GPS) RWY 32, Amdt 1B
Perry, IA, PRO, RNAV (GPS) RWY 32, Orig, SUSPENDED
Storm Lake, IA, SLB, RNAV (GPS) RWY 17, Orig–D
Indianapolis, IN, KMQJ, RNAV (GPS) RWY 16, Amdt 1C
Indianapolis, IN, 2R2, RNAV (GPS) RWY 18, Amdt 1E
Indianapolis, IN, HFY, RNAV (GPS) RWY 19, Amdt 1D
New Castle, IN, UWL, NDB RWY 10, Amdt 1
New Castle, IN, UWL, RNAV (GPS) RWY 10, Amdt 1
New Castle, IN, UWL, RNAV (GPS) RWY 28, Amdt 1
Sturgis, MI, KIRS, RNAV (GPS) RWY 19, Amdt 1D
Anaconda, MT, 3U3, RNAV (GPS)-B, Orig
Anaconda, MT, 3U3, VOR–A, Amdt 2
Omaha, NE, OMA, RNAV (GPS) Y RWY 36, Amdt 2B
Superior, NE, 12K, RNAV (GPS) RWY 14, Orig–B
Lakewood, NJ, N12, RNAV (GPS) RWY 6, Amdt 1A
Lakewood, NJ, N12, RNAV (GPS) RWY 24, Amdt 1B
Somerville, NJ, SMQ, RNAV (GPS) RWY 30, Amdt 2B
Somerville, NJ, SMQ, VOR RWY 8, Amdt 12C
Lancaster, OH, LHQ, RNAV (GPS) RWY 10, Amdt 1
Lancaster, OH, LHQ, RNAV (GPS) RWY 28, Amdt 2
Wilmington, OH, ILN, ILS OR LOC RWY 22R, ILS RWY 22R (SA CAT I), ILS RWY 22R (CAT II), ILS RWY 22R (CAT III), Amdt 6B
Wilmington, OH, ILN, RNAV (GPS) RWY 22R, Amdt 1
Zanesville, OH, ZZV, VOR RWY 4, Amdt 7, CANCELED
Zanesville, OH, ZZV, VOR RWY 22, Amdt 4, CANCELED
Sioux Falls, SD, FSD, RNAV (GPS) RWY 9, Orig–G
Cowley/Lovell/Byron, WY, U68, NDB RWY 9, Amdt 2B, CANCELED
Cowley/Lovell/Byron, WY, U68, Takeoff Minimums and Obstacle DP, Amdt 3
Greybull, WY, KGEY, Takeoff Minimums and Obstacle DP, Amdt 3

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DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 344

[FISCAL–2022–0002]

RIN 1530–AA25

U.S. Treasury Securities—State and Local Government Series

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule to amend the regulations governing State and Local Government Series (SLGS) securities. SLGS securities are non-marketable Treasury securities that are available for purchase only by issuers of tax-advantaged securities. The final rule amends the SLGS regulations to prevent impermissible uses of the SLGS program, most notably the use of program flexibilities by tax-advantaged entities, usually a state or local government, investing in SLGS securities to create impermissible cost-free options. The final rule amends the existing regulations to prevent such activity. In addition, the final rule makes administrative changes to increase efficiencies in the program.

DATES: This final rule is effective August 26, 2024.

FOR FURTHER INFORMATION CONTACT: Mike Goodwin, Division Director, Jared Waters, Program Manager, Brian Metz, Senior Counsel, or Elizabeth Spears, Senior Counsel, via email at *SLGS@fiscal.treasury.gov,* by telephone at (304) 480–5299, or via U.S. Mail at Bureau of the Fiscal Service, P.O. Box 396, Parkersburg, WV 26106–1328.

SUPPLEMENTARY INFORMATION:

I. Overview of Rulemaking

On September 30, 2022, Treasury published a notice of proposed rulemaking (NPRM) with request for comments (87 FR 59353, September 30, 2022), proposing amendments to the regulations governing U.S. Treasury securities of the State and Local Government Series (SLGS). The proposed amendments addressed certain practices of investors in SLGS securities that Treasury considers to be an inappropriate use of the SLGS securities program. The comment period ended on November 29, 2022, and Treasury received two comment letters. After careful consideration of the comments, Treasury is now issuing a final rule.

The NPRM proposed amendments to the SLGS regulations to address impermissible uses of the SLGS program, most notably the misuse of program flexibilities by tax-advantaged entities, usually a state or local government, investing in SLGS securities to create impermissible cost-free options. The NPRM proposed amendments designed to stop such activity. Additionally, the NPRM proposed administrative changes to increase efficiencies in the program.

In the final rule, Treasury is adopting all but one of the proposed amendments. In response to the public comments, Treasury is providing additional detail and clarification herein.

The following discussion provides background on previous related rulemakings, explains the NPRM's proposed amendments, addresses the public comments on those proposed amendments, and describes the final rule.

II. Background

SLGS securities are a type of non-marketable Treasury security that is available for purchase by state and local governments and other issuers (as defined in 31 CFR 344.1) of tax-advantaged bonds (Issuers). SLGS

securities have been issued by Treasury since 1972. The purpose of the SLGS program is to assist state and local government Issuers in complying with yield restriction and rebate requirements applicable to tax-advantaged bonds under the Internal Revenue Code.

Generally, the arbitrage requirements under the Internal Revenue Code provide that with certain exceptions, the proceeds of a tax-advantaged bond may not be invested at a yield that is materially higher than the yield on the bond (26 CFR 1.148–2). In the limited circumstances in which bond proceeds may be invested above the bond yield, the bond issuer generally is required to rebate to the Federal Government any earnings in excess of the bond yield.

SLGS securities may only be purchased with eligible funds (defined in 31 CFR 344.1). For SLGS Time Deposit securities (defined in 31 CFR 344.4) that bear interest, purchasers may generally select any maturity period from 30 days to 40 years and any interest rate that does not exceed the applicable SLGS rate for that maturity published in the daily SLGS rate table. Since 2005, the maximum SLGS rates have been set at the current Treasury borrowing rate less one basis point. Purchasers of SLGS securities have the flexibility to structure the securities with specified payment dates and yields.

In 1996, Treasury amended the regulations governing SLGS securities to eliminate certain requirements that had been introduced at various times since 1972, and to make the program a more flexible and competitive investment vehicle for Issuers (61 FR 55690, October 28, 1996). Under the 1996 regulations, Treasury also added a provision to permit Issuers to subscribe for SLGS securities and subsequently cancel the subscription, without a penalty, under certain circumstances. This additional flexibility led to unintended consequences in the SLGS program, primarily the creation of cost-free options.

Subsequently, in a series of regulatory amendments, Treasury has instructed that Issuers cannot use the flexibilities in the program, such as the ability to subscribe for SLGS and marketable securities and to select interest rates and maturities on SLGS securities, in a manner that either creates a cost-free option or is not necessary for the Issuer's compliance with yield restriction and rebate requirements. In 1997, Treasury amended the regulations to prohibit the use of the SLGS program to create a cost-free option in certain circumstances (62 FR 46444, September 3, 1997). Treasury stated in the preamble to the rulemaking that it was inappropriate to use the SLGS securities program as an option and provided examples of unacceptable practices. These practices included, among others, subscribing for SLGS securities for an advance refunding escrow and simultaneously purchasing marketable securities for the same escrow, with the plan that the marketable securities would be sold if interest rates declined or the SLGS subscription would be canceled if interest rates did not decline.

In 2004, Treasury proposed further amendments. In a proposed rule published in September 2004 (69 FR 58756, September 30, 2004) (2004 NPRM), Treasury indicated that it had become aware of several other practices involving SLGS securities that are also inappropriate uses of the securities and contrary to the purpose of the program. Several regulatory amendments were proposed to address these practices and other miscellaneous items. The 2004 NPRM addressed the redemption before maturity or sale of securities to reinvest at a higher yield, as well as the cancellation of subscriptions for the purchase of SLGS securities and re-subscribing at a higher yield when interest rate movements were favorable.

The 2004 NPRM reiterated that Treasury views the practice of requesting redemption of SLGS securities before maturity to take advantage of relatively infrequent updates to SLGS interest rates as an inappropriate use of SLGS securities. Even if undertaken to eliminate negative arbitrage (where bond proceeds have been invested at a yield that is less than the yield on the Issuer's bond), Treasury considers the practice to be a cost-free option and inconsistent with the purpose of the SLGS program. Treasury noted that there is a direct cost of such actions to Treasury because Treasury is not being compensated for the value of the option; that the practice results in volatility in Treasury's cash balances and increases the difficulty of cash balance forecasting and thereby increases Treasury's borrowing costs; and that there are administrative costs. The 2004 NPRM proposed a new provision making it impermissible to purchase a SLGS security with a maturity longer than is reasonably necessary to accomplish a governmental purpose of the Issuer. After reviewing the public comments and considering other measures being taken to stop the creation of cost-free options, Treasury decided not to implement the rule against purchasing securities with maturities longer than reasonably necessary to accomplish a governmental purpose.

The 2005 final rule (70 FR 37904, June 30, 2005) addressed several inappropriate practices that provided SLGS investors cost-free options or arbitrage opportunities that are not available in marketable securities. Those practices imposed substantial costs on the Federal Government. The amendments in the 2005 final rule were intended to make investments in SLGS securities more closely resemble investment opportunities available in Treasury marketable securities.

While implementation of the 2005 final rule put an end to many of the impermissible practices, Treasury still observed misuses within the SLGS program whereby program flexibilities were used to create cost-free options. For these reasons, the September 30, 2022 NPRM proposed the amendments described below to eliminate certain practices that persisted after Treasury's previous rule amendments. Treasury intends these amendments to also address new, yet similar, types of transactions that may also create impermissible cost-free options. Treasury believes that the amendments proposed in the NPRM retain sufficient flexibility for Issuers to appropriately select maturities and interest payment dates (a principal reason that SLGS securities are an attractive investment vehicle for Issuers) without creating cost-free options.

The final rule amendments will apply only to SLGS subscriptions started on or after August 26, 2024, the effective date of the final rule.

III. Proposals, Comments, and Final Rule

Treasury received two public comment letters on the NPRM: one from a nonprofit organization and bar association representing attorneys who work in the municipal bond market, and one from an independent municipal advisory firm. In general, the commenters objected to proposed rule amendments that would reduce flexibilities in the program. Commenters expressed concern that certain of the proposed amendments were vague or insufficiently clear. The commenters also made certain suggestions pertaining to items outside of the scope of the NPRM's proposed amendments. Comments within the scope of the NPRM are addressed below.

A. Proposals To Address Impermissible Use of Flexibilities in the Program To Create Cost-Free Options

In the NPRM, Treasury explained that, despite prior rule amendments to

explicitly prohibit the creation of cost-free options within the SLGS program, it has observed misuse where purchasers buy long-term SLGS securities and then redeem the security before maturity when interest rates move in a favorable manner to capture a redemption premium. To eliminate the creation of cost-free options, Treasury proposed imposing a requirement that the term of the SLGS security subscribed for is no longer than reasonably necessary for the Issuer's governmental purpose (as defined in § 344.1 of the proposed rule) for its purchase of the security and that Issuers must hold Time Deposit securities for a minimum amount of time before requesting an early redemption.

1. No Maturity Longer Than Necessary

To eliminate the cost-free option, the final rule adds a new restriction on maturity lengths in § 344.2(f)(1)(iv) that will be evidenced by a duration certification under § 344.2(e)(3) requiring the Issuer to certify that the length of the maturity of a SLGS security subscribed for is no longer than reasonably necessary for the underlying governmental purpose of the investment. To further explain what it considers to be the creation of an impermissible a cost-free option, Treasury is amending the non-exhaustive list of impermissible transactions in § 344.2(f)(1) by adding a new functional description. This description exhibits an impermissible practice of purchasing or redeeming prior to maturity a SLGS security with a term that is longer than is reasonably necessary to accomplish the governmental purpose.

Creating a subscription in the SLGSafe system (the secure internet site through which subscribers submit SLGS securities transactions) currently requires several certifications before a subscription can be completed; however, there is currently not a certification on the term of the SLGS security. The NPRM proposed a new duration certification which is intended to address a practice where an Issuer, in response to the direction of interest rates, purchases a SLGS security with a term longer than necessary for its governmental purpose, and then redeems the security before maturity to collect a premium.

The current rule at § 344.2(e) requires the Issuer or its agent to make: (1) an agent certification, and (2) a yield certification upon submitting a subscription for purchase of SLGS securities. Both certifications are currently incorporated into the subscription process within the SLGSafe system. The new duration certification will be added to the existing certifications in SLGSafe and will not require any additional paperwork or other administrative burden. Demand Deposit securities (as defined in 31 CFR 344.7) have a maturity of one day and will not be subject to the duration certification.

Treasury received comments from both commenters on the proposed duration certification. One commenter expressed concern that the duration certification requirement is vague and may cause confusion, while the other commenter requested further details on the process by which an Issuer would fulfill the certification requirement and requested that the requirement not impose an additional cost or burden on the Issuer.

Treasury has considered these comments and has determined that implementation of the duration certification is necessary to help stop inappropriate uses of the program. The duration certification requires that the term of the security subscribed for must be ''reasonably'' necessary for the Issuer's governmental purpose (as defined in § 344.1). The duration certification requirement provides needed clarity but also allows for some limited flexibility in matching the security term to the governmental purpose. At the time of subscription, Issuers should have a reasonable understanding of their maturity requirements for a particular subscription. Additionally, by incorporating the duration certification into the existing subscription process, in which other required certifications (§ 344.2(e)) already exist, there is no additional burden or expense for Issuers. In this final rule, Treasury has updated the duration certification language in § 344.2(e) to better match the requirement in § 344.2(f)(1).

2. Impermissible Practices

Transactions that impermissibly take advantage of the flexibilities afforded to Issuers in the SLGS program to create cost-free options are prohibited. The final rule includes additional examples of impermissible practices in § 344.2(f)(2). However, the list of examples in the regulation is non-exhaustive. These restrictions are necessary to curb the use of the SLGS program as a cost-free option. Previous efforts to eliminate the creation of cost-free options within the program have not adequately addressed these activities, and no alternatives have been identified that would be workable to achieve this goal.

There were no comments on the proposed addition of examples of impermissible practices, and accordingly Treasury adopts the amendment as proposed.

3. Increase in Minimum Holding Period Before Notification for Early Redemption of Time Deposit Securities

In the NPRM, Treasury proposed requiring a minimum 14-day holding period after a Time Deposit security has been issued and before the Issuer may request an early redemption of a Time Deposit note or bond. Treasury is adopting this change as proposed. Under the current regulations, the Issuer may request early redemption of a Time Deposit security as early as the day after Treasury issues the SLGS security. While a request for early redemption may be submitted as soon as the day after issue, a Time Deposit security that is a certificate of indebtedness of 30 days or more has a minimum 25-day holding period for redemption, and a Time Deposit security that is a note or bond has a minimum 30-day holding period for redemption. Treasury is not amending these minimum holding periods for redemption; however, Treasury is increasing the holding period, as proposed, prior to an Issuer being permitted to request an early redemption of a Time Deposit security that is a note or bond. In other words, the minimum holding period for requesting early redemption is increased, while the minimum holding period for early redemption remains the same. For example, currently a Time Deposit security that is a note or bond issued on the first day of a month may not be early redeemed prior to the 31st of that month, and notice of the early redemption may be submitted as early as the second day of that month. Under the final rule, that same Time Deposit security still may not be early redeemed prior to the 31st of the month of issuance, but notice of early redemption may not be submitted until the 15th day of that month (after the minimum 14-day holding period).

Because the interest rate used to calculate a premium or discount on an early redemption of a Time Deposit security is fixed as of the date that the early redemption of the security is requested, there are currently opportunities for Issuers to use the early redemption flexibility to generate premiums within the SLGS program. Treasury considers this to be the creation of a cost-free option and therefore impermissible. Increasing the minimum holding period before an Issuer may request early redemption will deter the creation of this type of

impermissible cost-free option by increasing the interest rate risk to a more meaningful level than exists under current regulations. It is Treasury's view that even more than *de minimis* risk to the Issuer does not change the fact that this is still a cost-free option and, either with or without risk, is an impermissible practice.

One commenter expressed concern that the minimum holding period could have an unintended negative impact on Issuers whose circumstances have changed or may require cash proceeds sooner than the proposed 14-day minimum holding period. Treasury believes this concern is misplaced, because Treasury is not changing the length of time that a Time Deposit security must be held prior to early redemption. The change is only to the amount of time that the security must be held prior to the Issuer making the request for early redemption. Therefore, Treasury adopts the amendment as proposed.

4. Specifying the Maturity of Time Deposit Securities

The NPRM proposed requiring that all Issuers must provide a maturity date at the start of a subscription, rather than by the time of completion of the subscription. The NPRM proposed that when starting a Time Deposit security subscription under § 344.5(b)(5) and completing a subscription under § 344.5(e)(2), the Issuer must separately itemize the maturity date(s) by individual Time Deposit security. If necessary, Issuers could still adjust the maturities of each of the Time Deposit securities, within certain parameters as described below.

One commenter expressed concern that adding this requirement could cause a problem for Issuers that know the minimum settlement requirement, but do not know the full details at the time of starting the subscription. The commenter's concern appears to be that this requirement may be overly burdensome and result in additional potential errors in the subscription details.

The NPRM did not propose adding additional requirements to the overall information necessary to issue a SLGS security. Specifying the term of a Time Deposit security has always been a requirement prior to issuance of that security in the SLGSafe system. Treasury is merely adjusting the time at which the security information must be provided from the time of issuance to the start of a SLGS subscription. Consequently, there is no additional burden placed upon an Issuer as to the type of information that must be provided to Treasury. Further, with respect to the risk of potential errors in the information that will be needed to start the SLGS subscription, SLGSafe will continue to include flexibility for the Issuer to adjust the initial established term of the security, within certain limits, to better match the projected needs of the Issuer that may change in the time between the start of the subscription and the issuance of the security. If the Issuer's circumstances change such that the built-in flexibilities are inadequate to address the needed correction, the Issuer may contact Treasury and request a waiver under the rules to allow for an adjustment to the maturity date. Treasury will carefully review the waiver request and any relevant supporting information, as it currently does with waiver requests, to ensure that there is no creation of an impermissible cost-free option. The request should explain any time exigencies so that Treasury can timely reply to the request. Therefore, Treasury adopts the rule amendment as proposed.

5. Limiting Maturity Adjustments on Time Deposit Securities

The NPRM proposed limiting Issuer adjustments to the maturity of a Time Deposit security before issuance. While this flexibility is an attractive feature of the SLGS program, it is also a flexibility where Treasury has observed repeated misuses of the program to create cost-free options. The NPRM proposed a new restriction that the Issuer cannot change the maturity date on a Time Deposit security by more than 30 days for certificates of indebtedness, six months for notes, and one year for bonds. The proposed rule amendments retain the Issuer's flexibility in setting the maturity of SLGS securities, while removing the ability to alter maturities beyond the time required to accomplish a governmental purpose. The flexibility retained in this provision will allow appropriate amendments to subscriptions for the purchase of SLGS securities while curbing efforts to create impermissible cost-free options.

One commenter requested that Treasury provide clear direction on the permissible and impermissible adjustments that may be made to the maturity of a Time Deposit security prior to issuance. Treasury believes the final rule provides clarity regarding these terms.

For example, an Issuer that subscribes for a certificate of indebtedness Time Deposit security with a maturity of 60 days may amend the maturity of that security prior to issuance by either lengthening or shortening the term by up to 30 days, such that the amended term may be any length between 30 days and 90 days, subject to other applicable rule requirements. A certificate of indebtedness subscribed for with a term of 360 days may be amended prior to issuance such that the term may be any length between 330 days and 390 days, subject to other applicable rule requirements. An Issuer that subscribes for a note Time Deposit security with a term of 5 years may amend the maturity prior to issuance by either lengthening or shortening the term by up to 6 months, such that the term may be any length between 4 years and 6 months, and 5 years and 6 months, subject to other applicable rule requirements. An Issuer that subscribes for a bond Time Deposit security with a term of 15 years may amend the maturity prior to issuance by either lengthening or shortening the term by up to 1 year, such that the term may be any length between 14 years and 16 years, subject to other applicable rule requirements.

The amount that a maturity can be adjusted is based on the term of the Time Deposit security as originally subscribed for, not the term of the resulting security after adjustment. For example, a note Time Deposit originally subscribed for with a term of 9 years and 7 months could be adjusted to a term of 10 years and 1 month. Even though the resulting security after adjustment is a bond Time Deposit security, the restriction on the amount of the adjustment is based on the Time Deposit security prior to any adjustment, which was a note Time Deposit security in this example.

Additionally, Time Deposit securities whose maturities are adjusted more than once prior to issuance remain subject to the adjustment restriction based on the term of the security originally subscribed for, not on the term after the adjustments. For example, where a Time Deposit security was originally subscribed for with a term of 10 years, the maturity can be adjusted multiple times within SLGSafe prior to issuance; however, regardless of any maturity adjustments prior to issuance, the maximum term of the security remains 10 years and 6 months, and the minimum term remains 9 years and 6 months. Treasury reiterates that in addition to complying with these adjustment restrictions, the final maturity chosen must be no longer than reasonably necessary for the underlying governmental purpose of the investment, as required by the new duration certification described above.

While this provision permits changes to the term of a Time Deposit security, Treasury emphasizes that such flexibilities are intended to address

situations when there is a change related to the governmental purpose after a subscription is started and prior to the issuance of the security, such as changes in projections of when the funds will be needed to meet disbursement or payment needs. Such flexibility is not provided for the purpose of adjusting maturities in response to movements in interest rates, anticipated movements in interest rates, or for any reason other than a change in circumstances that requires an adjustment to the maturity date. A change made to the maturity date for any other reason, even if the change complies with the adjustment restrictions described in this section, is prohibited under the final rule as the creation of an impermissible cost-free option.

6. Changing Principal Amounts on Time Deposit Securities

Treasury's current regulation provides that the aggregate principal amount originally specified in a SLGS subscription cannot be changed by more than 10 percent. The NPRM proposed to apply the 10 percent limit to each Time Deposit security rather than to a SLGS subscription as a whole. The ''limiting maturity adjustments on Time Deposit Securities'' proposed amendment would be ineffective if Issuers could simply ''shift'' subscribed for amounts from one Time Deposit security to another Time Deposit security with a significantly different maturity date.

Both commenters expressed concerns about the proposed change. One commenter noted that it could cause problems for Issuers that subscribe for SLGS securities when the minimum settlement amount is known but the full details for the subscription are not known at the time of starting a subscription. The other commenter expressed concern that this change would negatively impact the flexibility of Issuers to adjust subscriptions at the Time Deposit security level prior to issuance. The commenter also stated that maximum flexibility in refining subscriptions allows for optimal utilization of the SLGS program.

Even with the proposed amendment, appropriate flexibilities for Issuers remain. The current requirement on the amount that a SLGS subscription as a whole may be adjusted (+/−10%) is not being amended. The amendment requires that the Time Deposit security specific information that is required in all subscriptions prior to issue date, must be provided at the start of a SLGS subscription. The amendment is tailored to avoid the creation of impermissible cost-free options. Further, if the circumstances of an Issuer change such that the remaining flexibility is inadequate to address a necessary correction, the Issuer can contact Treasury and request a waiver under the rules to allow for a larger adjustment to the principal amount on the specific Time Deposit securities required. Therefore, Treasury adopts amendment as proposed.

7. Changing Principal Amounts on Demand Deposit Securities

In the NPRM, Treasury did not propose any amendments pertaining to the principal amounts for Demand Deposit securities. Accordingly, there were no comments relating to the rule as it pertains to Demand Deposit securities, and they will remain subject to the current rule that the aggregate principal amount may not be changed by more than 10 percent above or below the amount originally specified in the subscription.

B. Proposals To Address Administrative Updates and Changes to the Program

1. Purpose of the SLGS Program

In the NPRM, Treasury proposed reinserting language that the purpose of the SLGS program is ''to assist in complying with applicable provisions of the Internal Revenue Code'' as it appeared prior to the amendments made in 2005. At that time, Treasury updated the stated purpose of the SLGS program based on commentors' views that it was vague. However, the 2005 amendment was perceived as causing confusion among Issuers that interpreted the amendment to mean that the program could be used for broader, unintended purposes, such as eliminating negative arbitrage, in contravention of the rule against cost-free options.

Treasury received no comments on the proposed amendment to § 344.0(a) stating the purpose of the SLGS program and adopts the amendment as proposed.

2. Definitions Updates

The NPRM proposed amendments to certain definitions used in the SLGS program, including revisions to some existing definitions and the addition of new definitions to help clarify various provisions in the rules.

The NPRM proposed amending the definition of ''business day'' in § 344.1 to clarify which days normal processing of SLGS securities transactions will occur. Treasury received no comments on the proposed amendment and adopts the change as proposed.

The NPRM proposed amending the definition of ''Issuer'' in § 344.1 to update the definition to better align with the IRS arbitrage regulations. Treasury received no comments on the proposed amendment and adopts the change as proposed.

The NPRM proposed amending the definition of ''eligible source of funds'' to better align with the relevant portions of the Internal Revenue Code and the Income Tax Regulations. Treasury received no comments on the proposed amendment and adopts the change as proposed.

The NPRM proposed adding a definition of ''cost-free option'' in § 344.1 that states that ''the use of any provision(s) in the SLGS program to exploit movements in interest rates, including, but not limited to, those designed to provide marginal flexibility to Issuers in structuring their SLGS investments'' constitutes a cost-free option, which is prohibited in the rules. One commenter expressed concern that the definition may be overly broad and suggested stating that the definition of a cost-free option is specific to SLGS and other Treasury obligations. Treasury intentionally drafted the definition of cost-free option broadly to encompass all situations in which impermissible actions could be taken by Issuers to exploit the movement in interest rates. Past behavior by Issuers supports this broad definition. These misuses have primarily arisen through the creation of inappropriate cost-free options. Treasury notes, however, that the definitions set out in § 344.1 are specific to the SLGS program and do not purport to apply outside of part 344. Therefore, Treasury adopts the addition of the definition of cost-free option as proposed.

In the NPRM, Treasury proposed adding a definition of ''marketable security'' in § 344.1 that closely aligns with the example published in the SLGS Frequently Asked Questions. Treasury received no comments on the proposed amendment and adopts the addition of the definition of marketable security as proposed.

The NPRM proposed adding a definition of ''tax-advantaged bond'' in § 344.1 that corresponds with the definition of the types of bonds to which the relevant portions of the Internal Revenue Code and the Income Tax Regulations (generally 26 U.S.C. 148 and 26 CFR 1.148–0 through 1.148–11) apply. Treasury received no comments on the proposed amendment and adopts the addition of the definition of tax-advantaged bond as proposed.

The NPRM proposed adding a definition of ''governmental purpose'' in § 344.1 clarifying that using the SLGS program to create cost-free options is not a permitted governmental purpose.

Treasury received no comments on the proposed amendment and adopts the addition of the definition of governmental purpose as proposed.

3. Certification of Eligibility To Purchase

The NPRM proposed adding a new § 344.2(e)(4) that would add a certification on the Issuer's eligibility to purchase SLGS securities. This certification would require the Issuer to notify Treasury if, at any point while SLGS securities are outstanding, the issuer becomes ineligible to purchase SLGS securities or the funds used to purchase SLGS securities are no longer ''an eligible source of funds.'' The notification requirement would apply to all outstanding SLGS securities (*e.g.,* Time Deposit, Demand Deposit, and special 90-day certificates of indebtedness). Once Treasury receives notification that funds used to purchase a SLGS security are no longer ''an eligible source of funds,'' reinvestment of those funds after maturity into another SLGS security will not be permitted. Because Demand Deposit SLGS are one-day certificates of indebtedness that are automatically rolled over each day until redemption is requested, Treasury will deem the notification to be a request to redeem those outstanding Demand Deposit securities that are affected by the ineligibility under § 344.9, as amended. The Issuer would not be required to early redeem Time Deposit securities that are outstanding at the time of the notification because Time Deposit securities are longer-term securities that would have been purchased with an eligible source of funds at the time of issuance. Likewise, special 90-day certificates of indebtedness purchased with funds that are no longer considered ''an eligible source of funds'' would be redeemed either upon maturity (*i.e.,* would not be rolled into a new special 90-day certificate of indebtedness) or upon reversion to Demand Deposit securities and would not have to be early redeemed.

One commenter on the proposed rule asked for additional detail on the process through which an Issuer would certify its eligibility to purchase SLGS securities. Additionally, the commenter suggested that the regulations would be enhanced by clarifying any timing requirements associated with the notification. Treasury anticipates incorporating the eligibility certification into the existing certification process within the SLGSafe system that is used to subscribe for the purchase of SLGS securities. Treasury further clarifies that an Issuer must notify Treasury when the Issuer receives a ''final adverse determination'' letter from the IRS informing the Issuer that the funds status has changed and the funds are no longer considered proceeds from a tax-advantaged bond. If an Issuer has any question about a particular instance or IRS determination, that Issuer may contact Treasury with its specific details and seek further guidance on what, if anything, is required under the eligibility certification.

After considering this comment, Treasury has decided to adopt the amendment as proposed.

4. SLGS Rate Table

In the NPRM, Treasury proposed amending § 344.4(b)(1) to state that Treasury will post the SLGS rate table ''by 10 a.m. Eastern Time each business day or as soon as practicable thereafter,'' to provide Treasury more flexibility in those rare instances where the SLGS rate table cannot be released to the public by 10 a.m. Eastern Time. The amendment would provide that if no SLGS rate table has been published by 11 a.m. Eastern Time, then the SLGS rate table for the preceding business day would apply.

One commenter on the proposed rule stated that the amendment to the time for posting the SLGS rate table would increase ambiguity surrounding the timing for when the SLGS rates may be published and could adversely affect Issuers that price bonds in the market before 11 a.m. Eastern Time. The commenter suggested that the provision should not be amended. Treasury appreciates the concerns expressed in the comment, and the proposal would maintain the general expectation that the SLGS Rate Table would be published by 10 a.m. each business day. However, there may be rare situations where it is not feasible for Treasury to post the SLGS rates by 10 a.m. (for example due to an operational issue such as internet connectivity), and the proposed amendment would provide Treasury limited flexibility in posting the rates shortly thereafter. Additionally, the SLGS window remains open until 10 p.m. Eastern Time each business day and provides ample time for Issuers to finalize pricing and enter a subscription in the SLGSafe system. Therefore, Treasury adopts the amendment as proposed.

5. Lead Time for the Establishment of the Issue Date

The NPRM proposed amending the lead time for an Issuer to subscribe for SLGS securities from 60 to 45 calendar days. Moving the subscription date closer to the issue date would provide more accurate pricing for SLGS securities and would narrow the window of time in which an impermissible cost-free option could be created. Since less than 4 percent of SLGS subscriptions are started more than 45 days in advance of issue date, the impact of the proposed reduction in subscription lead time on Issuers should be minimal.

Treasury received comments from both commenters suggesting that maintaining the existing 60-day lead time would benefit Issuers in bond pricing and issuance especially during times of an impending debt limit contingency. In light of the other amendments in the final rule that are designed to reduce the opportunity to create impermissible cost-free options, Treasury accepts these comments and is not amending the current 60-day lead time for subscriptions to be submitted in SLGSafe.

6. Subscription Process

The NPRM proposed amendments to update §§ 344.5(e) and 344.8(e), which detail the information necessary for an issuer to start and complete the subscription process for Time Deposit and Demand Deposit securities, respectively. Updates are required due to the changes implemented by this rule. These amendments will help reduce opportunities to create impermissible cost-free options.

One commenter stated that some Issuers that currently subscribe for SLGS in time to account for the minimum settlement requirement do not know the full details of their subscription at the time of initial subscription. The commenter noted that requiring these Issuers to provide full subscription details at the time of initial subscription may be overly burdensome and result in potential errors in subscription details.

The proposed amendments would not add new requirements to the overall information necessary to issue a SLGS security. The maturity date for a Time Deposit security has always been a requirement prior to issuance. Treasury is only adjusting the time at which the Time Deposit security information must be provided, from the time of issuance to the start of a SLGS subscription. Hence, there is no additional burden on an Issuer as to the type of information that must be provided to Treasury. As to the concern about potential errors, Treasury is building in flexibility to allow the Issuer to adjust the previously established maturity of each Time Deposit security to better match the projected needs of the Issuer prior to the issuance of that security. If there are

significant changes to an Issuer's circumstances and the SLGS program's flexibilities are inadequate to address the necessary changes, the Issuer can contact Treasury and request a waiver under the rules to allow for an adjustment to the Time Deposit security's maturity date. Therefore, Treasury adopts the amendment as proposed.

7. Identification of the Tax-Advantaged Bond Issue

The NPRM noted that under the current rule, the underlying tax-advantaged bond issue must be identified when the Issuer ''starts'' and ''completes'' the subscription for SLGS securities. This requirement has been in the current regulation since the 2005 rule required the Issuer to enter a description of the Issuer's tax-exempt bond issue, such as ''Water and Sewer Revenue Bonds Series 2004'' (70 FR 37904, 37907, June 30, 2005). Subsequently, the Municipal Securities Rulemaking Board (MSRB) launched its Electronic Municipal Market Access (EMMA®) system, and EMMA has now become the official repository for municipal securities disclosures.

Given that EMMA generally contains information about state and local government bonds, the NPRM proposed requiring that if a bond issue is registered in EMMA, the Issuer must adhere to the naming convention supplied in the ''issue description'' field on the ''Security Information'' tab in EMMA at *https://emma.msrb.org* when describing the tax-advantaged bond in SLGSafe. If the EMMA website amends its naming convention, the Issuer would supply the updated registration as it is presented in EMMA or its successor system.

The Issuer would be able to input the ''EMMA registration'' into SLGSafe at the time the subscription is started, but that information could be changed or updated at any time. This would allow additional time for the Issuer to update the description field if the bond issue has not yet been registered with EMMA when the subscription is started. Coordinating the EMMA registration information with the underlying bond issuance field in SLGSafe will assist Treasury in determining if the amounts are an ''eligible source of funds'' that may be used to purchase SLGS securities.

One commenter on the proposed amendment expressed concern that the requirement to provide EMMA registration information may prevent Issuers from using the SLGS program because the requirement to identify a single bond issue eliminates Issuers' ability to invest commingled debt service reserve funds. Treasury is not amending its rules to change which funds can be used to purchase SLGS securities, including comingled funds. If the funds qualify as an eligible source of funds, the proposed amendment does not change their eligibility. Treasury intends to provide capability within SLGSafe for an Issuer to enter EMMA information for multiple registrations if needed.

A commenter also raised concerns that in many instances, an escrow trustee will file the subscription for SLGS securities. Given the escrow trustee's limited role in most bond issues, the commenter suggested that the additional identification requirement may cause confusion or result in faulty subscriptions for SLGS securities. An escrow trustee, acting as an agent on behalf of the Issuer, should be privy to the information surrounding an EMMA registration. Therefore, Treasury believes that requiring an agent for the Issuer to provide this information during the subscription process should not be unduly burdensome or costly.

Another commenter expressed concern that Issuers may use naming conventions other than the EMMA registration's naming convention for use within their own records and that requiring Issuers to change their naming conventions to those used in the EMMA registration could cause problems. To implement this amendment, Treasury is requiring that the EMMA registration information be entered in the existing ''Underlying Bond Issue'' field within SLGSafe, while retaining flexibility for Issuers to continue current practices used when subscribing for SLGS securities. The amendment requires the same information, a description of the bond issuance, including the required EMMA description (where available), while allowing flexibility for the Issuer to include its own naming convention.

Finally, a commenter noted that there are instances when the name of the issue is incorrectly entered on EMMA. Because Treasury may use this information to identify the underlying bond issue, the EMMA information provided should appear exactly as it does in the EMMA system. If there are any updates or corrections in the EMMA system, an Issuer must update the EMMA information in SLGSafe as soon as possible.

For these reasons, Treasury adopts the amendment as proposed.

8. Special Zero Interest Securities and Subscriptions on or Before December 27, 1976

The NPRM proposed removing subpart D of the current rule, as special zero interest securities were discontinued by Treasury on October 28, 1996, and all outstanding SLGS securities issued on or before December 27, 1976, matured by November 1, 2013. Treasury received no comments on this proposal and is removing §§ 344.5(e)(4) and 344.6(g) as proposed.

9. Debt Limit Contingency

a. Treasury's Discretion To Leave Demand Deposit Securities Invested or To Invest in Special 90-Day Certificates of Indebtedness

The NPRM noted that the current SLGS rules state that at any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, Treasury must invest any unredeemed Demand Deposit securities in special 90-day certificates of indebtedness. Treasury proposed amending § 344.7(b) to provide the Secretary with the flexibility to exercise discretion to either leave the unredeemed Demand Deposit securities invested or to invest them in special 90-day certificates of indebtedness.

Treasury received no comments and therefore adopts the amendment as proposed.

b. Terms Applying to Invested Demand Deposit Securities

The NPRM proposed clarifying § 344.7(b)(1) to provide that Demand Deposit securities during a debt limit contingency remain subject to the normal terms and conditions that apply to Demand Deposit securities.

Treasury received no comments and therefore adopts the amendment as proposed.

c. Terms Applying to Special 90-Day Certificates of Indebtedness

The NPRM proposed to clarify § 344.7(b)(2) to provide that special 90-day certificates of indebtedness that are issued during a debt limit contingency remain subject to the same redemption rules as Demand Deposit securities. As proposed, Treasury would roll over special 90-day certificates of indebtedness, along with accrued interest, into new special 90-day certificates of indebtedness when a debt limit contingency period lasts longer than 90 days.

Treasury received no comments and therefore adopts the amendment as proposed.

d. End of a Debt Limit Contingency

The NPRM noted that the current SLGS rules provide that at the end of a debt limit contingency, the Issuer has the option to keep the special 90-day certificates of indebtedness until maturity, redeem them before maturity, or reinvest them in Demand Deposit securities. Treasury proposed to amend § 344.7(b)(2) to provide that when regular Treasury borrowing operations resume, Treasury would redeem any special 90-day certificates of indebtedness and reinvest the proceeds, along with accrued interest, in Demand Deposit securities. As a result, the Issuer would again hold the investment that the Issuer originally requested.

Treasury received no comments and therefore adopts the amendment as proposed.

10. Notice Period for Redemption of Demand Deposit Securities

In the NPRM, Treasury noted that § 344.9(a) currently requires notice of one business day for redemption of Demand Deposit securities in the amount of $10 million or less and notice of three business days for redemptions of more than $10 million. To aid in Treasury's cash forecasting and cash management, Treasury proposed to amend § 344.9(a) to require notice of five business days for redemption of Demand Deposit securities and special 90-day certificates of indebtedness in the principal amount of $500 million or more.

One commenter noted that the amendment would assist Treasury in its cash forecasting and cash management but could have complications for Issuers and limit Issuer flexibility. While Treasury recognizes that this amendment would slightly reduce the flexibility in redeeming Demand Deposit securities, it will provide material benefits to Treasury's cash forecasting and cash management processes, which require accurate projections of cash inflows and outflows. Furthermore, Treasury believes that for cash needs of $500 million or more, Issuers will generally have sufficient notice and can provide the same to Treasury. Finally, in the event of an emergency, an issuer can request a waiver of this provision and ask that Treasury allow for a redemption of a Demand Deposit security with less notice.

Therefore, Treasury adopts the amendment as proposed.

C. Additional Comments Received Beyond the Scope of the Proposed Amendments

In addition to those comments discussed above, commenters recommended additional amendments to the SLGS program. Such comments are beyond the scope of the NPRM and are not addressed here.

Treasury notes that the delayed effective date of this final rule is intended to provide Issuers with sufficient time to review the final rule and make any necessary adjustments to their systems or processes.

IV. Procedural Requirements

A. Executive Order 12866

This final rule is not a significant regulatory action for purposes of Executive Order 12866, dated September 30, 1993, as amended.

B. Administrative Procedure Act (APA)

Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

C. Regulatory Flexibility Act

This final rule relates to matters of public contract and procedures for United States securities. Therefore, under 5 U.S.C. 553(a)(2), the notice and public procedure requirements of the APA are inapplicable. Because a notice of proposed rulemaking is not required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply.

D. Paperwork Reduction Act (PRA)

Neither the proposed rule, nor the final rule contain any new collection of information subject to the Paperwork Reduction Act.

E. Congressional Review Act (CRA)

This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect on August 26, 2024, after publication in the **Federal Register** and after we submit a copy of it to Congress and the Comptroller General.

List of Subjects in 31 CFR Part 344

Bonds, Government securities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we amend 31 CFR part 344 as follows:

PART 344—U.S. TREASURY SECURITIES—STATE AND LOCAL GOVERNMENT SERIES

■ 1. The authority citation for part 344 continues to read as follows:

Authority: 26 U.S.C. 141 note; 31 U.S.C. 3102, 3103, 3104, and 3121.

■ 2. Amend § 344.0 by:
■ a. Revising paragraph (a); and
■ b. Removing paragraph (b)(3).

The revision reads as follows:

§ 344.0 What does this part cover?

(a) *What is the purpose of the SLGS securities offering?* The Secretary of the Treasury (the Secretary) offers for sale non-marketable State and Local Government Series (SLGS) securities to provide issuers of tax-advantaged bonds with investments from any eligible source of funds (as defined in § 344.1) to assist issuers in complying with applicable provisions of the Internal Revenue Code.

* * * * *

■ 3. Amend § 344.1 by:
■ a. Revising the definition of ''Business day(s)'';
■ b. Adding in alphabetical order a definition for ''Cost-free option'';
■ c. Revising the definition of ''Eligible source of funds'';
■ d. Adding in alphabetical order a definition for ''Governmental purpose'';
■ e. Revising the definition of ''Issuer'';
■ f. Adding in alphabetical order definitions for ''Marketable security'' and ''Tax-advantaged bond.''

The revisions and additions read as follows:

§ 344.1 What special terms do I need to know to understand this part?

* * * * *

Business day(s) means any day other than a Saturday or Sunday that the Federal Reserve Bank of New York is open for business.

Cost-free option means the use of any provision(s) in the SLGS program to exploit movements in interest rates, including, but not limited to, those designed to provide marginal flexibility to issuers in structuring their SLGS investments.

* * * * *

Eligible source of funds means:

(1) Any amounts that are gross proceeds of an issue of tax-advantaged bonds or are reasonably expected to become gross proceeds of such an issue of tax-advantaged bonds;

(2) Any amounts that formerly were gross proceeds of a tax-advantaged bond

issue, but no longer are treated as gross proceeds of such issue as a result of the operation of the universal cap on the maximum amount treated as gross proceeds under 26 CFR 1.148–6(b)(2);

(3) Amounts held or to be held together with gross proceeds of one or more tax-advantaged bond issues in a refunding escrow, defeasance escrow, parity debt service reserve fund, or commingled fund (as defined in 26 CFR 1.148–1(b));

(4) Proceeds of a bond issue that is not an issue of tax-advantaged bonds but that refunds, or is refunded by, an issue of tax-advantaged bonds; or

(5) Any other amounts that are subject to yield limitations under the rules applicable to tax-advantaged bonds under the Internal Revenue Code (see title 26 of the U.S. Code and 26 CFR chapter I).

Governmental purpose, under this part, means the issuer's expected use of the invested funds, including but not limited to, financing a construction project, repaying a prior issue of bonds, or funding a debt service reserve. Such use must be consistent with the purposes of the Income Tax Regulations in 26 CFR part 1 under section 148 of the Internal Revenue Code. Generating gain on the proceeds of a bond issue through the use of a cost-free option in purchasing and redeeming SLGS is not a permitted governmental purpose.

Issuer refers to the government body or other entity that issues tax-advantaged bonds, or to a conduit borrower.

Marketable security, with reference to the types of securities that issuers are permitted to purchase with an eligible source of funds, means any security other than a SLGS security. Examples of marketable securities include Treasury securities (other than SLGS securities) and Federal agency securities.

* * * * *

Tax-advantaged bond means tax-advantaged bond as defined in 26 CFR 1.150–1(b).

* * * * *

■ 4. Amend § 344.2 by:

■ a. Revising paragraph (d) and paragraph (e)(2)(i) introductory text;

■ b. Adding paragraphs (e)(3) and (4);

■ c. Revising paragraph (f)(1), the second sentence of paragraph (f)(2)(iv), and the first sentence of paragraph (f)(2)(v) introductory text;

■ d. Adding paragraph (f)(2)(vii); and

■ e. Revising the last sentence of paragraph (g).

The revisions and additions read as follows:

§ 344.2 What general provisions apply to SLGS securities?

* * * * *

(d) *Can SLGS securities be transferred?* No. SLGS securities issued as any one type, *i.e.,* Time Deposit or Demand Deposit, cannot be transferred for other securities of that type or any other type. Transfer of securities by sale, exchange, assignment, pledge, or otherwise is not permitted.

(e) * * *

(2) * * *

(i) *Purchase of SLGS securities.* Upon submitting a subscription, or performing any other transaction for a SLGS security, a subscriber must certify that:

* * * * *

(3) *Duration certification.* For each subscription to purchase a Time Deposit SLGS security, the subscriber must certify that the term of the SLGS security subscribed for is no longer than is reasonably necessary to accomplish the issuer's governmental purpose for its purchase of the SLGS security.

(4) *Eligibility certification.* For each subscription to purchase a SLGS security, the subscriber must certify that if, at any point while SLGS securities are outstanding, the issuer becomes ineligible to purchase SLGS securities or the funds used to purchase SLGS securities are no longer an eligible source of funds, the issuer or agent thereof must, as soon as practicable, notify Treasury of such ineligibility. Such notification will be deemed to be a request for redemption of those outstanding Demand Deposit securities that are affected by the ineligibility.

(f) * * *

(1) *Impermissible transactions.* (i) To use the SLGS program to create a cost-free option (while the examples in paragraph (f)(2) of this section may specifically use marketable securities for illustration, creating a cost-free option via any means is prohibited);

(ii) To purchase a SLGS security with any amount received from the sale or redemption (at the option of the holder) before maturity of any marketable security, if the yield on such SLGS security exceeds the yield at which such marketable security is sold or redeemed;

(iii) To invest any amount received from the redemption before maturity of a Time Deposit security (other than a Zero Percent Time Deposit security) at a yield that exceeds the yield that is used to determine the amount of redemption proceeds for such Time Deposit security; or

(iv) To purchase a SLGS security with a maturity that is longer than is reasonably necessary to accomplish the issuer's governmental purpose for its purchase of the SLGS security or to purchase a SLGS security with an intention to redeem such SLGS security earlier than is reasonably necessary to accomplish the issuer's governmental purpose for its purchase of the SLGS security.

(2) * * *

(iv) * * * To reduce or eliminate this negative arbitrage, the issuer subscribes for SLGS securities for purchase in 45 days. * * *

(v) * * * On February 6, 2006, an issuer purchases a Time Deposit security using an eligible source of funds from a debt service reserve fund. * * *

* * * * *

(vii) *Purchase of SLGS security with maturity longer than reasonably necessary.* An issuer may purchase SLGS securities to facilitate compliance with arbitrage yield restrictions for investments of various types of proceeds of tax-advantaged bonds, including investments in refunding escrow funds, bond debt service reserve funds, or project construction funds, respectively. The determination of whether a maturity for a SLGS security is longer than is reasonably necessary depends on the issuer's governmental purpose for the issuance. Thus, the maturities of SLGS securities invested in a refunding escrow fund are reasonably necessary if they are no longer than those necessary to accomplish the defeasance of the underlying refunded bonds until the applicable redemption date or retirement date of the refunded bonds. Maturities of SLGS securities invested in a project construction fund are reasonably necessary if they are no longer than the reasonably expected construction period for the financed project, and early redemptions of such securities are reasonably necessary if they are reasonably related to construction draws for the financed project. Maturities of SLGS securities invested in a debt service reserve fund are reasonably necessary if they are no longer than the earlier of the permitted term of investments in that reserve fund under the bond documents or the term of the secured bonds. Early redemptions of SLGS securities with reasonably necessary maturities are permissible for the above bona fide business reasons, including changes in market interest rates. By contrast, the purchase of SLGS securities with maturities that are longer than the reasonably necessary maturities described above and associated early redemptions of those SLGS securities to obtain the funds within periods that would correspond to an issuer's bona fide governmental purpose for a SLGS

investment constitute impermissible practices under paragraph (f)(1)(iv) of this section. Thus, for example, if an issuer purchases SLGS securities to fund a refunding escrow to be used to defease and call refunded bonds at the first call date in five years, the issuer's purchase of SLGS securities with maturities beyond that five-year period and corresponding early redemptions of those SLGS securities within that five-year period constitute an impermissible use of the SLGS program.

(g) * * * Fiscal Service's American Bankers Association (ABA) Routing Number can be found on Fiscal Service's website under the SLGS frequently asked questions (FAQs).

* * * * *

■ 5. Amend § 344.3 by revising paragraph (e) to read as follows:

§ 344.3 What provisions apply to the SLGSafe Service?

* * * * *

(e) *How do I apply for SLGSafe access?* Submit to Fiscal Service a completed SLGSafe Application for internet Access, which is found on Fiscal Service's website.

* * * * *

■ 6. Amend § 344.4 by revising paragraph (b)(1) to read as follows:

§ 344.4 What are Time Deposit securities?

* * * * *

(b) * * *

(1) *When is the SLGS rate table released?* We release the SLGS rate table to the public by 10 a.m. Eastern time each business day or as soon as practicable thereafter. If the SLGS rate table is not available by 11 a.m. Eastern time on any given business day, the SLGS rate table for the preceding business day applies.

* * * * *

■ 7. Amend § 344.5 by revising paragraphs (a), (b), (d), (e), and (f) to read as follows:

§ 344.5 What other provisions apply to subscriptions for Time Deposit securities?

(a) *When is my subscription due?* The subscriber must set the issue date for the securities in the subscription. The issue date must be a business day. The issue date cannot be more than 60 days after the date we receive the subscription. If the subscription is for $10 million or less, we must receive a subscription at least 5 days before the issue date. If the subscription is for over $10 million, we must receive the subscription at least 7 days before the issue date.

Example 1 to paragraph (a): If SLGS securities totaling $10 million or less will be issued on May 16th, we must receive the subscription no later than May 11th. If SLGS securities totaling more than $10 million will be issued on May 16th, we must receive the subscription no later than May 9th. In all cases, if SLGS securities will be issued on May 16th, we will not accept the subscription before March 17th.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

(1) The issue date;

(2) The total principal amount;

(3) The issuer's name and Taxpayer Identification Number;

(4) A description of the tax-advantaged bond issue;

(5) Separately itemized securities to be purchased, specifying principal amount, maturity date, interest rate, and first interest payment date (in the case of notes and bonds) for each; and

(6) The certifications required by § 344.2(e).

* * * * *

(d) *How do I change a subscription?* You can change a subscription on or before 3 p.m. Eastern time, on the issue date. Changes to a subscription are acceptable with the following exceptions:

(1) You cannot change the issue date; provided, however, you may change the issue date up to 7 days after the original issue date if you establish to the satisfaction of Treasury that such change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster);

(2) You cannot change the principal amount originally specified for any security in the subscription by more than ten percent;

(3) You cannot change an interest rate to exceed the maximum interest rate in the SLGS rate table that was in effect for a security of comparable maturity on the business day that you began the subscription process; and

(4) You cannot change the maturity date originally specified for any security in the subscription by more than 30 days for certificates of indebtedness, 6 months for notes, and 1 year for bonds.

(e) *How do I complete the subscription process?* The completed subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Separately itemize securities specifying principal amount, maturity date, interest rate, and first interest payment date (in the case of notes and bonds) for each;

(3) Describe the bond issue. If the tax-advantaged bond issue referenced in paragraph (b)(4) of this section is, or will be, registered or disclosed in the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) system, describe the issue exactly as designated in the ''issue description'' field of EMMA®, or successor system;

(4) Include the issuer's address;

(5) Include information on the financial institution that will transmit the funds for the purchase of the securities and information on the financial institution that will receive security principal and interest payments;

(6) Not be more than ten percent above or below the aggregate principal amount originally specified in the subscription and not be more than ten percent above or below the originally subscribed for amount for each individual security;

(7) Not deviate from the original subscribed for maturity date specified for any security in the subscription by more than 30 days for certificates of indebtedness, 6 months for notes, and 1 year for bonds;

(8) Include the information required under paragraph (b) of this section, if not already provided; and

(9) Include the certifications required by § 344.2(e).

(f) *When must I complete the subscription?* We must receive a completed subscription on or before 3 p.m. Eastern time on the issue date.

■ 8. Amend § 344.6 by:

■ a. Revising paragraph (a)(3); and

■ b. Removing paragraph (g).

The revision reads as follows:

§ 344.6 How do I redeem a Time Deposit security before maturity?

(a) * * *

(3) *Notes or bonds.* A note or bond can be redeemed, at the owner's option, no earlier than 30 days after the issue date. Any request for redemption received within 14 days of the issue date will be rejected.

* * * * *

■ 9. Amend § 344.7 by revising paragraph (b) to read as follows:

§ 344.7 What are Demand Deposit securities?

* * * * *

(b) *What happens to Demand Deposit securities during a debt limit contingency?* At any time the Secretary determines that issuance of obligations sufficient to conduct the orderly financing operations of the United States cannot be made without exceeding the statutory debt limit, we

may invest any unredeemed Demand Deposit securities in special 90-day certificates of indebtedness.

(1) Funds left invested in Demand Deposit securities remain subject to the normal terms and conditions for such securities as set forth in this part.

(2) Funds invested in 90-day certificates of indebtedness earn simple interest equal to the daily factor in effect at the time Demand Deposit security issuance is suspended, multiplied by the number of days outstanding. Ninety-day certificates of indebtedness are subject to the same request for redemption notification requirements as those for Demand Deposit securities and will be redeemed at par value plus accrued interest. If a 90-day certificate of indebtedness reaches maturity during a debt limit contingency, we will automatically roll it into a new 90-day certificate of indebtedness, along with accrued interest, that earns simple interest equal to the daily factor in effect at the time that the new 90-day certificate of indebtedness is issued, multiplied by the number of days outstanding. When regular Treasury borrowing operations resume, the 90-day certificates of indebtedness, along with accrued interest, will be reinvested in Demand Deposit securities.

■ 10. Amend § 344.8 by revising paragraphs (a), (b), and (e) to read as follows:

§ 344.8 What other provisions apply to subscriptions for Demand Deposit securities?

(a) *When is my subscription due?* The subscriber must set the issue date in the subscription. You cannot change the issue date to require issuance earlier or later than the issue date originally specified; provided, however, you may change the issue date up to 7 days after the original issue date if you establish to the satisfaction of Treasury that such change is required as a result of circumstances that were unforeseen at the time of the subscription and are beyond the issuer's control (for example, a natural disaster). The issue date must be a business day. The issue date cannot be more than 60 days after the date we receive the subscription. If the subscription is for $10 million or less, we must receive the subscription at least 5 days before the issue date. If the subscription is for more than $10 million, we must receive the subscription at least 7 days before the issue date.

(b) *How do I start the subscription process?* A subscriber starts the subscription process by entering into SLGSafe the following information:

(1) The issue date;

(2) The total principal amount;

(3) The issuer's name and Taxpayer Identification Number;

(4) A description of the tax-advantaged bond issue; and

(5) The certifications required by § 344.2(e)(1), if the subscription is submitted by an agent of the issuer.

* * * * *

(e) *How do I complete the subscription process?* The completed subscription must:

(1) Be dated and submitted electronically by an official authorized to make the purchase;

(2) Describe the bond issue. If the tax-advantaged bond issue referenced in paragraph (b)(4) of this section is, or will be, registered or disclosed in the Municipal Securities Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA®) system, describe the issue exactly as designated in the ''issue description'' field of EMMA®, or successor system;

(3) Include the issuer's address;

(4) Include the information on the financial institution that will transmit the funds for the purchase of the securities;

(5) Not be more than ten percent above or below the aggregate principal amount originally specified in the subscription;

(6) Include the information required under paragraph (b) of this section, if not already provided; and

(7) Include the certifications required by § 344.2(e)(1) (agent certification), (e)(2)(i) (yield certification), and (e)(4) (eligibility certification).

■ 11. Amend § 344.9 by revising paragraph (a) to read as follows:

§ 344.9 How do I redeem a Demand Deposit security?

(a) *When must I notify Treasury to redeem a security?* Demand Deposit securities can be redeemed at the owner's option, if we receive a request for redemption not less than:

(1) One business day before the requested redemption date for total redemptions by an owner of $10 million or less;

(2) Three business days before the requested redemption date for total redemptions by an owner of more than $10 million but less than $500 million; and

(3) Five business days before the requested redemption date for total redemptions by an owner of $500 million or more.

* * * * *

Subpart D [Removed]

■ 12. Remove subpart D.

By the Department of the Treasury.

David Lebryk,

Fiscal Assistant Secretary.

[FR Doc. 2024–04380 Filed 3–1–24; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900–AS04

Agency Ethics Officials

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation governing Agency ethics officials to reflect that the Secretary designates these officials, to identify the employees who may serve in these roles, and to make other relevant nomenclature changes regarding employees and groups within the Office of General Counsel.

DATES: *Effective date:* This rule is effective March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Tracianna L. Winston, Chief Counsel, Ethics Specialty Team, Office of the General Counsel (021), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–6269. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Title 38 of the Code of Federal Regulations, Chapter I, Part 0 governs the Values, Standards of Ethical Conduct, and Related Responsibilities of VA employees. Subpart B, ''General Provisions'' includes 38 CFR 0.735–1 ''Agency ethics officials'' which is amended to provide updated information regarding the designation of agency ethics officials and the employees who may serve in these roles. The sections are also amended to reflect nomenclature changes to the names of certain Office of General Counsel offices and the employees in those offices.

Specifically, 38 CFR 0.735–1(a) is amended to reflect that the Secretary designates attorneys from the Office of General Counsel to serve as the Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO). Additionally, 38 CFR 0.735–1(b)(1) is amended to reflect nomenclature changes to the names of Office of General Counsel positions, including District Chief Counsels, and teams, including the Ethics Specialty Team.

This subsection is also amended to broaden the group of individuals who may act as Deputy Ethics Officials pursuant to delegations from the DAEO. Finally, 38 CFR 0.735–1(b)(2) is amended to include a citation to 5 CFR 2638.104(e) as the existing citation to 5 CFR 2638.204 is outdated.

Administrative Procedure Act

This final rule is a procedural rule that does not impose new rights, duties, or obligations on affected individuals but, rather, explains that the Secretary appoints Agency ethics officials and identifies the employees that may serve as Agency ethics officials. Therefore, it is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553. *See* 5 U.S.C. 553(b)(A) and (d)(3). This rule merely updates information regarding the delegation of Agency ethics officials, the employees who may serve in those roles, and the names of certain offices and employees in the Office of General Counsel.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This rule will affect only: (1) Office of General Counsel (OGC) and VA employees who serve as Agency ethics officials, and (2) VA employees seeking ethics advice from these Agency ethics officials. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov*.

Assistance Listing

There are no Assistance Listing numbers and titles for the programs affected by this document.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

List of Subjects in 38 CFR Part 0

Core Values, Characteristics and Customer Experience Principles of the Department, General Provisions, Standards of Ethical Conduct, and Related Responsibilities of Employees.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 26, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 0 as follows:

PART 0—VALUES, STANDARDS OF ETHICAL CONDUCT, AND RELATED RESPONSIBILITIES

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

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Amend § 0.735–1 by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 0.735–1 Agency ethics officials.

(a) *Designated Agency Ethics Official (DAEO).* The Secretary will designate attorneys from the Office of General Counsel to serve as the Designated Agency Ethics Official (DAEO) and Alternate Designated Agency Ethics Official (ADAEO).

(b) * * *

(1) The District Chief Counsels and attorneys on the Ethics Specialty Team are Deputy Ethics Officials. They have been delegated the authority to act for the DAEO pursuant to 5 CFR 2638.104(e).

(2) Other officials may also act as Deputy Ethics officials pursuant to delegations of one or more of the DAEO's duties from the DAEO.

[FR Doc. 2024–04442 Filed 3–1–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AR57

Reproductive Health Services

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is finalizing, without changes, an interim final rule that amended VA's medical regulations to remove the exclusion on abortion counseling in the medical benefits package; establish exceptions to the exclusion on abortions for veterans who

receive care set forth in that package; and remove the exclusion on abortion counseling and expand the exceptions to the exclusion on abortions for Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries.

DATES: This rule is effective April 3, 2024.

FOR FURTHER INFORMATION CONTACT: Dr. Shereef Elnahal, Under Secretary for Health, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–0373.

SUPPLEMENTARY INFORMATION: In an interim final rule (IFR) published in the **Federal Register** (FR), VA amended its medical regulations to remove the exclusion on abortion counseling in the medical benefits package; establish exceptions to the exclusion on abortions for veterans who receive care set forth in that package; and remove the exclusion on abortion counseling and expand the exceptions to the exclusion on abortions for Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA) beneficiaries. 87 FR 55287 (September 9, 2022).

VA provided a 30-day comment period on the IFR, which ended on October 11, 2022. VA received 57,901 comments, many of which were supportive of the IFR. The vast majority of the comments were a type of duplicated form response, where some requested clarifications or suggested changes to the IFR, and others merely expressed support or requested the IFR be rescinded without suggested clarifications or changes. VA summarizes and addresses all topics raised in relevant and significant comments below, but VA does not address any supportive comments below that did not also request clarifications or suggest substantive revisions.

I. Comments That Asserted VA Does Not Have Authority To Promulgate or Implement the IFR

Many commenters asserted that VA does not have the legal authority to promulgate or implement the IFR, most of which provided few details to explain their assertions. Other commenters cited to specific laws that they asserted conflicted with VA's provision of the health care services permitted by the IFR. VA addresses these comments below.

A. General Assertions of Lack of Authority

Many comments asserted that VA should rescind the IFR because VA has a longstanding policy regarding abortion and does not have the authority to impose the IFR in a manner that violates this policy. These comments generally assert that VA does not have authority to either promulgate or implement the IFR to remove the restriction on abortion counseling and create exceptions for abortions in certain circumstances in §§ 17.38 and 17.272 of title 38, Code of Federal Regulations (CFR).

VA does not make any changes to the rule and does not rescind the IFR based on these comments. As indicated in the IFR (see 87 FR 55288–55290), pursuant to VA's general treatment authority for veterans, VA ''shall furnish'' specified veterans with ''hospital care and medical services which the Secretary determines to be needed.'' Section 1710(a)(1)–(2) of title 38, United States Code (U.S.C.). For veterans not described in paragraphs (1) and (2), the Secretary ''may,'' subject to certain limitations, ''furnish hospital care'' and ''medical services . . . which the Secretary determines to be needed,'' 38 U.S.C. 1710(a)(3). Such ''medical services'' include ''medical examination, treatment,'' ''[s]urgical services,'' and ''[p]reventive health services.'' 38 U.S.C. 1701(6). VA implements its general treatment authority, and the Secretary determines what care is ''needed,'' 38 U.S.C. 1710(a)(1)–(3), by regulation through VA's medical benefits package. 38 CFR 17.38. Care included in the medical benefits package is ''provided to individuals only if it is determined by appropriate health care professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.'' 38 CFR 17.38(b). VA has determined that the health care services permitted under the IFR are ''needed'' within the meaning of VA's general treatment authority, 38 U.S.C. 1710, if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. 38 CFR 17.38(b). Although VA previously did not have any exceptions to the exclusion on abortion in the medical benefits package, VA's authority as described above permits it to amend the medical benefits package through regulation. VA can therefore provide the health care services permitted under the IFR to veterans pursuant to 38 U.S.C. 1710 and 38 CFR 17.38. Similarly, VA has determined that providing access to such care is medically necessary and appropriate to protect the health of CHAMPVA beneficiaries. *See* 38 U.S.C. 1781; 38 CFR 17.270(b) (defining ''CHAMPVA-covered services and supplies'' as ''those medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded under [38 CFR 17.272(a)(1)] through (84)'').

Several commenters suggested that the IFR usurps Congressional authority. Other commenters stated that VA is unable to provide the health care services permitted under the IFR because Congress has not funded them specifically, or that VA should not use taxpayer money to provide the health care services permitted under the IFR because VA does not have the legal right to do so, and it is contrary to the wishes of taxpayers. VA does not make changes to the rule based on these comments. The IFR did not usurp Congressional authority. VA, similar to other agencies in the Executive Branch, has the authority to promulgate regulations to interpret and implement laws passed by Congress, and such regulations may have the force and effect of law. In this instance, the IFR was promulgated and implemented pursuant to statute. 38 U.S.C. 1710, 1781; *see also id.* 501. VA does not receive separate appropriations for individual medical services, but instead receives appropriations generally for authorized services. While some taxpayers may disagree with this use of Federal funds, VA is authorized to provide and pay for care that is needed for veterans and medically necessary and appropriate for CHAMPVA beneficiaries.

B. Specific Assertions of Lack of Authority or Conflicting Authority

1. Lack of Authority Under 38 U.S.C. 1710

Commenters asserted that VA's interpretation of 38 U.S.C. 1710 to provide access to health care services permitted under the IFR was unsupported because the text of 38 U.S.C. 1710 does not expressly include these services and because VA has not previously invoked or construed 38 U.S.C. 1710 as authority for provision of these services. VA does not make changes to the rule based on these comments. The commenters' assertions regarding the text of 38 U.S.C. 1710 overlook that the terms ''hospital care'' and ''medical services'' as used in 38 U.S.C. 1710 are further defined in 38 U.S.C. 1701(5) and (6). As relevant here, ''hospital care'' is defined to include ''medical services rendered in the

course of hospitalization of any veteran'' and ''medical services'' is defined to include ''medical examination, treatment, and rehabilitative services,'' ''[s]urgical services,'' and ''[p]reventive health services'' (38 U.S.C. 1701(5) and (6)). The definitions of ''hospital care'' and ''medical services'' in 38 U.S.C. 1701(5) and (6) do not list more specific types of care or services. And, in describing categories of hospital care and medical services, 38 U.S.C. 1701 and 1710 do not enumerate every conceivable or commonly prescribed care or service, whether such care or service involves specific care or services such as abortion, prescription drugs, or completion of specific medical forms such as life insurance applications. Rather, such care and services are generally described in the VA medical benefits package codified in 38 CFR 17.38(a).

The medical benefits package consists of a wide range of basic and preventive care, including inpatient and outpatient medical and surgical care, prescription drugs, emergency care, pregnancy and delivery services, and periodic medical exams. 38 CFR 17.38(a). Whether hospital care or medical services under the medical benefits package are considered needed are determinations that 38 U.S.C. 1701 and 1710 leave to the Secretary's discretion. See 38 U.S.C. 1710(a)(1) (''The Secretary . . . shall furnish hospital care and medical services which the Secretary determines to be needed[.]''). The Secretary can include or exclude care in the medical benefits package based on whether the Secretary determines that care is ''needed'' within the meaning of 38 U.S.C. 1710(a)(1)–(3). 38 CFR 17.38(c).

After the Supreme Court issued its decision in *Dobbs* v. *Jackson Women's Health Organization,* 142 S. Ct. 2228 (2022), veterans living in States that ban or restrict abortions may no longer be able to receive needed medical services in their communities as a result of State restrictions. It is thus essential for the lives and health of our veterans that abortions be made available if determined needed by a health care professional when: (1) the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest.

Additionally, the commenters' assertions that VA has never previously invoked its authority under 38 U.S.C. 1710 to authorize the provision of abortions are incorrect. Before the regulatory promulgation of the medical benefits package in 1999, which excluded the health care services permitted under the IFR, VA policy authorized the provision of certain abortions. VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a (July 26, 1977, partial rescission, expired on Jan. 7, 1999) (authorizing ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein). This was permitted under VA's authority to provide hospital care and medical services under 38 U.S.C. 1710 and 38 U.S.C. 1712 (former medical services authority), respectively. As explained in the IFR, VA did not explain the rationale behind the exclusion of abortions and abortion counseling from the medical benefits package when it was established in 1999, but at the time, *Roe* v. *Wade,* 410 U.S. 113 (1973) had been reaffirmed in relevant part by *Casey,* and VA was aware that veterans could access abortions in their communities. 87 FR 55288. Following the *Dobbs* decision, States began to ban or restrict abortion services and veterans living in those States were losing access to such medical care. *Id.* Thus, VA explained in the IFR that this policy change was essential for the lives and health of the veterans that VA serves. *Id.*

VA makes no changes to the rule based on the assertions raised in these comments, as discussed above.

In support of the claim that 38 U.S.C. 1710 does not authorize VA's provision of the health care services permitted under the IFR, some commenters cited to testimony presented during a June 2022 legislative hearing before the House of Representatives Veterans Affairs Committee Subcommittee on Health and minutes from an August 2019 meeting of the Advisory Committee on Women Veterans. VA makes no changes to the rule based on this comment.

Neither the testimony presented during the June 2022 legislative hearing before the House of Representatives Veterans Affairs Committee Subcommittee on Health nor the minutes from the August 2019 meeting of the Advisory Committee on Women Veterans suggests that VA lacks authority under 38 U.S.C. 1710 to provide the health care services permitted under the IFR. The passage that the commenter cites from the Advisory Committee on Women Veterans meeting minutes refers to language from page 20 of the August 2019 Advisory Committee on Women Veterans meeting minutes, which refers to an update on the Committee's recommendation that VA pursue a regulatory change to remove the exclusion of abortions in cases of threat to the life of the mother, sexual assault, and incest from the medical benefits package. The minutes state:

> VA has declined the ACWV's recommendation and will not change the medical benefits package regulations to remove the exclusion of abortions and abortion counseling services. VA believes that Congress, as the representatives of the will of the American people, must take the lead on this sensitive and divisive issue. VA will take no further action on the matter without a legal mandate, and will work with the House Veterans Affairs Committee to provide technical assistance on related legislation.

VA has never indicated that it lacks statutory authority to include abortion counseling and abortions in its medical benefits package in a circumstance in which the VA Secretary determined that such care was needed. And notably, VA made this statement in response to ACWV's recommendations before the Supreme Court issued its decision in *Dobbs*.

In addition, during the June 2022 legislative hearing, VA was discussing a single, standalone bill, H.R. 345, that would have overridden VA's regulatory exclusion of abortion counseling by requiring the Department to provide this service to a veteran as appropriate. VA stated, ''[T]he bill would not authorize VA to provide abortions; it would only allow VA to provide patient education.'' This statement does not mean that VA otherwise lacks authority to provide abortions, merely that VA was providing testimony on a legislative measure that, if enacted, would have only overridden VA's then-exclusion of abortion counseling codified in VA regulations. VA also notes that such legislative discussions in 2022 do not provide a basis to narrowly construe the scope of VA's pre-existing statutory authority. *See, e.g., Bostock* v. *Clayton Cnty., Georgia,* 140 S. Ct. 1731, 1747 (2020) (''[S]peculation about why a later Congress declined to adopt new legislation offers a 'particularly dangerous' basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.'' (citing *Pension Benefit Guaranty Corporation* v. *LTV Corp.,* 496 U.S. 633, 650 (1990))).

One commenter, in further support of the assertion that VA did not have legal authority to issue the IFR, cited recent Supreme Court case law to argue that Federal agencies exceed their statutory authorities when they purport to find novel powers in long extant Federal statutes. *West Virginia* v. *Environmental Protection Agency,* 142 S. Ct. 2587 (2022); *National Federation of Independent Business* v. *Dept. of Labor,*

142 S. Ct. 661 (2022). But those cases are inapposite because, as discussed, clear statutory authority supports this rulemaking. Pursuant to VA's general treatment authority provided by Congress, VA ''shall furnish'' specified veterans with ''hospital care and medical services which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(1)–(2). For other veterans, the Secretary ''may,'' subject to certain limitations, ''furnish hospital care'' and ''medical services . . . which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(3). VA issued the IFR because the Secretary determined that it is ''essential for the lives and health of our veterans that abortions be made available if determined needed by a health care professional when: (1) the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest.'' 87 FR 55288. The Secretary also determined that ''abortion counseling is needed so that veterans can make informed decisions about their health care.'' *Id.* at 55292. The Secretary thus ''determined that such medical care is 'needed' within the meaning of VA's general treatment authority,'' which ''means that such care may be provided if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.'' *Id.* at 55288. *See also* 38 U.S.C. 1781(a); 38 CFR 17.270(b); 87 FR 55290–92 (discussing the VA Secretary's authority and determinations regarding CHAMPVA beneficiaries).

The Secretary has previously exercised authority under 38 U.S.C. 1710 to amend 38 CFR 17.38 to add new services to the medical benefits package services. For example, VA added to the medical benefits package pregnancy and delivery services to the extent authorized by Federal law. See 64 FR 54217. VA also added newborn care as a service provided under the medical benefits package. See 76 FR 78569. Such care was authorized pursuant to 38 U.S.C. 1710 and 1786.

The decisions the commenter cites also are distinguishable because, as discussed above, this is not the first time that VA has relied on relevant statutory authority in this manner. As stated before, VA policy authorized the provision of certain abortions. VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a. (July 26, 1977, partial rescission, expired on Jan. 7, 1999)) (authorizing ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein).

The determination not to continue this medical service when the medical benefits package regulation was established in 1999 was based on a VA policy decision, not because VA's general treatment authority did not cover this medical service. Indeed, the fact that abortion was specifically excluded from the medical benefits package under 38 CFR 17.38(c) makes clear that VA has long held the position that abortion and abortion counseling is medical care that the Secretary is statutorily authorized, pursuant to his discretion, to include in the medical benefits package under § 17.38(a). Although VA maintained the exclusion on abortion care starting from the effective date of the medical benefits package in 1999 until 2022, as stated in the preamble to the IFR, Congress has authorized VA to amend its medical benefits package when the Secretary determines such change is warranted. Contrary to the commenter's assertion, VA's reading of 38 U.S.C. 1710 is not novel but supported by past readings of VA's medical care treatment authority; the commenter's cited case law is thus not applicable to this rulemaking. VA makes no changes to the rule based on this comment.

2. Conflict With Section 106 of the Veterans Health Care Act of 1992

Many commenters generally stated that the IFR violates section 106 of the Veterans Health Care Act of 1992 (VHCA), Public Law (Pub. L.) 102–585, 106 Stat. 4943, and that therefore VA should rescind the IFR. VA does not make any changes to the rule or rescind the IFR based on these comments. As explained in the preamble to the IFR, the VHCA barred the provision of abortion, infertility, and much of prenatal and delivery care but only under section 106 of the VHCA. It did not limit VA's authority to provide such services under any other statutory provision such as 38 U.S.C. 1710 or 38 U.S.C. 1712. Public Law 102–585, sec. 106(a). *See* 87 FR 55288–289. Moreover, in 1996, the Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA by enacting major changes to eligibility for VA health care, including by amending 38 U.S.C. 1710, and directing VA to establish a system of patient enrollment to manage the provision of care. *See* 87 FR 55289. The purpose behind eligibility reform was to replace the old system with a system where an enrolled veteran could receive whatever medical care and services are deemed needed. *See* House of Representatives Report No. 104–690, at 4 (1996). Consequently, for decades, VA has offered general pregnancy care and certain infertility services under 38 U.S.C. 1710, despite the VHCA's prohibition on providing such services under section 106. *Id.* VA has not relied on section 106 of the VHCA to provide such services or any other services.

Other commenters more specifically asserted that section 106 of the VHCA was still operable to prohibit abortion in VA health care programs, and provided more specific supporting rationale, as addressed below.

a. General Versus Specific Canon of Statutory Construction

Some commenters asserted that, under traditional rules of statutory construction, the more specific and targeted treatment of abortion in section 106 of the VHCA governs over the more general treatment of health care in the Veterans Health Care Eligibility Reform Act of 1996 and 38 U.S.C. 1710. As further explained below, this canon of construction is applicable when two statutory provisions are in conflict, but section 106 does not conflict with VA's authority to provide abortions under other statutory provisions such as 38 U.S.C. 1710 and 1712 (former medical services authority). Consequently, the focus of commenters on the general versus specific canon is mistaken, and VA does not make changes to the rule based on these comments.

By its plain terms, section 106 of the VHCA does not circumscribe the Secretary's authority to determine what hospital care and medical services are needed under 38 U.S.C. 1710. Section 106 affirmatively authorized VA to provide certain healthcare services to women, including ''[g]eneral reproductive health care,'' but provided that this authorization for general reproductive health care did ''not includ[e] *under this section* infertility services, abortions, or pregnancy care (including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.'' (emphasis added). The phrase ''under this section'' means that while section 106 bars the provision of any abortion or infertility or general pregnancy services under section 106 of the VHCA, it does not limit VA's authority to provide such services under any other statutory provision, such as VA's general treatment authority, 38 U.S.C. 1710. *See, e.g., Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees*

When Providing Certain Abortion Services, 46 Op. O.L.C., __, at *1, 7–8 (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf* (noting that the IFR represented a reasonable exercise of the VA Secretary's discretion to provide medical services).

Accordingly, the commenters' reliance on the ''general/specific canon'' is misplaced. Moreover, as the Supreme Court has acknowledged, the general/specific canon is not an absolute rule and can be overcome by textual indications that point to the general and specific provisions coexisting, rather than the specific governing the general. *See RadLAX Gateway Hotel* v. *Amalgamated Bank,* 566 U.S. 639, 646 (2012). In this case, section 106 specifies that abortions cannot be provided ''under this section'' of the VHCA, but it does not prohibit VA from providing abortions under other statutory provisions such as 38 U.S.C. 1710 and 1712 (former medical services authority).

VA's interpretation of section 106 in this respect has been long-standing. VA has never interpreted section 106 to prohibit the Department from providing health care under other statutory authorities. For example, as discussed above, VA continued to provide certain abortions as well as therapeutic surgical sterilizations, a type of infertility treatment, after the passage of section 106 and until promulgation of the final rule establishing VA's medical benefits package in October of 1999. *See* VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a. (July 26, 1977, partial rescission, expired on Jan. 7, 1999) (authorizing ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein).

A VA policy published in 1993 also demonstrates this long-standing interpretation of section 106. With VA's increased focus on health services available for women veterans, VA published VHA Directive 10–93–151, Health Care Services for Women Including General Reproductive Health Care for Women Veterans under the Women Veterans Health Program Act of 1992 (Pub. L. 102–585) (dated Dec. 6, 1993, rescinded Dec. 29, 1994). In para. 2.b. of this 1993 policy, VA squarely addressed section 106's relation to other treatment laws. Specifically, VA explained that the exclusions from ''general reproductive healthcare'' (set forth in section 106(a)(3)) ''do not constitute a ban on the Secretary's authority to provide infertility or abortion services as otherwise authorized under 38 United States Code (U.S.C.) Chapter 17.'' It also explained how the authorities granted in section 106 ''are not new,'' as VA medical centers ''have provided cancer screening to women for some time,'' and it further described how ''general reproductive health care'' is ''within the purview of gynecology.'' To this point, when later issuing the medical benefits package, VA included, within covered basic care, infertility services (such as reverse voluntary sterilization and infertility services other than in vitro fertilization) because they meet the criteria for inclusion, *i.e.,* ''care that is determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice.'' 64 FR 54207, 54210.

Similarly, VA has provided some infertility services (excluding in vitro fertilization (IVF) pursuant to 38 CFR 17.38(c)(2)) and pregnancy-related services under 38 U.S.C. 1710 for decades. See 87 FR 55289; see also 64 FR 54210; VHA Directive 10–93–151, December 6, 1993. Section 106 excludes ''infertility services'' and ''pregnancy care'' in addition to ''abortion'' from care provided under section 106. (We note that section 106 does not further define these terms.) Commenters' reliance on section 106 to object to VA's addition of abortion to care provided under 38 U.S.C. 1710 overlooks VA's longstanding provision of infertility services (excluding IVF) and pregnancy-related services under 38 U.S.C. 1710, which shows that section 106 does not limit VA's other healthcare authorities. And VA has long recognized that a veteran could be eligible for certain infertility services (excluding IVF) for a service-connected disability under (former) 38 U.S.C. 1712 (former authority under which outpatient medical services were provided prior to 1996), even though that veteran would have been ineligible for infertility services under section 106 of the VHCA. 87 FR 55289.

The IFR explained that Congress enacted the VHCA at a time when ''VA health care was subject to a patchwork of eligibility criteria, and care was largely linked only to service-connected conditions,'' and how ''[t]he VHCA, in relevant part, was designed to improve the health care services available to women veterans.'' 87 FR 55288–89. Section 106 of the VHCA, however, was effectively overtaken by a subsequent statutory and regulatory overhaul of VA's medical benefits system, which extended eligibility for hospital care and medical services. The Veterans' Health Care Eligibility Reform Act of 1996 established a system in which an eligible veteran could receive whatever medical care and services the Secretary determines are ''needed.'' 38 U.S.C. 1710; *see, e.g.,* H.R. Rep. No. 104–690, at 4 (1996); *see also id.* (''While the new standard is a simple one, more importantly, it employed a clinically appropriate 'need for care' test, thereby ensuring that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished.''); *id.* at 13 (''[The Act] would substitute a single, streamlined eligibility provision—based on clinical need for care—for the complex array of disparate rules currently governing veterans' eligibility for hospital and outpatient care.''). As explained in the IFR, ''[t]he Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA,'' and ''section 106's prohibition on providing certain services 'under this section' simply is no longer operative.'' 87 FR 55289–90.

b. VA's Interpretation of the Phrase ''But Not Including Under This Section'' in Section 106 of VHCA

Some commenters further asserted that VA's interpretation of the phrase ''but not including under this section'' in section 106 of the VHCA, as reiterated in the IFR (87 FR 55289), was invalid, arguing that such language does not limit abortion restrictions to only that healthcare for women veterans that was provided under section 106. In support of this assertion, the commenters proffered that certain prefatory language in section 106(a) qualifies the ''under this section'' language in section 106(a)(3) such that the exclusion on abortions there must be read to apply to all hospital care and medical services under chapter 17 of title 38.

VA does not make changes to the rule based on these comments, which misunderstand VA's statutory authority. The VHCA, in relevant part, was designed to improve the health care services available to women veterans. 102 Cong. Rec. 32,367 (1992). Section 106(a) of the VHCA stated that ''[i]n furnishing hospital care and medical services under chapter 17 of title 38, United States Code,''—prefatory language applicable to all of section 106—VA could provide ''women'' with ''[p]apanicolaou tests (pap smears),'' ''[b]reast examinations and mammography,'' and ''[g]eneral reproductive health care . . . , but not including under this section infertility services, abortions, or pregnancy care

(including prenatal and delivery care), except for such care relating to a pregnancy that is complicated or in which the risks of complication are increased by a service-connected condition.'' Public Law 102–585, sec. 106(a).

As explained above, the VHCA has been effectively overtaken by laws that Congress has subsequently enacted. But even taking section 106 on its own terms, the commenters' interpretation of section 106(a)'s prefatory language would render the important ''under this section'' qualifier in section 106(a)(3) a nullity, contrary to longstanding precedent. *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.,* 583 U.S. 109, 128–29 (2018) (''As this Court has noted time and time again, the Court is 'obliged to give effect, if possible, to every word Congress used.' '' (quoting *Reiter* v. *Sonotone Corp.,* 442 U.S. 330, 339 (1979)). If section 106(a)'s prefatory language precluded VA from providing abortion care under its other statutory authorities, then section 106(a)(3)'s ''under this section'' qualifier would be ''a dead letter.'' *United States* v. *Atl. Rsch. Corp.,* 551 U.S. 128, 137 (2007). By contrast, VA's longstanding interpretation of section 106 faithfully reads the statute '' 'as a whole.' '' *Id.* at 135 (quoting *King* v. *St. Vincent's Hospital,* 502 U.S. 215, 221 (1991)). In addition, VA finds support for this in the legislative history accompanying the enactment of section 106. See Joint Explanatory Statement on H.R. 5193, 1992 U.S.C.C.A.N. 4186, 4189–90 (noting ''[t]he inclusion of the phrase 'under this section' underscores the intent of the Committees not to limit such authority as the Secretary may have to provide any infertility services under Chapter 17.''). As explained, moreover, the commenters' interpretation is inconsistent with the plain meaning (and VA's decades-long interpretation) of the phrase ''under this section.''

c. VA's Furnishing of In-Vitro Fertilization Services

Commenters asserted that section 106 of the VHCA remains in effect to prohibit VA from furnishing the health care services permitted under the IFR, citing as evidence the proposition that VA required a special amendment, the ''Murray Amendment,'' to carve out an exception from section 106 of the VHCA so that VA could provide IVF services. The Murray Amendment is a reference to section 260 of Public Law 114–223, Division A, title II, enacted on September 29, 2016, and renewed in subsequent fiscal years. Section 260(a)(1) of Public Law 114–223 provides, notwithstanding any other provision of law, that the amounts appropriated or otherwise made available to VA for the Medical Services account may be used to provide fertility counseling and treatment using assisted reproductive technology to a covered veteran or the spouse of a covered veteran, subject to certain statutory and regulatory limitations.

VA does not make changes to the rule based on these comments. VA disagrees with the commenters' assertion that independent authority to provide IVF care was needed to supersede section 106. The Murray Amendment established new authority to provide fertility counseling and treatment using assisted reproductive technology not only to a covered veteran but also to the spouse of a covered veteran. It was needed because 38 U.S.C. 1710 does not extend, and never has extended, to a veteran's spouse. See 38 U.S.C. 1710 (referring only to veterans) and 38 U.S.C. 1781 through 1789 (VA's statutory authorities to provide health care to persons other than veterans, which do not extend IVF care to non-veterans). Independent authority was needed to authorize VA to also include the spouses of covered veterans in the VA-furnished IVF episode of care. But the Murray Amendment was not necessary to enable VA to provide infertility services to the veterans themselves under 38 U.S.C. 1710. And as explained above, section 106 has no impact on VA's authority to provide medical services pursuant to section 1710 or any statutory authority other than section 106 itself. In short, the Murray Amendment did not and does not implicate section 106 of the VHCA.

d. Effect of Deborah Sampson Act of 2020

Some commenters asserted that section 106 of the VHCA must prohibit VA from furnishing the health care services permitted under the IFR because the Deborah Sampson Act of 2020 (Pub. L. 116–315, title V, subtitle A) defined ''health care'' as ''the health care and services included in the medical benefits package provided by the Department before January 5, 2021,'' sec. 5101 of Public Law 116–315, and on January 4, 2021, the health care and services included in the medical benefits package provided by the Department did not include abortion or abortion counseling. The commenters argued that Congress thus approved of the exclusion of abortion and abortion counseling.

VA does not make changes to the rule based on these comments. The IFR explained that the Deborah Sampson Act of 2020, Public Law 116–315, title V, section 5001 (2021) ''created a central office to, inter alia, 'monitor[ ] and encourag[e] the activities of the Veterans Health Administration with respect to the provision, evaluation, and improvement of health care services provided to women veterans by the Department.' '' 87 FR 55289 (quoting 38 U.S.C. 7310(b)(1)) (alterations in original). Congress defined ''health care'' for these purposes as ''the health care and services included in the medical benefits package provided by the Department as in effect on the day before the date of the enactment of this Act [Jan. 5, 2021].'' *Id.* (quoting 38 U.S.C. 7310 note). At the time, the medical benefits package included (and still includes) care that would have been excluded under the commenters' interpretation of section 106 of the VHCA, such as prenatal and delivery services.

The IFR stated that ''[g]iven that VA's medical benefits package as of that date included services that were excluded from the coverage of Section 106 of the VHCA, Congress ratified VA's interpretation that it may provide for these services pursuant to its authority under 38 U.S.C. 1710, notwithstanding section 106. Indeed, the fact that the Deborah Sampson Act of 2020 did not reference section 106 of the VHCA and only referenced VA's medical benefits package shows that Congress did not interpret section 106 of the VHCA as a limitation on VA's authority to provide care to 'women veterans.' '' 87 FR 55289.

Contrary to the commenter's assertion, the fact that VA had not, in its discretion, exercised its authority at the time of the Act to provide abortions or make exceptions to the regulatory exclusion on abortion does not mean that VA lacks statutory authority under 38 U.S.C. 1710 to determine that abortions in some cases constitute needed care and to accordingly amend its exclusion by regulation. As VA explained in the IFR, the Deborah Sampson Act of 2020 recognized 38 U.S.C. 1710 as a separate treatment authority unaffected and not limited by section 106. In fact, the terms of 38 U.S.C. 7310A(g)(2) as added by the Deborah Sampson Act of 2020 define, for purposes of VA's annual reporting requirement, gender-specific services to include: ''mammography, obstetric care, gynecological care, and such other services as the Secretary determines appropriate,'' some of which VA would not have authority to provide ''under the commenters' interpretation of section 106. *See also supra* I.B.2. Thus, section 106 and its limits on certain care under section 106 of Public Law 102–

585 were clearly not seen by Congress in promulgating the Deborah Sampson Act of 2020 as having any effect on VA's exercise of authority under 38 U.S.C. 1710.

Nothing in the Deborah Sampson Act of 2020 prohibits VA from removing exclusions from the medical benefits package under 38 U.S.C. 1710. VA recognizes that 38 U.S.C. 7310, Note, (Pub. L. 116–315, title V, section 5101(b)(2)) provides that: ''The references to health care and the references to services in sections 7310 and 7310A of title 38, United States Code, as added by paragraph (1), are references to the health care and services included in the medical benefits package provided by the Department as in effect on the day before the date of the enactment of this Act [Jan. 5, 2021].'' Congress did not, through that language, freeze in place the types of medical services that VA is authorized to provide under its general treatment authorities. Section 7310 of title 38, U.S.C. relates to the establishment of the Office of Women's Health within VHA and its mission, and 38 U.S.C. 7310A relates to annual reports on Women's Health to be submitted to Congress. Nothing in either statute prohibits VA from expanding the medical benefits package or services or from providing additional information beyond what is required under 38 U.S.C. 7310 and 7310A. And these sections impose no limits on VA's general treatment authority in 38 U.S.C. 1710.

To the contrary, some of the functions of the Office of Women's Health set forth in 38 U.S.C. 7310(b) are to promote the expansion and improvement of clinical activities of VHA with respect to the health care of women veterans and to carry out such other duties as the Under Secretary for Health may require. On its face, the function of the Office to ''expand and improve'' clinical activities of VHA contemplates VA's authority to modify the medical benefits package to include additional services with respect to the health care of women veterans.

e. Repeal of Section 106 of the VHCA

Some commenters asserted that section 106 has not been expressly repealed and further that repeals by implication are not favored, citing *Branch* v. *Smith,* 538 U.S. 254, 273 (2003), and *Posadas* v. *National City Bank,* 296 U.S. 497 (1936). VA does not make any changes to the rule based on these comments.

At the outset, VA notes that this issue is immaterial because, even if section 106 remained in force, it would not constrain VA's authority to provide services (whether abortions, prenatal care, or other services) limited under section 106 but authorized under other statutory provisions such as 38 U.S.C. 1710 and former 38 U.S.C. 1712. Rather, the limitation in section 106 regarding care ''under this section'' applies only to section 106.

Regardless, VA disagrees with commenters that section 106 remains in force. As discussed above and in the preamble to the IFR, the Veterans' Health Care Eligibility Reform Act effectively overtook section 106 of the VHCA by establishing a new standard to focus on medical necessity as ''the sole criterion of eligibility for VA hospital care and medical services.'' [1] The ''need for care'' test was meant to ensure ''that medical judgment rather than legal criteria will determine when care will be provided and the level at which that care will be furnished.'' [2] To the extent the commenters would construe section 106 of the VHCA to restrict VA's authority to provide a specific type of health care or service under separate statutory authorities, regardless of a finding of medical need, that restriction would irreconcilably conflict with VA's furnishing of any needed health care or services under 38 U.S.C. 1710. Indeed, for decades, VA has offered general pregnancy care and certain infertility services under 38 U.S.C. 1710 and has not relied on section 106 of the VHCA to provide such services or any other services.

3. Conflict With State Laws

Many commenters generally opined that the IFR violates State laws. VA does not make changes to the rule based on these comments.

The Supremacy Clause of the U.S. Constitution, U.S. Const. art. VI, cl. 2., generally prohibits States from interfering with or controlling the operations of the Federal government, and therefore immunizes the Federal government from State laws that directly regulate it. ''[W]hen a federal agency 'perform[s] a federal function pursuant to a law validly enacted by Congress[,] . . . under the Supremacy Clause, the states may not prohibit or, by regulation, significantly burden the manner of its execution without the consent of the United States.' '' *Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services,* 46 Op. O.L.C., __, at *4 (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf*. Applying this principle to VA's IFR, the Department of Justice's Office of Legal Counsel concluded that ''states may not restrict VA and its employees acting within the scope of their federal authority from providing abortion services as authorized by federal law, including VA's rule.'' *Id.* at *10.

Moreover, VA promulgated a regulation at 38 CFR 17.419 that explicitly preempts any State laws, rules, regulations, or requirements that conflict with a VA health care professional's practice within the scope of their VA employment. As explained in the IFR, consistent with § 17.419, VA has determined that State and local laws, rules, regulations, or requirements, to the extent those laws unduly interfere with Federal operations and the performance of Federal duties, are preempted. That includes laws that States and localities might attempt to enforce in civil, criminal, or administrative matters against VA employees. State and local governments lack legal authority to enforce such laws, rules, regulations, or requirements in relation to health care and medical services provided by VA employees acting within the scope of their VA authority and employment.

One commenter asserted that VA has no basis in Federal law to claim ''blanket preemption'' in States that prohibit or restrict abortion, and other commenters relatedly stated that VA must be specific with regards to its claim of Federal supremacy. Such comments noted specific kinds of State laws that they asserted VA must either adhere to or demonstrate are explicitly preempted. Other commenters stated that Federal agencies cannot preempt State law unless an explicit conflict exists.

VA does not make changes to the rule based on these comments. It is not clear what the commenter meant by ''blanket preemption.'' VA has been specific as to the scope of preemption; as VA previously confirmed in 38 CFR 17.419, and reiterated in the IFR, VA health care professionals may practice their health care profession consistent with the scope and requirements of their VA employment, notwithstanding any State law or license, registration, certification, or other requirements that unduly interfere with their practice. VA's regulation provides that, in order to ''provide the same complete health care and hospital service to beneficiaries in all States as required by 38 U.S.C. 7301, conflicting State laws, rules, regulations, or requirements pursuant to such laws are without any force or effect, and State governments have no legal authority to

[1] H.R. REP. NO. 104–690, at 11.

[2] Id. at 4.

enforce them in relation to actions by health care professionals within the scope of their VA employment.'' 38 CFR 17.419. Consistent with the Supremacy Clause and § 17.419, the IFR further explained that a State or local civil or criminal law that restricts, limits, or otherwise impedes a VA professional's provision of needed medical care within the scope of their VA employment, including the health care services permitted under the IFR, would be preempted. VA employees, including health care professionals who provide care and VA employees who facilitate that health care, such as VA employees in administrative positions who schedule abortion procedures and VA employees who provide transportation to the veteran or CHAMPVA beneficiary to the VA facility for reproductive health care, may not be held liable under State or local law or regulation for reasonably performing their Federal duties.

In response to comments that raised specific State requirements related to abortion, and further suggested that VA must show whether such requirements are specifically preempted, we do not make changes. As a general matter, VA determines whether a State law ''unduly interferes on a case-by-case basis.'' See Authority of VA Professionals to Practice Health Care, 85 FR 71838, 71842 (Nov. 12, 2020); Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services, 46 Op. O.L.C., __, at *10 (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf.* Accordingly, consistent with VA's existing regulations and the authorities discussed above, any State and local laws and regulations that VA determines would prevent or unduly interfere with VA health care professionals providing needed care as permitted by this rule, would be preempted.

Several commenters referenced a court case related to HHS's interpretation of the Emergency Medical Treatment and Labor Act (EMTALA), which VA believes meant to reference an injunction issued by the U.S. District Court for the Northern District of Texas, *Texas* v. *Becerra,* 623 F. Supp. 3d 696 (N.D. Tex. 2022), *aff'd,* 89 F.4th 529 (5th Cir. 2024), where the district court was interpreting the specific language of this different statute that applies to certain hospitals that receive Medicare funding. The court was not interpreting VA's statutory authority, or related statutory language applicable here, and its decision and reasoning are not applicable to VA's IFR.

One commenter asserted, without any supporting authority, that VA is required to show a compelling interest to preempt State laws. As VA explained in the IFR, pursuant to its authorities in 38 U.S.C. 1710 and 1781, VA implemented the IFR to avert imminent and future harm to veterans and CHAMPVA beneficiaries whose interests Congress entrusted VA to serve. As explained above, 38 CFR 17.419(c) preempts ''conflicting State laws, rules, regulations, or requirements pursuant to such laws'' to the extent the State law unduly interferes with VA's ability ''provide the same complete health care and hospital services to beneficiaries in all States'' including, but not limited to, abortion. VA takes no action based on this comment.

4. Conflict With the Holding in Dobbs and the Tenth Amendment

Some commenters stated that the *Dobbs* decision delegated abortion matters to States rather than the Federal government, and further that the Tenth Amendment of the United States Constitution limits VA's authority to preempt State law. VA takes no action based on these comments. The *Dobbs* decision overturned *Roe* v. *Wade,* 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania* v. *Casey,* 505 U.S. 833 (1992), and in no way affects VA's Federal statutory authority to develop regulations and policy related to the agency's own provision of needed medical care, including the health care services permitted under the IFR. VA furnishes hospital care and medical services determined to be needed pursuant to VA's general treatment authority for veterans (38 U.S.C. 1710), and pursuant to regulation through VA's medical benefits package (38 CFR 17.38). VA has determined that the health care services permitted by the IFR are needed. Similarly, VA has determined that providing access to such care is medically necessary and appropriate to protect the health of CHAMPVA beneficiaries. *See* 38 U.S.C. 1781; 38 CFR 17.270(b) (defining ''CHAMPVA-covered services and supplies'' as ''those medical services and supplies that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded under [38 CFR 17.272(a)(1)] through (84)''). As explained above, the Supremacy Clause of the United States Constitution prohibits states from restricting Federal agencies and their employees acting within the scope of their Federal authority from providing abortion services. *See generally Intergovernmental Immunity for the Department of Veterans Affairs and Its Employees When Providing Certain Abortion Services,* 46 Op. O.L.C., __, (Sept. 21, 2022), *https://www.justice.gov/d9/2022-11/2022-09-21-va_immunity_for_abortion_services.pdf.*

The Tenth Amendment of the United States Constitution provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. VA is a Federal health care system, the operations of which are governed by Federal law, consistent with title 38, United States Code. VA's authority to furnish health care to veterans and CHAMPVA beneficiaries has been granted by Federal statute as described above. VA's issuing of the IFR does not encroach on any rights reserved to the States or to the people and is not a violation of the Tenth Amendment to the United States Constitution. The statement of preemption of conflicting State law under the IFR is consistent with 38 CFR 17.419(c) and lawful pursuant to the Supremacy Clause, U.S. Const. art. VI, cl. 2.

5. Conflict With Department of Defense Authorities

Commenters alleged that this rule violates 10 U.S.C. 1093 and that VA cannot or should not provide broader access to abortion counseling and abortions than DoD. Multiple of these commenters further asserted that it is hard to imagine that Congress intended for former members of the armed services and their dependents to have access to abortion under VA programs when current service members do not have such access under DoD programs, and one commenter incorrectly stated that VA Medical Centers are facilities within the control of DoD. VA does not make changes to the rule based on these comments.

Section 1093 of title 10 of the U.S. Code establishes that DoD may not use funds or facilities ''to perform abortions except where the life of the mother would be endangered if the fetus were carried to term or in a case in which the pregnancy is the result of an act of rape or incest.'' Section 1093 applies only to the use of DoD funds and facilities, not to VA funds and facilities. VA notes, however, that the terms of 10 U.S.C. 1093 conflict with the assertions made by some commenters that active-duty members of the armed services can never receive abortions under DoD programs.

To the extent that some of these commenters raised the issue of dependents of service members having access to services in VA programs that they would not have under DoD programs for dependents, the statute governing VA's coverage for CHAMPVA beneficiaries specifically recognizes the possibility of differences in what care is covered under this VA program as opposed to the care covered under the similar DoD program, *i.e.,* TRICARE (Select). Congress did not require that VA furnish identical medical benefits to those not eligible for TRICARE (Select). Rather, the law directs VA to provide CHAMPVA beneficiaries with medical care ''in the same *or similar* manner and subject to the same *or similar* limitations as medical care'' furnished to DoD TRICARE Select beneficiaries. 38 U.S.C. 1781(b) (emphases added). Indeed, prior to the IFR, CHAMPVA was not identical to TRICARE (Select). *See, e.g.,* 87 FR 55290. For example, the former did not include access to abortions in cases of rape or incest, while the latter did. The IFR brought CHAMPVA more in line with TRICARE (Select) in this regard. The commenter does not address the statute's repeated use of the phrase ''or similar.'' That text recognizes differences may exist between the two programs' respective beneficiary populations and their needs. As VA explained in the IFR, VA has previously regulated to provide CHAMPVA benefits beyond those benefits offered by TRICARE (Select) if providing such health care would better promote the long-term health of CHAMPVA beneficiaries. 87 FR 55290. Further, CHAMPVA beneficiaries (unlike TRICARE (Select) beneficiaries) include family caregivers of veterans, not just eligible dependents. 38 U.S.C. 1720G(a)(3)(A)(ii)(IV). Consistent with the statute's plain meaning, VA provides CHAMPVA beneficiaries certain care that is ''similar,'' but not necessarily identical, to care provided to beneficiaries of TRICARE (Select). *See, e.g.,* 73 FR 65552 (November 4, 2008) (adding coverage for medically necessary prostheses because of significant conditions and removing exclusion of enuretic devices despite each not being covered by TRICARE (Select)); 87 FR 41594 (July 13, 2022) (providing coverage for annual physical exams, even though excluded in TRICARE (Select)).

6. Conflict With the Antideficiency Act

Commenters stated that VA is barred from providing or paying for abortion or abortion counseling pursuant to the Antideficiency Act. VA does not make changes to the rule based on these comments. The Antideficiency Act, 31 U.S.C. 1341(a), generally prohibits Federal agencies from making expenditures in excess of available appropriations or in advance of appropriations. Per 31 U.S.C. 1349(a) and 1350, there are penalties associated with violations of the Antideficiency Act.

In this case, the Antideficiency Act is not implicated because Congress appropriated funds to VA to perform authorized services. Per title II of division J of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), title II of division J of the Consolidated Appropriations Act, 2022 (Pub. L. 117–103) and title II of division J of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), funds appropriated for fiscal years 2022, 2023, and 2024 to the Medical Services appropriations account have been made available ''[f]or necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the Department.'' The Medical Community Care appropriations account for fiscal years 2022, 2023, and 2024, has been made available ''[f]or necessary expenses for furnishing health care to individuals pursuant to chapter 17 of title 38, United States Code, at non-Department facilities.'' Title II, Division J, Consolidated Appropriations Act, 2021 (Pub. L. 116–260); Title II, Division J, Consolidated Appropriations Act, 2022 (Pub. L. 117–103); Title II, Division J, Consolidated Appropriations Act, 2023 (Pub. L. 117–328). More specifically, the Medical Services appropriation is for necessary expenses of inpatient and outpatient VA beneficiary care provided by VA at VA facilities and Government facilities for which VA contracts. The Medical Community Care appropriation is for necessary expenses of providing healthcare to VA beneficiaries in the community—facilities other than VA facilities and Government facilities for which VA contracts.

As explained, an abortion is authorized care under 38 U.S.C. 1710, the IFR, and the medical benefits package when a health care professional determines it to be needed and in accord with generally accepted standards of medical practice and: (1) the life or the health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest. Expenditures associated with such authorized care may be made from VA's Medical Services and—when appropriate—Medical Community Care accounts.

The IFR also authorizes the provision of medically necessary abortions and abortion counseling under VA's CHAMPVA program, 38 U.S.C. 1781, under the circumstances described in the rule. Medical Services and Medical Community Care account funds are used for the CHAMPVA program and may therefore be used for authorized counseling and care. Such expenditures are proper and do not violate VA's appropriations act or the Antideficiency Act.

7. Conflict With the Hyde Amendment

Some commenters stated that VA is barred from providing or paying for the health care services permitted under the IFR pursuant to what is referred to as the Hyde Amendment. VA does not make changes to the rule based on these comments.

VA is not subject to the Hyde Amendment, which addresses Federal funds available to the Departments of Labor, Health and Human Services, and Education in legislation on annual appropriations. Division H of Public Law 117–328; *see also* 87 FR 55290. Accordingly, VA is not barred by the Hyde Amendment from spending its funds to provide authorized health care services permitted by the IFR.

8. Conflict With the Assimilative Crimes Act and VA-Related Regulation

Some commenters asserted that the IFR violates the Assimilative Crimes Act, 18 U.S.C. 13, which allows the Federal government to prosecute a State crime as a Federal offense in limited circumstances when such offense has been committed on an area within the jurisdiction of the United States known as a Federal enclave and is not otherwise a Federal offense. These commenters appeared to assert that if a State makes it a crime to perform an abortion, any abortion performed in that State, in the absence of a Federal law prohibiting such performing of an abortion, would be unlawful under 18 U.S.C. 13 if performed on Federal property. Relatedly, one commenter alleged that the rule conflicts with 38 CFR 1.218(c)(3), which states that nothing contained in the rules and regulations set forth under 38 CFR 1.218(a) shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13, or any State or local laws and regulations applicable to the area in which the property is situated.

VA does not make changes to the rule based on these comments. As some of these commenters acknowledged, the Department of Justice's Office of Legal Counsel (OLC) has examined whether the Assimilative Crimes Act would apply to Federal employees performing their duties in a manner authorized by Federal law, while on a Federal enclave, which may include VA hospitals. OLC concluded that Federal employees engaging in such conduct would not violate that statute and could not be prosecuted by the Federal government under that law. *Application of the Assimilative Crimes Act to Conduct of Federal Employees Authorized by Federal Law,* 46 Op. O.L.C. __ (Aug. 12, 2022), *https://www.justice.gov/olc/file/1527726/download*. The reasoning in that opinion applies to VA employees on Federal enclaves who are providing care in accordance with their Federal duties authorized under the IFR. The commenter did not provide any response to this analysis, other than to reiterate the commenter's view that Federal law ''places significant limitations on abortions in VA programs.'' As explained, however, VA has statutory authority to provide the health care services permitted under the IFR.

Furthermore, the IFR is not in conflict with 38 CFR 1.218(c)(3), which provides, ''Nothing contained in the rules and regulations set forth in paragraph (a) of this section shall be construed to abrogate any other Federal laws or regulations, including assimilated offenses under 18 U.S.C. 13 or any State or local laws and regulations applicable to the area in which the property is situated.'' Paragraph (a) of such section describes rules and regulations that apply at a property under the charge and control of VA, and to persons entering such property, including, for example, conduct related to gambling, use of service animals, creation of disturbances, and vehicular and pedestrian traffic. 38 CFR 1.218(a). This provision is unrelated to matters of medical practice or the provision of medical benefits. It does not subject VA and its employees to State or other local restrictions on any form of medical care that VA staff are authorized to furnish, including VA's provision of health care services permitted under the IFR. Additionally, because the Assimilative Crimes Act has no application to VA employees practicing within the scope of their VA practice, as explained above, the portion of 38 CFR 1.218(c)(3) referring to the Act has no application to care provided under the IFR.

9. Conflict With Interstate Prohibitions Under 18 U.S.C. 1461 and 1462

Commenters alleged that the IFR violates 18 U.S.C. 1461 and 1462. Section 1461, in pertinent part, prohibits the mailing of ''[e]very article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use'' and ''[e]very article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose.'' Section 1462, in pertinent part, prohibits the knowing use of ''any express company or other common carrier or interactive computer service'' for transportation across State lines of ''any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use[.]'' These commenters also alleged that violation of these laws then support offenses under 18 U.S.C. 1961(1)(B) and 18 U.S.C. 552 (prohibiting Federal employees from aiding and abetting persons engaged in violation of laws prohibiting dealing in, among other things, the means for procuring abortion).

VA does not make changes to the rule based on these comments because the IFR is consistent with 18 U.S.C. 1461. In December 2022, OLC concluded that 18 U.S.C. 1461 does not prohibit the mailing of certain drugs that can be used to perform abortions where the sender lacks the intent that the recipient of the drugs will use them unlawfully. Because there are manifold ways in which recipients in every State may lawfully use such drugs, the mere mailing of such drugs to a particular jurisdiction is an insufficient basis for concluding that the sender intends them to be used unlawfully. *See Application of the Comstock Act to the Mailing of Prescription Drugs That Can Be Used for Abortions,* 46 Op. O.L.C., __, at 1 (Dec. 23, 2022), *https://www.justice.gov/d9/opinions/attachments/2023/01/03/2022-12-23_-_comstock_act_1.pdf*. In support of this conclusion, the OLC opinion explains that there are uses of these medications that State law does not prohibit, including mailing of abortion medications intended, for example, to be used pursuant to Federal authorities. Federal agencies, including VA, provide lawful abortions pursuant to their Federal authorities; therefore the mailing of abortion medications intended to be used lawfully pursuant to those authorities would not violate 18 U.S.C. 1461. This opinion further explains that the same analysis is applicable to the cognate provision 18 U.S.C. 1462. *Id.* at 2 n.3. Because any mailing or other transporting across State lines of certain medications or items under the IFR would not violate 18 U.S.C. 1461 or 1462, there is no subsequent potential offense under 18 U.S.C. 1961(1)(B) and 18 U.S.C. 552.

10. Conflict With the Major Questions Doctrine

Commenters alleged that this rule violates the major questions doctrine, referencing *West Virginia* v. *Environmental Protection Agency,* 142 S. Ct. 2587 (2022). Under such doctrine, an agency must identify clear congressional authorization for its exercise of authority in '' 'extraordinary cases' in which the 'history and the breadth of the authority that [the agency] has asserted,' and the 'economic and political significance' of that assertion, provide a 'reason to hesitate before concluding that Congress' meant to confer such authority.'' *Id.* at 2608 [alterations in original]. VA does not make changes to the rule based on these comments. As explained above, VA has not found ''a newfound power'' in an ''ancillary provision'' of the Veterans' Health Care Eligibility Reform Act of 1996, as the Supreme Court found the Environmental Protection Agency had done with the Clean Power Plan. *West Virginia,* 142 S. Ct. at 2602, 2610. Congress expressly delegated to the Secretary of Veterans Affairs the authority to ''furnish hospital care [and] medical services . . . which the Secretary determines to be needed.'' 38 U.S.C. 1710(a)(1)–(3). Identifying the medical services ''determine[d] to be needed'' for veterans is clearly within VA's authority. As discussed above, prior to promulgation of the final rule establishing VA's medical benefits package in October of 1999, VHA Policy, Manual M–2, Professional Services Part XIV, Surgical Service, Change 27, paragraph 9.02a. (July 26, 1977, partial rescission, expired on Jan. 7, 1999), recognized the need for and authorized the provision of a ''therapeutic . . . abortion as a proper treatment'' in some circumstances pursuant to the procedures described therein. The IFR is thus a traditional exercise of VA's established authority to determine what medical services are ''needed'' and, therefore, to decide what specific medical services VA will cover or provide under the medical benefits package.

Additionally, Congress has directed VA to provide ''for medical care'' under CHAMPVA ''in the same or similar manner and subject to the same or similar limitations as medical care is'' provided under TRICARE (Select). As

explained in the IFR, VA has previously deviated from TRICARE (Select) in amending its CHAMPVA regulations to provide services that best promote the long-term health of CHAMPVA beneficiaries while remaining sufficiently ''similar'' to TRICARE (Select). 87 FR 55290–55291. Thus, this IFR is also a traditional exercise of VA's authority to administer CHAMPVA and decide what medical services are medically necessary and appropriate for CHAMPVA coverage while remaining sufficiently ''similar'' to TRICARE (Select).

11. The Born Alive Infants Protection Act

One commenter inquired what VA will do to comply with its obligations under the Born Alive Infants Protection Act of 2002, and further stated that VA fails to explain what policies and procedures are in place to ensure that any children born alive after attempted abortions are given appropriate medical care in the same manner as other children born alive. The Born-Alive Infants Protection Act of 2002, Public Law 107–207, was enacted August 5, 2002, and is codified at 1 U.S.C. 8. The Act clarifies that, for purposes of any Act of Congress or any ruling, regulation, or interpretation of the various Federal agencies, the meaning of the words ''person,'' ''human being,'' ''child,'' or ''individual'' ''shall include any infant member of the species homo sapiens who is born alive at any stage of development.'' VA is subject to, and will continue to comply with, the provisions found in 1 U.S.C. 8. Additionally, VA is authorized to provide certain health care services to a newborn child of a woman veteran receiving care from VA. 38 U.S.C. 1784A and 1786. VA does not make changes to the rule based on this comment.

II. Comments That Raised Concerns With VA's Good Cause Analysis To Issue an IFR

VA issued an IFR, in which the changes to 38 CFR 17.38 and 17.272, were effective immediately upon publication, and the public comment period began on the date of publication. 87 FR 55287. VA found that good cause justified forgoing advance notice for public comment and a delayed effective date. 5 U.S.C. 553(b)(B), (d)(3). VA cited its urgent need to provide access to abortion counseling and to abortions in cases of rape or incest or where the life or health of the pregnant individual is in danger following *Dobbs.* After *Dobbs,* some States had begun to enforce existing abortion bans and restrictions on care and were proposing and enacting new bans and restrictions containing limited exceptions for medical necessity; some also included exceptions for pregnancy that is the result of rape or incest. These measures were creating urgent risks to the lives and health of pregnant veterans and CHAMPVA beneficiaries in those States. 87 FR 55294. VA received comments that opposed VA's issuance of an IFR based on general assertions that VA's good cause justification was insufficient, although only some of these comments directly addressed VA's good cause. VA notes at the outset that our request for comment in the IFR and issuance of this final rule have overtaken any assertions concerning a lack of good cause. In any event, VA addresses below the comments it received concerning VA's good cause for making the IFR effective immediately.

A. General Assertions That Good Cause Was Not Established

Some commenters asserted that VA's good cause justification was insufficient for general reasons unrelated to VA's rationales supporting good cause. Many of the duplicated form responses that VA received as comments asserted that the IFR violated the Administrative Procedure Act (APA) and stated that the APA requires that the public have an opportunity to provide comment on matters of public interest before a rule is effective. VA does not change course based on these comments. The APA, codified in part at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice and comment and provide at least a 30-day delay before the rules become effective. 5 U.S.C. 553(b), (d). However, an agency may forgo prior notice if the agency for good cause finds that compliance would be impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)) and may also bypass the APA's 30-day delayed effective date requirement if good cause exists (5 U.S.C. 553(d)(3)), or if the rule ''grants or recognizes an exemption or relieves a restriction'' (5 U.S.C. 553(d)(1)). VA found good cause under 5 U.S.C. 553(b)(B), ((d)(3), and also explained that the IFR removed certain restrictions (*see* 87 FR 55294–96), and therefore did not violate the APA in issuing the IFR.

Other commenters asserted that although a Federal agency is allowed to publish an IFR, VA did not demonstrate that it had good cause to do so. Because these commenters did not specifically assert or explain why they believed VA did not demonstrate good cause, VA does not change course based on these comments. As VA explained in the IFR, VA had good cause to make the IFR effective immediately because delaying its effectiveness would leave many veterans and CHAMPVA beneficiaries without access to needed and medically necessary and appropriate health care—abortions and abortion counseling that VA is able to provide under the IFR—thus putting their health and lives at risk. 87 FR 55295–96. Immediate effectiveness was critical following State actions to further ban or restrict abortion post-*Dobbs. Id.* These State bans and restrictions on abortion presented a serious threat to the health and lives of over one hundred thousand veterans and CHAMPVA beneficiaries who relied, or may rely in the future, on VA health care. *Id.* VA determined that such bans and restrictions would have an immediate detrimental impact on the lives and health of veterans and CHAMPVA beneficiaries who are unable to receive the care that was available in the community before the *Dobbs* decision, especially as State laws prompted providers to cease offering abortion services altogether. 87 FR 55295–55296. This detrimental impact is underscored by the potential harmful effects associated with being denied an abortion when an abortion is needed to protect the life or health of the pregnant individual or when the pregnancy is the result of an act of rape or incest. *Id.* As noted in the IFR, it was estimated that up to 53 percent of veterans of reproductive age may be living in States that either had already banned abortions or were soon expected to ban abortions, following *Dobbs.* 87 FR 55295. VA also estimated that nearly 50,000 CHAMPVA beneficiaries could have been impacted by such those then-current or expected bans. *Id.*

Some commenters asserted that the substantive provisions of the IFR were generally not in the public interest or in States' interests (for those States that have instituted more stringent restrictions on abortions or more burdensome requirements on abortion counseling), and therefore VA could not have provided adequate good cause. These commenters did not offer specific reasons why VA did not have good cause to issue the IFR; rather, they seemed to assert that because they deemed a substantive provision of an IFR to generally be against the public or States' interests, then a good cause justification must necessarily fail. In invoking the public interest prong of the good cause exemption, the question is not whether a substantive provision of a rule, itself, would be contrary to public interest in the minds of some, but

whether following ''ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest.'' *Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 95 (D.C. Cir. 2012). For the reasons explained in the IFR, VA provided good cause for why providing advance notice and comment would be contrary to public interest. *See, e.g.,* 87 FR 55294–96.

B. Specific Assertions That Good Cause Was Not Established

Some commenters asserted that VA's good cause justification was insufficient for reasons more directly related to the reasons VA stated in finding good cause. These commenters did not agree with VA's statement of urgent need to provide access to the health care services permitted under the IFR following the ruling in *Dobbs,* which resulted in some States severely restricting and banning abortion. VA groups and summarizes such comments below.

Some commenters asserted that the IFR was not urgently needed because every, or nearly every, State that restricts abortion permits exceptions when the life of the pregnant individual would be endangered were the pregnancy carried to term, and further that some of those States also permit exceptions where the pregnancy was the result of rape or incest. These commenters generally seemed to assert that if many or enough of the States had similar exceptions for abortions as the IFR, then there could not be sufficient need among veterans to access the health care services permitted under the IFR from VA to support good cause.

VA does not change course based on these comments. The fact that some, but not all, States might permit similar access to care as VA is not sufficient to prevent endangerment to the life or health of pregnant individuals that VA serves. *See* 87 FR 55288 (concluding that care available under the IFR is needed and medically necessary and appropriate). In fact, even though some States may allow an abortion to prevent the endangerment to the life of a pregnant individual, they may not allow an abortion to prevent the endangerment to the health of a pregnant individual. When pregnant veterans and CHAMPVA beneficiaries face pregnancy-related complications that their VA health care providers have determined are putting their health or lives at risk or are pregnant due to an act of rape or incest, they must be confident that their providers can take the clinically necessary action to provide needed and medically necessary and appropriate health care. And even in States that restrict abortions subject to exceptions similar to VA's, abortion access is often subject to additional restrictions that VA, on the basis of its authorities and obligations, has not adopted, such as timeframe limitations, evidentiary requirements, or prerequisite procedures (such as mandatory waiting periods or required ultrasounds), which could delay delivery of care that is often time sensitive. VA must always ensure it can consistently meet the medical needs of veterans and CHAMPVA beneficiaries across its healthcare system. Even one State presents enough risk to the lives and health of veterans and CHAMPVA beneficiaries to support VA's good cause justification in the IFR. As the IFR states, ''[a]llowing even one preventable death of a veteran or CHAMPVA beneficiary by limiting access to abortions is unacceptable.'' 87 FR at 55296.

Commenters further asserted that VA's statements of good cause were not substantiated because VA did not cite specific cases where needed and medically necessary and appropriate care would not be permitted. In so doing, commenters argued that VA must conduct a more thorough analysis to more specifically identify those individuals who cannot get the care VA has found to be needed and medically necessary and appropriate. Those commenters are incorrect. VA explained that ''certain States have begun to enforce abortion bans and restrictions on care, and are proposing and enacting new ones.'' *Id.* at 55288; *see also id.* at 55293, 55295 (citing examples and describing the evolving legal landscape). VA also documented the pressing need to ensure that *all* of the veterans and CHAMPVA beneficiaries for which VA provides healthcare have access to needed and medically necessary and appropriate care. *Id.* at 55291–92.

Other commenters asserted that VA has not issued statements regarding, or otherwise does not have, a clear plan to implement the provisions of the IFR despite asserting an emergency to support good cause. These commenters seemed to argue that there can be no need to forgo notice and comment procedures and dispense with a delayed effective date if VA is not yet ready to implement the IFR on a large-scale level. That is incorrect: VA was prepared to offer health care services permitted under the IFR on the day the IFR was published.

To the extent commenters posit that abortion is harmful to patients or is never necessary—that abortions are, essentially, illegitimate medical services, thereby negating VA's good cause argument and grounds for publishing the IFR—the commenters failed to provide a rationale for, and to demonstrate the basis for, this position. The VA Secretary has determined that the health care services permitted under the IFR are needed pursuant to 38 U.S.C. 1710 and are medically necessary and appropriate pursuant to 38 U.S.C. 1781, as implemented by 38 CFR 17.270 *et seq.,* and VA has authority to provide these services under the terms of the IFR, as explained there. As non-exhaustive examples, the IFR identified conditions such as ''severe preeclampsia, newly diagnosed cancer requiring prompt treatment, and intrauterine infections, and . . . pre-existing conditions exacerbated by continuing the pregnancy,'' for which pregnancy termination ''may be the only treatment available to save the health or life of the pregnant individual.'' 87 FR 55295. In States that restrict access to abortion services, treatment delayed so VA could seek prior public comment would have been treatment denied.

Other commenters asserted that the timing of VA's publication of the IFR, being two months after publication of the *Dobbs* decision (and four months after such decision ''leaked'' as stated in the comments) was too late to justify VA's statement of need in support of its good cause. In support of this assertion, these commenters proffered that because VA was aware that the Supreme Court could overturn *Roe,* prior to the *Dobbs* decision, and because some States had taken anticipatory action prior to the *Dobbs* decision, VA would have issued the IFR sooner if there were an actual emergent need. VA does not change course based on these comments. The administrative process for VA to weigh policy, make decisions, draft a rulemaking, and have that rulemaking clear all required reviews prior to publication in the **Federal Register** can routinely take substantial effort and time. Indeed, the Supreme Court has found that an agency taking two months to prepare a 73-page rule did not constitute ''delay'' inconsistent with the Secretary's finding of good cause. *Missouri,* 142 S. Ct. at 654. Here, the publication of the IFR was completed at the earliest possible time and ensures that, irrespective of contrary State laws post-*Dobbs,* veterans and CHAMPVA beneficiaries can receive access to the needed and medically necessary and appropriate health care services permitted under the IFR.

One commenter opined that the IFR lacked good cause because VA has always provided care to pregnant individuals in life-threatening

circumstances, including treatment for ectopic pregnancies or miscarriages, which were covered under VA's medical benefits package prior to the IFR. In support, the commenter cited to Veterans Health Administration (VHA) Directive 1330.03, titled Maternity Health Care and Coordination, dated November 3, 2020. The commenter further stated that providing such lifesaving care to a pregnant individual is not an abortion and is already allowed. This commenter seemed to assert that because VA provided some lifesaving treatment to manage certain complications associated with pregnancy prior to the IFR, that there could not have been an emergency to warrant VA's issuance of the IFR. While VA agrees that the care identified by the commenter has been lawfully provided, as discussed herein and in the IFR (for example, see 87 FR 55291), there are many life- and health-endangering complications of pregnancy other than ectopic pregnancies and miscarriages where abortion would be the needed or necessary treatment, and prior to the IFR, VA's medical benefits package did not provide access to care in such circumstances.

One commenter opined that the IFR did not have good cause since it undermines what the commenter described as the ''pro-life policy stance'' of Congress and further disregards governmental interests, including ''interest in safeguarding preborn human life''. VA disagrees with the commenter's assertion and implemented the IFR pursuant to the authority Congress granted VA to furnish eligible veterans and CHAMPVA beneficiaries with medical services that VA determines to be needed and medically necessary and appropriate. 38 U.S.C. 1710, 1781; 87 FR 55291–55293. The changes made by the IFR were within the scope of the authority Congress has provided to VA.

III. Comments Asserting That the IFR Is Too Broad

Commenters raised concerns with various aspects of the IFR being overly broad so as to allow for abortions for reasons beyond the circumstances stated in the IFR. VA summarizes and addresses those comments below.

A. Lack of Definition of Abortion

One commenter opined that the IFR avoided clarity by not defining abortion. VA does not make changes to the rule based on this comment. VA does not specifically define in its regulations the other various types of care provided under the medical benefits package or covered by CHAMPVA. As the medical field is constantly evolving, attempting to define medical terms in regulation could be arbitrary or outdated based on evolving standards of practice and thus could result in unintended limitations on the provision of life and health-saving care. Therefore, and consistent with other treatments listed in such regulations, VA does not find it appropriate to define the term abortion in regulation.

B. The Term ''Health'' Is Too Broad or Not Defined

Several commenters asserted that the term ''health,'' in the context of the exception permitting abortion if a health care provider determines that the ''health'' of the pregnant individual would be endangered were the fetus carried to term, was too broad in scope. Some asserted that the lack of definition for the term ''health'' means VA will provide abortions in all circumstances, or, essentially, allow for ''elective abortions.'' Other commenters more specifically asserted that the Supreme Court broadly defined ''health'' for purposes of abortion as ''physical, emotional, psychological, familial, and the woman's age—relevant to the wellbeing of the patient. All these factors may relate to health.'' *Doe* v. *Bolton,* 410 U.S. 179, 192 (1973). These commenters argue that a rule permitting abortion for reasons of health without further qualification or limitation could be interpreted in a way that increases access to abortions beyond the scope stated in the IFR.

VA does not make changes to the term ''health'' or further define or characterize it in regulation based on these comments. VA has existing statutory and regulatory authorities that establish when needed care provided under the medical benefits package may be provided to an individual veteran and when medically necessary services are covered by CHAMPVA.

As explained in the IFR, VA's general treatment authority requires the Secretary to determine what ''hospital care and medical services'' are ''needed.'' 38 U.S.C. 1710. Consistent with this authority and under the IFR, VA provides an abortion to a veteran only if an appropriate health care professional determines that such care is in accord with generally accepted standards of medical practice and is needed to promote, preserve, or restore the health of the individual, consistent with the definitions set forth by existing VA regulations. 38 CFR 17.38(b).

With respect to CHAMPVA, VA provides beneficiaries with medical services and supplies if the services and supplies are ''medically necessary and appropriate for the treatment of a condition'' and ''not specifically excluded from program coverage.'' *See* 38 CFR 17.272(a). With respect to abortions, VA would provide or reimburse for the care only if the life or the health of the pregnant beneficiary would be endangered if the pregnancy were carried to term or if the pregnancy is the result of an act of rape or incest. See *id.* at § 17.272(a)(64).

Because determining whether a pregnant individual's health is endangered necessarily requires an individualized assessment by a health professional, VA does not believe it is appropriate to define the term ''health'' in regulation. Attempting to define every single condition, illness, and other circumstance (and combination of such circumstances) that could be included under such a definition would likely be arbitrary and incomplete and thus could result in veterans and CHAMPVA beneficiaries not receiving needed and medically necessary and appropriate care.

C. Breadth of Determinations by, or Qualifications of, Health Care Professionals

One commenter asserted ''the phrase 'if determined to be needed by' a medical professional . . . allows abortion on demand'' because it generally allows a provider to say such care is ''needed for mental anguish or anxiety''. VA does not make changes to the rule based on this comment. As stated above, the IFR does not allow for abortions in all circumstances; rather, it allows only those permitted under the circumstances described in the IFR when the life or health of the individual would be endangered if the pregnancy were carried to term or when the pregnancy is the result of rape or incest. The decision of whether a veteran's health is endangered is a clinical decision made on an individual, case-by-case basis using the standard provided in 38 CFR 17.38(b) for the provision of health care to veterans. VA health care professionals consider a veteran's health in terms of the veteran's whole health when determining if care is needed to promote, preserve, or restore the health of the individual and is also in accord with generally accepted standards of medical practice, pursuant to 38 CFR 17.38(b). As to CHAMPVA beneficiaries, a determination is likewise performed on a case-by-case basis, with the health care provider determining if the care is medically necessary and appropriate for the treatment of a condition and not specifically excluded from program coverage. *See* 38 CFR 17.272(a).

Multiple commenters raised concerns that VA did not indicate in the IFR the qualifications or professional competence required for VA health care professionals to furnish the health care services permitted under the IFR. One commenter more specifically alleged that, to merely permit a ''health care professional'' (as that term was used in the preamble of the IFR) to determine the clinical need for an abortion would allow for personnel without any gynecological or obstetrical skill or experience to make such determination. One commenter more generally raised concerns about who determines whether the life of the pregnant individual is at risk and at what degree, and other commenters specifically requested that VA ensure only physician-led teams are making these clinical eligibility decisions.

VA does not make changes to the rule based on these comments. As a preliminary matter, VA regulations specify that care in the medical benefits package will only be provided if an ''*appropriate* health care professional[ ]'' determines that it is needed. 38 CFR 17.38(b) (emphasis added). VA health care professionals are not permitted to provide any medical care, including making determinations about needed care, beyond the scope of their VA practice, training, expertise, and demonstrated skills and abilities. 38 U.S.C. 7402 and 38 CFR 17.419. Regarding the expressed concerns about the term ''health care professional,'' or the lack of defined qualifications or occupations in the IFR to designate that a ''health care professional'' is permitted to determine whether an abortion is medically necessary, VA notes that the regulations revised by the IFR (38 CFR 17.38 and 38 CFR 17.272) only address the coverage of health care and not the provision of health care by a ''health care professional'' or the training or credentials they must possess. Therefore, this final rule will not specify particular occupations or qualifications for a VA health care professional to provide either abortion counseling or abortions under the circumstances identified through this rule. VA reiterates that only an appropriate health care professional can make determinations about what care is needed. A VA health care professional is not and will not be permitted to provide any medical care beyond the scope of their VA practice, training, expertise, and demonstrated skills and abilities in any context, including if providing either abortion counseling or abortions.

Regarding the comment that inquired about the degree of risk to life to be ascertained when determining whether an abortion is medically necessary, that determination is made by the appropriate health care professional on a case-by-case basis; VA will not establish a threshold degree of risk to life that is required before an individual is determined eligible for an abortion through VA because every case is clinically distinct. Regarding the requests that VA only permit decisions about the provision of abortions to be made by physician-led teams, VA restates from above that this final rule will not specify particular occupations or qualifications for a VA health care professional to provide either abortion counseling or abortions. VA does not intend for any occupation to perform clinical duties beyond their occupational training and expertise, and their practice will be consistent with generally accepted standards of care.

One commenter stated that the regulations were vague and can leave room for interpretation, and further suggested that VA have a service that would allow doctors or staff the ability to get a second opinion, feedback, and ability for quick determinations or assistance. VA does not make changes to the rule based on this comment. The IFR does not restrict VA health care professionals' ability to seek consultations for assistance with determinations of clinical necessity for any health care or service provided, to include the health care services permitted by the IFR.

D. Lack of Gestational Limits

Commenters raised concerns that the IFR did not establish gestational age limits beyond which an abortion would not be permitted, which they asserted will authorize VA to provide abortions for reasons beyond the circumstances permitted in the IFR. Most of these commenters did not offer specific support for this concern. Other commenters asserted that an abortion is only necessary up to a certain gestational age. One commenter specifically inquired about a gestational age limit for pregnancies that were the result of rape or incest, and relatedly other comments stated that some States that permit abortion in cases where the pregnancy is the result of rape or incest also have gestational age limits for such abortions. VA does not make changes to the rule based on these comments. As explained, the IFR does not permit the provision and coverage of abortions in all circumstances. The preamble to the IFR explains that VA has authority under 38 U.S.C. 1710 to furnish veterans with hospital care and medical services that the Secretary determines to be needed. 87 FR 55288. Consistent with this authority, VA would provide an abortion to a veteran only if determined needed by a health care professional when (1) the life or health of the pregnant veteran would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest. This means that in either case such care may be provided only if an appropriate health care professional determines that such care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice. 38 CFR 17.38(b)(1)–(3).

Additionally, VA has authority under 38 U.S.C. 1781 to provide CHAMPVA beneficiaries with medical care. 87 FR 55290. Pursuant to 38 CFR 17.270(b), VA provides those medical services that are medically necessary and appropriate for the treatment of a condition and that are not specifically excluded. Consistent with these authorities, VA would provide an abortion to a CHAMPVA beneficiary only if such care is medically necessary and appropriate when (1) the life or health of the pregnant beneficiary would be endangered if the pregnancy were carried to term; or (2) the pregnancy is the result of an act of rape or incest. 38 CFR 17.272(a)(64).

The decision about whether a pregnancy endangers the veteran's or CHAMPVA beneficiary's life or health, and the needed care or medically necessary and appropriate treatment, must be made on a case-by-case basis by appropriate healthcare professionals consistent with 38 CFR 17.38 and 17.270(b). As life and health endangering pregnancy complications can arise throughout a pregnancy, imposing a time limit after which VA could not provide needed or medically necessary and appropriate care could be potentially dangerous to veterans and CHAMPVA beneficiaries and would be inconsistent with VA's authority to provide needed health care to veterans and medically necessary and appropriate health care to CHAMPVA beneficiaries and contrary to VHA's primary function to provide a complete medical and hospital service for the medical care and treatment of veterans. 38 U.S.C. 1710, 38 CFR 17.38; 38 U.S.C. 7301(b); 38 U.S.C. 1781; 38 CFR 17.270(b). Each patient's situation is different, and the decision about whether to continue a pregnancy that endangers the veteran or CHAMPVA beneficiary's life or health must be made on a case-by-case basis by the pregnant patient in consultation with appropriate health care professionals based on the

best medical evidence and accepted standards of medical practice. As to comments that specifically inquired about gestational age limits in cases where pregnancies are the result of rape or incest, we reiterate the statements above that establishing limits would be inconsistent with VA's authority to provide needed health care to veterans and medically necessary and appropriate health care to CHAMPVA beneficiaries and contrary to VHA's primary function to provide a complete medical and hospital service for the medical care and treatment of veterans. 38 U.S.C. 1710, 38 CFR 17.38, 38 U.S.C. 7301(b), 38 U.S.C. 1781, 38 CFR 17.270(b).

IV. Comments Related to the Exception for Abortion if the Life of the Pregnant Individual Would Be Endangered

The IFR revised 38 CFR 17.38(c)(1) to establish an exception for an abortion if the life of the pregnant veteran would be endangered if the pregnancy were carried to term. Below VA summarizes comments that specifically raised concerns with this exception, other than those already addressed in this rulemaking.

Commenters who opposed the IFR generally stated that it is rare that the life of a pregnant individual is truly threatened by pregnancy or delivery. VA does not make changes to the rule based on these comments as VA disagrees. Endangerment to even one veteran's life would be sufficient, and regardless, VA refers commenters to the discussion in the IFR that details how pregnant individuals may face life-threatening conditions, and abortion may be the only medical intervention available that can preserve their life. *See* 87 FR 55291. As noted in the IFR, while research has shown most pregnancies progress without incident, from 1998 to 2005, the U.S. maternal mortality rate associated with live births was 8.8 deaths per 100,000 live births, and maternal mortality rates have increased staggeringly since then. *Id.* A 2019 study reviewed mortality data from 2007 to 2015 from the National Association for Public Health Statistics and Information Systems, which includes information on all deaths in the 50 States and the District of Columbia (DC). *Id.* The data showed that, during this time, within 38 States and DC, the maternal mortality rate rose to 17.9 deaths of individuals per 100,000 live births. *Id.* Additionally, in 2020 and 2021, maternal mortality rates increased to 23.8 and 32.9 deaths per 100,000 live births, respectively. *Id.* The study identified abortion clinic closures and legislation restricting access to abortion as factors that likely contributed to this rise in maternal mortality rates. *Id.*

One commenter more specifically stated that the presence of underlying health conditions prior to pregnancy does not mean a patient's life is in danger when they are pregnant, and further asserted that such cases merely require more skill and attentiveness by a provider that specializes in obstetrics and gynecology. VA does not make changes to the rule based on this comment, which seems to be stating that a pregnancy can always be carried to term without the pregnant veteran's life ever being endangered by either preexisting health conditions or health conditions arising during pregnancy, if and when a correct approach is used by providers. This assertion is incorrect. As VA described in the IFR, there are circumstances in which abortion may be the only medical intervention available that can preserve a pregnant veteran's life. *See* 87 FR 55291. VA has amended the medical benefits package to allow VA to provide abortions in certain circumstances, including when an appropriate healthcare professional determines that such care is needed to save a pregnant veteran's life, which is critical now that some States are enforcing and enacting abortion restrictions that could result in the delay or denial of such life-saving treatment.

Relatedly, other commenters stated that the presence of health conditions (such as preeclampsia, as noted in one comment) in pregnant individuals are not life threatening as they can be resolved by the induction of labor or the performance of a c-section, and therefore an abortion is not necessary to preserve the pregnant individual's health or life. One commenter further asserted that a fetus is viable at approximately 24 weeks gestational age, and if the health of the pregnant patient was a concern, birth could be induced, or a cesarean section (c-section) performed, to save the life of both the pregnant patient and the child. VA does not make changes to the rule based on these comments. Similar to our response to related comments above, VA recognizes that there are circumstances in which abortion may be the only medical intervention available that can preserve a pregnant veteran's life, and the decision about the needed care or medically necessary treatment must be made on a case-by-case basis by appropriate healthcare professionals consistent with 38 CFR 17.38 and applying the applicable clinical standards discussed throughout this preamble.

V. Comments Related to the Exception for Abortion if the Health of the Pregnant Individual Would Be Endangered

Several commenters raised concerns about the exception for an abortion if the health of the pregnant individual would be endangered if the pregnancy were carried to term. Below VA summarizes comments that specifically raised concerns with this exception, other than as already addressed in this rulemaking.

One commenter suggested that VA revise the regulatory text in § 17.38(c)(1) to additionally include ''wellbeing'' because the addition of ''wellbeing'' would encompass mental and emotional health. This commenter raised concerns that the rule was not clear that mental health was included in the consideration of the ''health'' of the pregnant veteran as opposed to applying solely to physical health. Another commenter asked that VA acknowledge in the text of the rule that the exception for abortions for the health of the pregnant beneficiary includes mental health in addition to physical health. VA does not make any changes to the rule based on these comments. Both physical and mental health are included in the meaning of the term ''health'' under 38 CFR 17.38 and 38 CFR 17.272. *See also* 87 FR 55291 (explaining that both chronic medical and mental health conditions increase risks associated with pregnancy, and health care professionals may determine ''that these conditions (potentially in combination with other factors) render an abortion needed to preserve the health of a veteran[.]''). VA therefore does not believe it is necessary to revise the regulatory text as the commenters suggest. *See also supra* Part III.B above.

One commenter asserted the IFR implied that all pregnancies threaten the health of the pregnant individual, and that abortions would be permitted in all circumstances based on the threat to the pregnant individual's health. The commenter states that authorizing abortions when there is a threat to health is an ''ideological'' statement and not a medical determination. The commenter further requests that VA enumerate these ''threats to their health'' in writing. VA makes no changes to the rule based on this comment. See Section III.B. above. VA has determined that abortions may be authorized when carrying the pregnancy to term endangers the health of the pregnant individual and VA has authority to provide these services under the terms of the IFR, as explained in the IFR and herein. Further, medical

determinations regarding threats to health must be made by healthcare professionals on a case-by-case basis and be consistent with established standards of care.

VI. Comments Related to the Exception for Abortions in Cases of Rape or Incest

The IFR revised 38 CFR 17.38(c)(1) and 38 CFR 17.272(a) to establish an exception for an abortion if the pregnancy were the result of rape or incest. Below VA summarizes comments that specifically raised concerns with this exception other than as already addressed in this rulemaking.

A. Evidence of the Incident of Rape or Incest

Several commenters alleged that a person's statement that a pregnancy resulted from rape or incest is not sufficient evidence to support the provision of abortion, particularly as a provider has no obligation to confirm such statement.

VA does not make changes to the rule based on these comments. As VA explained in the IFR, the self-reporting from the pregnant veteran constitutes sufficient evidence, and the rule does not require a veteran or CHAMPVA beneficiary to present particular evidence such as a police report to qualify for this care. 87 FR 55294. This is consistent with longstanding VA policy to treat eligible individuals who experienced military sexual trauma without additional evidence of the trauma. *Id.* This approach is appropriate as it removes barriers to providing needed or medically necessary and appropriate care. *Id.* VA does not believe it is appropriate to require a provider to separately investigate or confirm the veteran or CHAMPVA beneficiary's self-reporting that an act of rape or incest occurred. Requiring such proof or confirmation could harm the provider-patient relationship, and it is unnecessary.

It is a part of routine practice for VA providers to take and rely on many types of patient-reported information (family, trauma, work, medical, legal, and other histories, for instance), as part of their clinical evaluations and assessments. For instance, VA providers make a clinical eligibility determination as to whether an individual is eligible for military sexual trauma-related treatment under 38 U.S.C. 1720D without requiring additional proof that this experience occurred, as already stated herein. See VHA Directive 1115(1), Military Sexual Trauma (MST) Program.

The comments misunderstand the function of the rape or incest exception. By operation of the IFR, patient self-reports of rape or incest constitute sufficient evidence for the VA provider to establish and document that this exception is met. 38 CFR 17.38(c)(1)(ii), 17.272(a)(64)(ii). There is no reason to treat these patient self-reports differently from self-reports supporting other sought-after medical care; nor do these comments provide any rationale for doing so. In any case where the rape or incest exception applies, the VA provider must still determine that an abortion meets the clinical standard set forth in 38 CFR 17.38(b) or 17.272(a), as applicable.

B. Assertions That Rape or Incest Exception Is Not Medically Necessary

One commenter opined that in the case of a pregnancy that is the result of rape or incest, an abortion can never be ''needed'' or ''medically necessary and appropriate'' and that patients who experience mental health issues following acts of rape or incest should be provided counseling and support, not abortions. VA does not make changes to the rule based on this comment. As VA explained in the IFR, VA has determined that abortions for pregnancies resulting from rape or incest, when sought by a pregnant veteran and clinically determined to be needed to promote, preserve, or restore the health of the veteran and in accord with generally accepted standards of medical practice, are needed consistent with the terms of 38 U.S.C. 1710. As noted in the IFR, there are severe health consequences associated with being forced to carry a pregnancy that is the result of rape or incest to term, including constant exposure to the violation committed against the individual which can cause serious traumatic stress and a risk of long-lasting psychological conditions. 87 FR 55292. Such consequences can have a particular impact on veterans, who report higher rates of sexual trauma compared with civilian peers. *Id.* In addition, veterans are more likely to have preexisting mental health conditions that would be compounded by the mental health consequences of being forced to carry a pregnancy to term if that pregnancy is the result of rape or incest. *Id.* In addition, for similar reasons to those discussed above and in the IFR, and because it is ''similar'' to the care offered under TRICARE (Select), *see* 38 U.S.C. 1781(b), VA has also determined, for purposes of 38 CFR 17.272(a), that access to abortion when the pregnancy is the result of an act of rape or incest is medically necessary and appropriate and so must be available to CHAMPVA beneficiaries. 87 FR 55292.

C. Investigation or Reporting

Commenters raised concerns about whether evidence of sexual abuse will be investigated or reported. To the extent these commenters might want VA to regulate such investigation or reporting for purposes of providing the health care services permitted under the IFR, VA does not make changes to the rule. For the reasons already explained herein, self-reports are sufficient to establish that an act of rape or incest occurred. Further, this approach is similar to how VA providers, who are not investigators, consider other types of patient self-reported information such as military sexual trauma; other trauma; and medical, personal, health information and history. VA will investigate claims of rape or incest to the extent they occurred on VA property or involved a VA employee, consistent with VHA Directive 5019.02, which relates to reporting of harassment, sexual assault, and other public safety incidents in VHA. Additionally, consistent with VHA Directive 1199(2), VA providers will report claims of abuse, as necessary and required by Federal law.

VII. Availability of the Health Care Services Permitted Under the IFR to Non-Veterans and Non-CHAMPVA Beneficiaries

A. Spina Bifida Health Care Benefits Program

One commenter inquired into whether the health care services permitted under the IFR will be available to beneficiaries in VA's Spina Bifida Health Care Benefits Program. VA considers this comment outside the scope of the rulemaking as VA did not amend the regulations for such program; only the regulations for the medical benefits package and CHAMPVA were amended by the IFR. VA makes no changes to the rule based on this comment.

B. Nonveterans

This same commenter inquired into whether the health care services permitted under the IFR will be available to nonveterans for emergency services on a humanitarian basis. VA is authorized to provide humanitarian care under 38 U.S.C. 1784 and medical screening and stabilization for an emergency medical condition under 38 U.S.C. 1784A, but VA considers this comment to be outside the scope of the rulemaking as VA only amended the regulations for the medical benefits

package and CHAMPVA, which determine care for veterans and CHAMPVA beneficiaries, respectively. VA makes no changes to the rule based on this comment.

C. ''Wives of Military Members''

Another commenter inquired whether ''wives of military members'' will be eligible for the health care services permitted under the IFR. To the extent such individuals have veteran status and are receiving their medical care through VA (specifically care included in the medical benefits package), or else are CHAMPVA beneficiaries, then they would be eligible for health care services in the circumstances permitted by the IFR. However, to the extent the commenter is referring to individuals who do not have veteran status or are not CHAMPVA beneficiaries, these individuals are not covered by the amendments made by the IFR. VA makes no changes to the rule based on this comment.

VIII. Comments That Stated Abortion Was Not Health Care or Is Otherwise Harmful

Many commenters stated that abortion is not health care. Some of these commenters did not provide any supporting rationale for this statement, while others asserted that abortion could not be health care because the practice of medicine is supposed to preserve life, not end life. VA does not make changes to the rule based on these comments. As VA explained in the IFR and herein, abortions are health care and may be needed to preserve the life or health of a pregnant individual. Pregnant individuals may face life and health-threatening conditions, where abortion may be the only medical intervention available that can preserve their health or life.[3] *See* 87 FR 55291.

Many commenters opposed VA providing access to abortions because they asserted that abortions can be harmful to pregnant individuals. Some commenters stated that abortions can result in emotional harm or complications for pregnant individuals but did not offer support, evidence, or a rationale for such assertions. Some commenters asserted similar opinions but posited distinct harms and cited certain literature. VA does not make changes to the rule based on these comments.

All medical care may pose a risk of complications to some patients. In every instance of care, medical practice requires practitioners to balance the risks of providing needed or medically necessary and appropriate care with the risks of not doing so, a calculation guided by clinical standards and informed by reliable data. The patient must then also balance the risks of receiving needed or medically necessary and appropriate care with the risks of not doing so, and VA obtains informed consent for any medical care pursuant to its existing informed consent requirements set forth in 38 CFR 17.32 (implementing 38 U.S.C. 7331). As explained in the IFR (87 FR 55291) and herein, research has shown that while most pregnancies progress without incident, pregnancy and childbirth in the United States can result in physical harm and even death for pregnant individuals.[4] Without access to comprehensive reproductive health care, including abortion, such individuals may experience conditions resulting from their pregnancy that can leave them at risk for loss of future fertility, significant morbidity, or death. In such instances, an abortion may be the only medical intervention that can preserve that individual's health or save their life.[5]

The health care profession understands that abortions are safe medical interventions.[6] A study available to the public and cited in the IFR addressed the rate of abortion complications and concluded that, contrary to the unsupported assertion by commenters, the most common type of complications from abortions are minor and treatable.[7] The scientific evidence also shows that the risk of complication or mortality from abortion is less than the risk of complication or mortality from other common clinical procedures.[8]

A 2018 consensus study report from the National Academy of Medicine (National Academies of Sciences, Engineering, and Medicine (NASEM)) reviewed the then available evidence on the safety and quality of legal abortions in the United States and concluded that having an abortion does not increase an individual's risk of secondary infertility, pregnancy-related hypertensive disorders, abnormal placentation, preterm birth, or breast cancer.[9] This review by NASEM also found that having an abortion does not increase a person's risk of depression, anxiety, or posttraumatic stress disorder.[10]

One commenter opined that allowing access to abortion counseling or abortions via telehealth is harmful. The commenter provides no evidence or rationale for this assertion. VA makes no changes to the rule based on this comment. Telehealth is widely implemented at VA to provide high-quality care to veterans and eligible beneficiaries, enhancing access to care in appropriate cases. *See* 38 U.S.C. 1730C. Abortion counseling as well as some abortions can be provided through telehealth in accord with generally accepted standards of medical practice. VA will only provide medical care, whether in-person or through telehealth, that is consistent with generally accepted standards of care.

Commenters also raised concerns that the rule did not include informed consent or standards for medical evaluations to ensure that an abortion would not lead to further medical complications or harm for women. VA does not make changes to the rule based on these comments. In determining whether to recommend *any* treatment or procedure, VA providers take into consideration all relevant clinical factors, that is, they conduct a medical evaluation based on a number of clinical factors. Decisions as to which treatment or procedures to recommend are clinical judgments made in accord with generally accepted standards of care. Informed consent is not required as part of the provider's individual undertaking of a differential diagnosis or decision process as to available and recommended treatment options. These clinical evaluation steps occur before the provider's professional recommendation is decided. Informed consent only applies to the receipt of

[3] Martha B. Kole, Jennifer Villavicencio, and Erika G. Werner, *Reproductive services for the patient at increased risk for morbidity and mortality during the second trimester.* Semin Perinatol, 44 (5), 151270 (2020).

[4] Elizabeth G Raymond & David A Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States,* 119 Obstetrics & Gynecology 215, 216 (2012); see also Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues,* 128 Obstetrics & Gynecology 447 (2016) (finding a 26.6 percent increase in maternal mortality rates between 2000 and 2014).

[5] *Abortion Can Be Medically Necessary,* Am. College of Obstetricians and Gynecologists, Sep. 25, 2019. *http://www.acog.org/news/news-releases/2019/09/abortion-can-be-medically-necessary* (last visited Aug. 22, 2022).

[6] *Abortion Access Fact Sheet.* The American College of Obstetrics and Gynecology. 2023. *https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet* (last visited May 15, 2023).

[7] Desai Upadhyay, et al. *Incidence of emergency department visits and complications after abortion,* Obstet Gynecol; 125(1):175–183 (2105).

[8] *Abortion Access Fact Sheet.* The American College of Obstetrics and Gynecology. 2023. *https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet* (last visited May 15, 2023).

[9] *The Safety and Quality of Abortion Care in the United States.* National Academies of Sciences, Engineering, and Medicine (Mar. 2018), *https://nap.nationalacademies.org/catalog/24950/the-safety-and-quality-of-abortion-care-in-the-united-states.*

[10] Id.

VA recommended treatment or procedures, which the patient can then decide to reject or accept. No medical treatment or procedure may be performed without the prior, voluntary, and fully informed consent of the patient. 38 CFR 17.32(b). 38 U.S.C. 7331; 38 CFR 17.32. As part of informed consent discussion, the practitioner must explain in plain language understandable to the patient the nature of the proposed procedure or treatment; expected benefits; reasonably foreseeable associated risks, complications, side effects; reasonable and available alternatives; and anticipated result if nothing is done, among other information. *See* 38 CFR 17.32(c)(2).

IX. Comments Related to Employee Rights and Protections and Rights of the Public

Commenters raised concerns related to employees' religious and conscience-based protections, including under the First Amendment, the Religious Freedom Restoration Act, the Public Health Service Act (including the Coats-Snowe Amendment), and Title VII of the Civil Rights Act of 1964. Commenters further asserted that VA is forcing VA employees to provide abortions that may be criminal offenses under State or local law, and one commenter specifically inquired whether any or all VA employees will be responsible for assisting with ''emergency abortions.'' VA does not make any changes to the rule based on these comments. In implementing the IFR and this rule, VA adheres to all applicable Federal laws relating to employee rights and protections, including protections based on an employee's religious or conscience-based objection to abortion. VA has a policy in place for reasonable accommodation requests, where employees may request to be excused from providing, participating in, or facilitating an aspect of clinical care, including reproductive health clinical care authorized by this rule. See, AUSHO Memorandum, *Processing Employee Requests to be Excused from Aspects of the Provision of Reproductive Health Care within the Veterans Health Administration* (Jan. 6, 2023). Pursuant to that policy, VA health care professionals that object to furnishing the care covered by this rulemaking to veterans or CHAMPVA beneficiaries may request to be excused from that care and such requests will be individually assessed under the applicable Federal law. If excusal is requested, supervisors should grant interim excusal for employees from duties or training regarding reproductive health care while requests are being processed.

Commenters also raised concerns regarding whether those providing the health care services permitted under the IFR, including VA employees and non-VA providers, would be protected by VA against State action, such as potential enforcement of State criminal, civil, or administrative penalties related to the provision of the health care services permitted under the IFR. To the extent a VA employee provides the health care services permitted under the IFR within the scope of their VA employment as authorized by Federal law, they could not legally be subject to adverse State actions. As described above, State and local laws, rules, regulations, and requirements that unduly interfere with health care professionals' practice will have no force or effect when such professionals are practicing health care while working within the scope of their VA employment. 38 CFR 17.419.

Moreover, as further described above, in circumstances where there is a conflict between Federal and State law, Federal law would prevail in accordance with the Supremacy Clause under Article VI, clause 2, of the U.S. Constitution. The Department of Justice's Office of Legal Counsel has issued an opinion confirming that States may not impose criminal or civil liability on VA employees who provide or facilitate abortions or related services in a manner authorized by Federal law, including this rule. *See* 46 Op. O.L.C. __ (Sept. 21, 2022); *www.justice.gov/olc/opinion/intergovernmental-immunity-department-veterans-affairs-and-its-employees-when-providing.* If States attempt to subject VA employees to legal action for appropriately carrying out their Federal duties the Department of Justice will support and provide representation to those employees.

Several commenters additionally asserted that performing an abortion would violate a VA health care professional's Hippocratic oath, where some of these comments further noted that this oath requires individuals who take it to ''do no harm'' in the practice of medicine. VA does not make changes to the rule based on these comments. An abortion would be provided pursuant to the rule to veterans only when determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice; and to CHAMPVA beneficiaries when medically necessary and appropriate.

Some commenters appeared to allege that the IFR violates their First Amendment rights and religious freedoms as members of the public, without providing rationale or support for such statements. Unlike the comments above that raised specific First Amendment and religious freedom concerns for VA health care professionals, these comments did not assert or explain why they believed the IFR violated their First Amendment rights or religious freedoms as members of the public. VA's IFR authorizes the provision of abortions and abortion counseling to veterans and CHAMPVA beneficiaries in certain circumstances. It does not limit the First Amendment rights or religious freedoms of the public.

X. Comments Specifically Concerning Abortion Counseling

The IFR revised 38 CFR 17.38(c)(1) and 17.272(a) to remove a prohibition on VA providing access to abortion counseling. Below VA summarizes comments that specifically raised concerns with this revision, other than as already addressed in this rulemaking.

A. Provision of Abortion Counseling

Multiple commenters raised various concerns about VA's provision of abortion counseling. The commenters stated that abortion counseling should be unbiased, and that VA should not ''direct'' pregnant individuals to have an abortion. The commenters further suggested that abortion counseling should include discussion of options other than abortion and should also include information about the negative effects of abortion. One commenter further implied that VA is not providing counseling about options other than abortion specifically for victims of rape or incest.

VA does not make changes to the rule based on these comments. Prior to the IFR, VA could not discuss abortion as an option with pregnant patients, but VA has always provided counseling to pregnant patients about pregnancy options such as carrying the pregnancy to term and adoption. Under the IFR, VA now provides the full range of pregnancy options counseling to individuals who are pregnant, which includes all options related to that individual's pregnancy and is not limited to discussing only the option of abortion. This is consistent with Centers for Disease Control and Prevention guidance.[11] As explained in the IFR,

[11] *Providing Quality Family Planning Services: Recommendations of CDC and the U.S. Office of Population Affairs.* Centers for Disease Control and

abortion counseling is part of pregnancy options counseling and is a component of comprehensive, patient-centered, high-quality reproductive health care, and is needed care for veterans, and medically necessary and appropriate for CHAMPVA beneficiaries, because such counseling will enable a pregnant individual to make a fully informed health care decision, just as counseling offered or covered by VA regarding other health care treatments enables the patient to make an informed decision. *See* 87 FR 55292–93. Such pregnancy options counseling is provided in a neutral, non-directive, and unbiased manner to ensure patients receive the most complete and accurate information regarding available treatment options. VA does not direct a patient towards a specific option when it conducts pregnancy options counseling. The rule also makes clear that VA's determinations that such counseling is needed care (as to veterans) and medically necessary and appropriate (as to CHAMPVA beneficiaries)—and the accompanying regulatory amendments—were not limited to instances in which the pregnancy is the result of rape or incest. *See, e.g., id* at 55293–94.

B. Post-Abortion Counseling

Another commenter suggested VA provide post-abortion counseling and support for the pregnant individual and their spouse. VA does not make changes to the rule based on this comment. To the extent a veteran requests counseling or mental health support from VA after an abortion or any other type of medical service, such care is available to veterans as part of the medical benefits package. VA would also cover such counseling and mental health support for CHAMPVA beneficiaries. However, and as explained herein, VA does not have authority to provide such counseling under the medical benefits package or CHAMPVA to non-veterans and non-VA beneficiaries, respectively.

XI. Comments Specific to CHAMPVA

Prior to the IFR, the CHAMPVA program at 38 CFR 17.272(a)(64) covered abortions for beneficiaries when the life of the beneficiary would be endangered if the pregnancy were carried to term. The IFR revised § 17.272(a)(64) to: (i) expand the exception on the exclusion of abortion to cover cases where the health of the pregnant CHAMPVA beneficiary would be endangered if the pregnancy were carried to term; and (ii) to establish an exception to the exclusion of abortion to cover cases where the pregnancy of the CHAMPVA beneficiary is the result of an act of rape or incest. Below VA addresses comments that specifically raised concerns with these changes to CHAMPVA, other than as already addressed in this rulemaking.

A. CHAMPVA and TRICARE

One commenter stated that VA does not have authority to provide medical care under the CHAMPVA program in the same manner as under the TRICARE program because TRICARE and CHAMPVA are separate programs and CHAMPVA covers medical care only to those specifically identified at 38 U.S.C. 1781(a). The commenter further stated that VA does not effectively argue that CHAMPVA and TRICARE coverage should be aligned. VA does not make any changes to the rule based on this comment. It appears that the commenter may misunderstand the CHAMPVA authority. VA has authority to furnish medical care to CHAMPVA beneficiaries pursuant to 38 U.S.C. 1781. Section 1781(b) establishes that VA must provide such care ''in the same or similar manner and subject to the same or similar limitations as medical care'' is provided by DoD under the TRICARE program.

Other commenters asserted that the IFR's changes to the CHAMPVA regulations were not the same or similar to what is permitted under TRICARE. Specifically, these comments noted that the exclusion to provide abortions if the health of an individual were endangered, as well as furnishing abortion counseling for any reason (and not just in those cases for which abortions would be covered by TRICARE), were too broad to be considered the same or similar to what is permitted under TRICARE. Notably, these comments also incorrectly argued that the CHAMPVA exception to protect the health of the pregnant individual without further qualification or limitation could be interpreted in a way that increases access to abortion services beyond the scope stated in the IFR.

VA does not make changes to the rule based on these comments. As explained in the IFR and herein, TRICARE (Select) provides coverage for abortions when the pregnancy is the result of an act of rape or incest, or when a physician certifies that the life of the woman would be endangered if the pregnancy were carried to term. 87 FR 55290. CHAMPVA regulations previously allowed for abortions only when a physician certifies that the abortion was performed because the life of the woman would be endangered if the pregnancy were carried to term. *See* 38 CFR 17.272(a)(64); 87 FR 55290. Pursuant to VA's authority in 38 U.S.C. 1781, VA amended the CHAMPVA regulations to better align coverage under CHAMPVA with coverage under TRICARE (Select). In this regard, VA amended its regulations to additionally provide coverage of abortions when the pregnancy is the result of an act of rape or incest. Although VA also revised the regulations to cover abortions when the health of the CHAMPVA beneficiary would be endangered if the pregnancy were carried to term, in contrast with coverage under TRICARE (Select), coverage under CHAMPVA must be provided in the ''same or similar'' manner and subject to the ''same or similar'' limitations as TRICARE (Select). 38 U.S.C. 1781(b); *see* 87 FR 55290. By referring to care that is ''similar,'' the statute permits VA flexibility to administer the program for CHAMPVA beneficiaries. If Congress had intended for VA to administer the program for CHAMPVA beneficiaries in a manner equivalent to TRICARE (Select), 38 U.S.C. 1781(b) simply could have required VA provide ''the same'' care in ''the same'' manner as TRICARE (Select); however, the statute recognizes that there will be differences in how VA administers CHAMPVA. VA determined that the care provided under this rule is similar to that provided by DOD under TRICARE (Select), which covers abortions to beneficiaries when there is a medical risk to the pregnant individual if the pregnancy were carried to term or if the pregnancy is the result of an act of rape or incest. *Id.* The flexibility to administer CHAMPVA in a manner ''similar'' to TRICARE (Select) also recognizes that VA serves a different population than TRICARE under a different authority. Section 1781(b) of 38 U.S.C. authorizes VA to provide care directly to CHAMPVA beneficiaries through VA facilities, and beneficiaries who receive care at a VA facility are eligible for the same medical services as a veteran. In exercising our discretion to provide care in a ''similar'' manner to TRICARE (Select), we have concluded it lies within our discretion to determine that abortions in the circumstances authorized by the IFR should be made available to all CHAMPVA beneficiaries, not just those who receive their care through VA facilities. As explained, it is important to provide medically necessary and appropriate abortion care when the health of the pregnant individual is endangered, as determined by an appropriate medical professional under

Prevention. April 25, 2014. *https://www.cdc.gov/mmwr/preview/mmwrhtml/rr6304a1.htm?s_cid=rr6304a1_w* (last visited December 6, 2023).

generally accepted standards of care, to better promote the long-term health of CHAMPVA beneficiaries, which is consistent with VA's past practices related to implementing CHAMPVA.

Regarding the portion of these comments related to VA furnishing abortion counseling under CHAMPVA for any beneficiary and not just in those cases for which an abortion would be covered by TRICARE, we reiterate from above that VA finds this more comprehensive abortion counseling to be sufficiently similar to that under TRICARE (Select). VA's broader coverage may deviate for purposes of promoting the long-term health of CHAMPVA beneficiaries by covering the most complete and accurate information available regarding various pregnancy and health care options, regardless of whether CHAMPVA would cover any such abortion the beneficiary receives. *See also* 87 FR 55292–93.

B. CHAMPVA Care at VA Facilities

One commenter stated that 38 U.S.C. 1781 authorizes, but does not mandate, the provision of CHAMPVA care at VA facilities through the CHAMPVA In-House Treatment Initiative (CITI). The commenter suggested that VA ensure that VA facilities provide access to abortion to CHAMPVA beneficiaries through the CITI program, particularly in localities where abortions are banned or restricted. VA does not make changes to the rule based on this comment. The provision of CHAMPVA care at VA facilities through the CITI program is permissible under 38 U.S.C. 1781(b), which provides that those VA medical facilities that are equipped to provide CHAMPVA beneficiaries care may do so only to the extent they are not being utilized for the care of eligible veterans. Because the capacity, projected demands, and care needs of veterans at each VA Medical Center can fluctuate, VA cannot ensure that a certain number of VA facilities or facilities in any particular State or region will participate in the CITI program at any given time. However, where a VA facility operates a CITI program, it will provide the health care services permitted by the IFR to CHAMPVA beneficiaries who are eligible to receive care through CITI consistent with the IFR and to the extent that facility's resources are not being utilized for the care of eligible veterans. Further, it remains the case that the CITI program may expand to additional VA facilities if such facilities are equipped to provide the care and treatment and are not being utilized for the care of eligible veterans, without any revisions to VA regulations.

C. Provision of Abortions and Abortion Counseling to Those Under Age 18

One commenter asserted that VA should clarify that it is not requiring its health care professionals to perform any abortions on those under the age of 18, and that parental notification and consent is required for any abortion. Another commenter similarly stated that it was unclear what protocols will be put in place to ensure that children of veterans who may be eligible to receive abortions through the VA have received proper parental consent. VA makes no changes to the rule based on these comments.

In accordance with VHA Directive 1004.01, dated December 12, 2023, it is VA policy that if a patient is considered a minor under State law in the jurisdiction where the VA facility is located, then that patient is not presumed to have decision-making capacity for giving informed consent. As a result, for patients considered minors, consent would be obtained from the patient's parent or legal guardian, except as otherwise provided by law. And as also consistent with this VA policy, if the patient is not considered a minor under State law, for example, by virtue of a State court order awarding emancipation to the minor or automatic emancipation under State law based on certain events, parental notification and consent would not be required.

XII. Comments Related to Fatal Fetal Anomalies

One commenter recommends VA revise the rule to include an exception to allow abortions for fatal fetal anomalies. VA makes no changes based on this comment. The commenter provides no rationale for the proposal that abortions be provided absent the circumstances identified in the rule, or for a finding that the proposed expansion would constitute needed care (for veterans) or medically necessary and appropriate care (for CHAMPVA beneficiaries) under 38 U.S.C. 1710 and 1781. As explained herein and in the IFR, VA has determined that abortions are needed or medically necessary and appropriate care, as required under VA's statutory authorities, when the life or health of the pregnant veteran or CHAMPVA beneficiary would be endangered if the pregnancy were carried to term or when the pregnancy is the result of an act of rape or incest. It is up to the provider to determine if the specific clinical facts of the individual case establish that the carrying to term of a fetus with a fatal fetal anomaly would endanger the life or health of a pregnant veteran or CHAMPVA beneficiary. That is, it would be up to the provider to make the necessary clinical determination.

XIII. Comments Related to VA Mission and Funding

Several commenters opined that VA should not use its limited resources for abortion as VA facilities are for veteran care. These commenters expressed concerns regarding the impact of the health care services permitted under the IFR on VA's provision of other needed care. VA makes no changes to the rule based on these comments. As explained in the IFR and throughout this final rule, abortions can also be needed health care for veterans and medically necessary and appropriate for CHAMPVA beneficiaries. Pursuant to authorized appropriations, detailed above, VA receives and uses funding to furnish medical care authorized under the medical benefits package, which now includes abortions in certain circumstances and abortion counseling. VA's provision of the health care services permitted under the IFR does not impact or preclude VA's provision of all other needed health care.

XIV. Comments That VA Should Expand Access to Abortion

Several commenters opined that VA should permit access to abortions for any reason, not just in the circumstances identified in the IFR. One of these commenters asserted that VA's statutory authority permits abortion care in all circumstances, not just in cases where the life or health of the pregnant patient would be endangered if the pregnancy were carried to term, or when the pregnancy is the result of rape or incest. Consistent with its authorities, and as discussed throughout this rule and the IFR, VA has removed exclusions for certain care that VA has, at this time, determined to be ''needed'' (for veterans) and ''medically necessary and appropriate'' (for CHAMPVA beneficiaries). We decline to change course based on these comments.

Some commenters supported a legislative change to permit VA to provide access to abortions for any reason. Those comments regarding Congress's ability to amend VA's statutory authority are outside the scope of this rulemaking.

Some commenters otherwise asserted that the IFR's framing of VA's regulatory changes as prohibitions on abortion with exceptions could be confusing, perhaps to the detriment of veterans or CHAMPVA beneficiaries. As discussed, given VA's statutory authorities and regulations concerning determinations that care is ''needed'' or ''medically

necessary and appropriate''—as well as a preexisting prohibition with ''exceptions'' for abortion care under VA's implementing regulations for CHAMPVA (38 CFR 17.272)—it was appropriate to regulate in this consistent manner. VA has and will continue to issue appropriate guidance to ensure that VA health care professionals understand that abortion is permitted under the exceptions as outlined in the IFR, and again directs veterans, CHAMPVA beneficiaries, and external stakeholders to VA's public-facing websites for clarifying information: *www.womenshealth.va.gov/WOMENSHEALTH/topics/abortion-services.asp.*

XV. Comments Outside the Scope of the IFR

Many commenters raised concerns that were outside the scope of the rulemaking, in addition to those noted above. VA has briefly summarized those concerns below; VA does not make any changes to the rule based on them.

A. Mandated Provision of Abortion or Any Related Reproductive Health Services

One commenter suggested VA clarify that ''the rule cannot mandate coverage for abortion or situationally for any related reproductive health services.'' To the extent the comment was simply asking VA to clarify this point, we reiterate that the covered health care and services permitted under the IFR are available to veterans and CHAMPVA beneficiaries when their health care provider determines they are needed or medically necessary and appropriate. The decision to pursue a particular course of treatment is the pregnant individual's decision, made in consultation with a provider, VA does not make that decision for the individual.

B. VA's Implementation of the IFR

Multiple commenters made statements or asked questions about VA's implementation plan(s) related to the IFR. VA finds comments related to VA's implementation beyond the scope of the IFR as these are administrative matters not controlled by the regulations that were revised by the IFR. Nonetheless, VA provides summaries and responses below for the purposes of transparency and as appropriate.

One commenter opined that VA must make explicit its plan to implement the rule. VA has made relevant information available on its website. *See www.womenshealth.va.gov/WOMENSHEALTH/topics/abortion-services.asp.* As stated there, VA is taking steps to guarantee veterans and CHAMPVA beneficiaries have access to abortion-related care, as authorized by this rule, anywhere in the country.

One commenter stated that a VHA website related to community care provisions (*https://www.va.gov/communitycare/programs/veterans/general_care.asp*) provided that VA facilities do not provide maternity care which suggests that veterans can only receive medical care related to pregnancy (and therefore abortions) through VA's community care providers. The commenter raised a concern about how eligible veterans would be able to access the health care services permitted under the IFR if they were solely available in the community and those community providers would be required to adhere to State law requirements. Relatedly, another commenter inquired whether VA will be providing the health care services permitted under the IFR within its VA medical facilities or referring individuals out to the community in other States.

VA does provide some maternity care services to veterans in VA medical facilities, and to the extent that VA can furnish the health care services permitted by the IFR directly, it will do so. Since the IFR published and became effective, VA has made efforts to ensure it has adequate capacity to provide abortion care at VA facilities, including abortion counseling. Regarding needed health care services permitted by the IFR that cannot be furnished in VA facilities (due to lack of resources such as staff or equipment, for instance), VA may refer such care to VA community care providers where that health care is available, consistent with existing VA regulations (see, for instance, 38 CFR 17.4000 *et seq.*).

Several commenters raised concerns that the IFR does not explain the types of abortion methods that will be permitted or prohibited by VA. As noted above, VA does not generally find it appropriate to regulate the types of methods of care or procedures that are permitted or prohibited. Doing so could unnecessarily restrict the provision of care, including abortions, and result in negative impact or harm to our patients. The type of abortion provided will vary on a case-to-case basis, and appropriate VA medical professionals must be able to determine, in accord with generally accepted standards of medical practice, how best to treat all individuals.

One commenter opined that VA should clarify in guidance that no additional administrative barriers should delay or impede access to the health care services permitted under the IFR determined to be appropriate by a health care professional. Neither the IFR nor this final rule adds administrative barriers to delay or impede access to the health care services permitted under the IFR. VA will ensure its health care professionals furnish this care consistent with the manner in which they furnish all other authorized health care.

One commenter inquired as to whether VA will have funding for the provision of this care, if VA will provide medication abortion, and if VA will have necessary providers available to provide this care. VA is using and will continue to use its current funding for the provision of health care authorized under 38 U.S.C. 1710 and 1781 to provide health care services in the circumstances permitted under the IFR. VA will ensure that experienced and trained VA providers are available to provide abortions, including medication abortion. Another commenter relatedly recommended that VA equip its pharmacists with the authority and infrastructure to support mail dispensary of medication abortion drugs. VA pharmacists do have the authority to mail medications.

Another commenter urged VA to include virtual counseling and medication abortion as part of the care authorized under the IFR. As explained previously in this rule, abortion counseling may be provided virtually through telehealth in accord with generally accepted standards of care. VA will provide medication abortions when needed and medically appropriate and in a manner consistent with Federal law.

Another commenter suggested that VA clarify that sexual assault survivors can receive the full range of health care without barriers, especially as the majority of sexual assaults are not reported, and survivors may distrust the police or fear retaliation from a known perpetrator. Veterans who are eligible for VA health care and CHAMPVA beneficiaries are able to receive the full range of health care authorized under the medical benefits package and CHAMPVA, respectively, regardless of whether they are a sexual assault survivor. VA notes that it has military sexual trauma coordinators at every VA medical facility that can further assist eligible individuals in accessing needed military sexual trauma care. For additional information, please see *www.va.gov/health-care/health-needs-conditions/military-sexual-trauma/.*

One commenter appeared to support VA's training of medical students and residents to provide the health care services permitted under the IFR.

Similar to the provision of all other health care provided by VA, medical students and residents may receive training from VA regarding the provision of the health care services permitted under the IFR. Such training would be conducted pursuant to an affiliation agreement between an educational institution and a VA facility, and under the clinical supervision of an appropriate health care professional.

One commenter stated that not all VA facilities are located on exclusive Federal property, and therefore it would seem necessary to alert individuals seeking an abortion at such a VA facility that VA cannot guarantee that such individuals would not be prosecuted under State law even though the VA medical provider would appear to be protected. The commenter further stated that a better option would be to have VA authorize transport at government expense of such an individual to a VA facility in a State that does not criminalize abortion. Relatedly, commenters inquired how VA will address State action concerns because not all veterans live in areas that permit abortion counseling or services and that there should be measures to ensure travel across State lines if necessary, and generally noted that VA needs to ensure that veterans feel safe in accessing abortion care.

For the portions of these comments that assert or question VA's jurisdiction or control of its facilities, any care or services furnished by VA in a manner authorized by Federal law, including by this rule, would preempt conflicting State law that would penalize VA employees for performing their Federal functions, regardless of any specific land ownership or leasing arrangements (for instance, such as if a VA facility is co-located to a State-sponsored academic institution).

To the extent these comments may raise concerns that needed abortion counseling or abortions cannot be furnished in VA facilities (due to lack of resources such as staff or equipment, for instance), VA reiterates from earlier in this discussion that VA may refer such care to VA community care providers where available.

Insofar as some comments concerned potential travel needed to obtain the health care services permitted under the IFR, veterans would have access to both Beneficiary Travel and Veterans Transportation Program benefits if so eligible under VA regulations at 38 CFR part 70.

Finally, insofar as commenters suggested that VA alert certain individuals seeking abortions that VA cannot guarantee that such individuals would not be prosecuted under State law, VA is a health care provider, and VA attorneys have no authority to provide any legal advice to veterans or CHAMPVA beneficiaries.

C. Suggested Alternatives to VA Providing Access to Abortion

Commenters asserted that instead of access to the health care services permitted under the IFR they believed pregnant individuals should be given the option of emotional and physical support throughout their pregnancies and post-partum experiences, specifically including prenatal medical attention. Other commenters similarly indicated that instead of providing access to abortions, VA should direct pregnant individuals to support groups that are available and, if such individuals do not wish to keep a child after giving birth, to help them through the adoption process. As with all comments discussed in this section, VA finds these comments to be beyond the scope of the IFR.

These commenters seem to assert that abortion would not be necessary if pregnant individuals were given more support during prenatal, pregnancy, or postpartum stages, or offered choices beyond abortion, which seems to assume that VA is providing access to abortion procedures for reasons other than medical necessity. However, the IFR permits abortions to be provided only when the life or health of the pregnant individual would be endangered if the pregnancy were carried to term or when the pregnancy is the result of an act of rape or incest. VA provides care to veterans when such care is determined by an appropriate health care professional to be needed to promote, preserve, or restore the health of the veteran and is in accord with generally accepted standards of medical practice, and provides care for CHAMPVA beneficiaries that is medically necessary and appropriate. The need for health care services permitted under the IFR would not be prevented by increased access to support groups or to a particular level of maternity care services. Moreover, VA's pregnancy options counseling, discussed above, includes abortion counseling and all other pregnancy options. The course of treatment is the pregnant individual's decision, made in consultation with a provider, and nothing in the IFR changes this.

To the extent the commenters might be expressing that lack of maternity care services could endanger a pregnant individual's life or health if the pregnancy were carried to term, maternity care services provided by VA include comprehensive pre- and post-partum care and services. VA will continue to provide comprehensive maternity care in addition to the health care services permitted by the IFR in the circumstances stated in the rule.

Regarding the request in the comments that VA assist pregnant individuals with the adoption process if they did not want to keep a child after giving birth, VA does provide pregnancy options counseling as part of its furnishing of maternity care services, and this pregnancy options counseling includes providing information on adoption.

Severability

The purpose of this section is to clarify VA's intent with respect to the severability of provisions of this rule. Each provision and portion of this rule is capable of operating independently. If any provision or portion of this rule is determined by judicial review or operation of law to be invalid, that partial invalidation will not render the remainder of this rule invalid. As explained in the IFR and above, VA amended its regulations because it determined that providing access to abortion-related medical care is needed to protect the lives and health of veterans and is medically necessary and appropriate care for CHAMPVA beneficiaries. For those same reasons, VA intends each aspect of the rule to operate and ensure that such care is available, even if one portion of the rule is invalidated. For example, if a provision of the rule concerning benefits for CHAMPVA beneficiaries were held invalid, other provisions concerning CHAMPVA beneficiaries, and provisions concerning the care available to Veterans under the medical benefits package, could and should continue to operate independently. The provisions authorizing abortions in cases where the life or health of the pregnant veteran or CHAMPVA beneficiary would be endangered if the pregnancy were carried to term could operate independently should the provision authorizing abortions in cases where the pregnancy is due to an act of rape or incest be held invalid, and vice versa. The provisions authorizing VA to provide abortions could continue to operate should the provisions authorizing VA to provide abortion counseling be held invalid. We emphasize that this is a non-exhaustive list of examples. Likewise, if the application of any portion of this rule to a particular circumstance is determined to be invalid, the agency intends that

the rule remain applicable to all other circumstances.

Administrative Procedure Act

VA has considered all relevant input and information contained in the comments submitted in response to the IFR (87 FR 55287) and, for the reasons set forth in the foregoing responses to those comments, has concluded that changes to the IFR are not warranted. Accordingly, based upon the authorities and reasons set forth in issuing the IFR (87 FR 55287), as supplemented by the additional reasons provided in this document in response to comments received, VA is adopting the provisions of the IFR as a final rule without changes.

Executive Order 13132, Federalism

Executive Order 13132 establishes principles for preemption of State laws when those laws are implicated in rulemaking or proposed legislation. The order provides that, where a Federal statute does not expressly preempt State law, agencies shall construe any authorization in the statute for the issuance of regulations as authorizing preemption of State law by rulemaking only when the exercise of State authority directly conflicts with the exercise of Federal authority or there is clear evidence to conclude that the Congress intended the agency to have the authority to preempt State law.

As discussed in the IFR, consistent with 38 CFR 17.419, State and local laws, rules, regulations, or requirements are preempted to the extent those laws unduly interfere with Federal operations or the performance of Federal duties. 87 FR 55293–55294. That includes laws that States and localities might attempt to enforce in civil, criminal, or administrative matters against VA health care professionals acting in the scope of their VA authority and employment and that would prevent those individuals from providing care authorized by 38 U.S.C. 1701, 1710, 1781, 1784A, 7301, and 7310, and VA's implementing regulations. State and local laws, rules, regulations, or requirements are therefore without any force or effect to the extent of the conflict with Federal law, and State and local governments have no legal authority to enforce them in relation to actions by VA employees acting within the scope of their VA authority and employment.

Because all State and local laws, rules, regulations, or requirements have no force or effect to the extent that they unduly interfere with the ability of VA employees to furnish reproductive health care while acting within the scope of their VA authority and employment, there are no actual or possible violations of such laws related to VA programs, operations, facilities, contracts, or information technology systems that would necessitate mandatory reporting by VA employees. 38 CFR 1.201–1.205. This rulemaking confirms VA's authority and discretion to manage its employees concerning the services that will be provided pursuant to this rulemaking.

Next, Executive Order 13132 requires that any regulatory preemption of State law must be restricted to the minimum level necessary to achieve the objectives of the statute pursuant to which the regulations are promulgated. Under VA's regulations, State and local laws, rules, regulations, or other requirements are preempted only to the extent they unduly interfere with the ability of VA employees to furnish needed or medically necessary and appropriate health care to veterans and CHAMPVA beneficiaries while acting within the scope of their VA authority and employment. Therefore, VA believes that the rulemaking is restricted to the minimum level necessary to achieve the objectives of the Federal statutes.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *https://www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule will not have a significant impact on a substantial number of small entities because the final rule does not directly regulate or impose costs on small entities and any effects will be indirect. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, see 2 U.S.C. 1532, requires that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–21.

Congressional Review Act

Pursuant to the Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not satisfying the criteria under 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Health records, Medical devices, Medical research, Mental health programs, Veterans.

■ For the reasons stated in the preamble, the interim final rule amending 38 CFR part 17, which was published at 87 FR 55287 on September 9, 2022, is adopted as final.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on February 26, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

electronically as an official document of the Department of Veterans Affairs.

Michael P. Shores,

Director, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2024–04275 Filed 3–1–24; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, International Mail Manual* (IMM®) dated January 21, 2024, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This rule is effective March 4, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy, (202) 268–6592.

SUPPLEMENTARY INFORMATION: The *International Mail Manual* (IMM) provides our standards for all international mailing services and references for the applicable prices. It was issued on January 21, 2024, and was updated with *Postal Bulletin* revisions through December 28, 2023. It replaces all previous editions.

The IMM continues to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. It continues to: (1) increase the user's ability to find information; (2) increase the user's confidence that he or she has found the information they need; and (3) reduce the need to consult multiple sources to locate necessary information. The provisions throughout this issue support the standards and mail preparation changes implemented since the version of July 10, 2022. The *International Mail Manual* is available to the public on the Postal Explorer® internet site at *https://pe.usps.com.*

List of Subjects in 39 CFR Part 20

Administrative practice and procedure, Foreign relations, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Amend § 20.1 by revising paragraphs (a)(3) and (b) to read as follows:

§ 20.1 Incorporation by reference; Mailing Standards of the United States Postal Service, International Mail Manual.

(a) * * *

(3) *Inspection—NARA.* 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.*

(b) The Director of the Federal Register approved the IMM, updated January 21, 2024, for incorporation by reference as of March 4, 2024.

■ 3. Revise § 20.2 to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the *International Mail Manual* issued January 21, 2024 (incorporated by reference, see § 20.1), are applicable with respect to the international mail services of the Postal Service.

■ 4. Amend § 20.4 by adding an entry for ''IMM'' at the end of table 1 to read as follows:

§ 20.4 Amendments to the International Mail Manual.

* * * * *

TABLE 1 TO § 20.4—INTERNATIONAL MAIL MANUAL

International mail manual	Date of issuance
* * * * *	
IMM	January 21, 2024.

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–04420 Filed 3–1–24; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) dated January 21, 2024, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This rule is effective March 4, 2024. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy (202) 268–6592.

SUPPLEMENTARY INFORMATION: The *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) provides the United States Postal Service's official prices and standards for all domestic mailing services. The most recent issue of the DMM is dated January 21, 2024. This issue of the DMM contains all Postal Service domestic mailing standards and continues to: (1) increase the user's ability to find information; (2) increase confidence that users have found all the information they need; and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. The issue dated January 21, 2024, sets forth specific changes, including new standards throughout the DMM to support the standards and mail preparation changes implemented since the version issued on July 10, 2022.

Changes to mailing standards will continue to be published through **Federal Register** documents and the *Postal Bulletin* and will appear in the next online version available via the Postal Explorer® website at: *https://pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 111 as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101,

401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Amend § 111.1 by revising paragraphs (a)(3) and (b) to read as follows:

§ 111.1 Incorporation by reference; Mailing Standards of the United States Postal Service, Domestic Mail Manual.

(a) * * *

(3) *Inspection—NARA.* 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.*

(b) The Director of the Federal Register approved DMM, updated January 21, 2024, for incorporation by reference as of March 4, 2024.

■ 3. Amend § 111.3 by adding an entry for ''DMM'' to the end of table 1 to read as follows:

§ 111.3 Amendments to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

* * * * *

TABLE 1 TO § 111.3—DOMESTIC MAIL MANUAL

Transmittal letter for issue	Dated	**Federal Register** publication
* * * * * * *		
DMM	January 21, 2024	[Insert **Federal Register** citation for this final rule].

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2024–04421 Filed 3–1–24; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 305

RIN 0970–AC95

Modifications to Performance Standards During Natural Disasters and Other Calamities

AGENCY: Office of Child Support Services (OCSS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS or the Department).

ACTION: Final rule.

SUMMARY: OCSS issues this final rule to provide temporary relief to states from certain child support program performance requirements and penalties during natural disasters and other calamities which have a negative impact on state child support program operations. The rule allows OCSS to modify performance measure requirements when natural disasters and other calamities affect, or are expected to affect, the state child support program's ability to achieve performance standards for paternity establishment, support order establishment, and current collections. The rule enables states to avoid the imposition of penalties due to adverse data reliability audit findings during, and after, natural disasters and other calamities, including pandemics and declared public health emergencies.

DATES: This rule is effective on March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Tricia John, Policy Specialist, Division of Policy and Training, OCSS, telephone (202) 260–7143. Email inquiries to *ocss.dpt@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This rule is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act. The authority to modify the paternity establishment percentage (PEP) performance measure and data reliability audit requirements is based on section 452(g)(3)(A) of the Act (42 U.S.C. 652(g)(3)(A)), which provides the Secretary with discretionary authority to modify the PEP and program audit requirements taking into account additional variables as identified by the Secretary that affect the ability of a state to meet the PEP and audit requirements. The authority to modify, waive or suspend the support order establishment and current collections performance measures is based on section 409(a)(8)(A)(i)(I) of the Act (42 U.S.C. 609(a)(8)(A)(i)(I)), which provides the Secretary with discretion regarding the establishment of other state child support program performance measures.

Background

The purpose of this rule is to authorize the Secretary to provide targeted and time-limited relief to states from certain performance penalties when natural disasters and other calamities impact state child support program operations, preventing the state from achieving the required program performance measures.

This rule allows OCSS to modify the requirements for states to meet the following performance standards: the PEP performance standard of 90 percent under 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections performance standard of 35 percent under 45 CFR 305.40(a)(3). This rule sets forth the process by which states may request, and OCSS may adjust these performance standards to a lower level to avoid imposing financial penalties on states and modify the requirements to avoid the imposition of penalties due to adverse data reliability audit findings. The rule permits time-limited modification of performance requirements during, and subsequent to, natural disasters and other calamities. We note that the rule only addresses modifications to penalty performance measures and levels under 45 CFR 305.40; it does not change the requirements related to incentive payments under section 458 of the Act and 45 CFR part 305.

The need for OCSS to establish a process for states to request relief from penalties during natural disasters and calamities became apparent during the COVID–19 pandemic. During the COVID–19 pandemic, states experienced significant workload burdens and service backlogs due to disruptions to state child support program operations and court closures.

State child support program operations were affected in a variety of ways, including being unable to obtain voluntary acknowledgments through in-hospital programs or to access genetic testing due to child support office closures, court closures, staffing shortages, or when clinical laboratory resources were diverted for pandemic-related testing. In response, OCSS added 45 CFR 305.61(e) to provide time-limited relief specific to the impact of COVID–19, to modify the Paternity Establishment Percentage for Federal Fiscal Years (FFY) 2020, 2021, and 2022.

Since the start of the pandemic in early 2020, states have appealed for relief from program requirements in order to support their operations during the crisis. OCSS was able to provide certain flexibilities for administrative requirements under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) (*See* OCSS's Dear Colleague Letter 20–04: Flexibilities for State and Tribal Child Support Agencies during COVID–19 Pandemic [1]). However, these flexibilities did not extend to relief for financial penalties related to performance or adverse data reliability audit findings. States are concerned that performance-related financial penalties resulting from a natural disaster or other calamity, and which are imposed in the form of a reduction to state TANF grants, place an undue burden on state budgets and threaten funding that supports the very families who are most in need of public assistance during a time of crisis.

State Child Support Program Performance Requirements

Under title IV–D of the Act, states are required to achieve performance levels in paternity establishment, support order establishment, and current collections. Failure to achieve required performance levels may lead to penalties assessed as a percentage reduction of the state's Temporary Assistance for Needy Families (TANF) grant in accordance with section 409(a)(8) of the Act (42 U.S.C. 609(a)(8)).

The PEP, support order establishment, and current collections performance measures, which are part of the overall performance, audit, penalties, and incentives for the child support program, are established under 452(g) of the Act and 45 CFR 305.40. Section 452(a)(4)(C)(i) of the Act requires the Secretary to determine whether state-reported data used to determine the performance levels are complete and reliable. Additionally, section 409(a)(8)(A) of the Act and 45 CFR 305.61(a)(1) include the assessment of a financial penalty if there is a failure to achieve the required level of performance or an audit determines that the data are incomplete or unreliable.

The required levels of performance for the PEP, support order establishment, and current collections performance measures are set out in 45 CFR 305.40:

- The PEP performance level must be at least 90 percent or an improvement of 2 to 6 percentage points over the previous year's level of performance, below which a state will incur a penalty.
- The support order establishment performance level must be at least 40 percent, below which a state will be penalized unless an increase of 5 percent over the previous year is achieved.
- The current collections performance level must be at least 35 percent, below which a state will be penalized unless an increase of 5 percent over the previous year is achieved.

Section 409(a)(8)(A)(ii) of the Act and 45 CFR 305.61(a)(2) impose automatic corrective action for the subsequent fiscal year. A state also must submit complete and reliable data used in the performance measure calculations, which will be audited according to 45 CFR 305.60.

If a state fails to meet the annual performance measure standards, or to show improvement in the subsequent year, the amount of the initial penalty will be equal to one to two percent of the adjusted State Family Assistance Grant for the state's TANF program in accordance with 45 CFR 305.61(c) and (d). A penalty will also be imposed if the state fails to submit complete and reliable performance measure data and there is an adverse data reliability audit finding for a performance measure in the subsequent year. The penalty will continue to be assessed in accordance with section 409(a)(8)(B) of the Act and 45 CFR 305.61 until the state is determined to have submitted complete and reliable data and achieved the required performance measure standards. In accordance with 45 CFR 262.1(e)(1), the state must expend additional state funds equal to the amount of the penalty (which will not count toward the maintenance-of- effort requirement under TANF) the year after the TANF grant penalty is assessed.

Summary Description of the Regulatory Changes

The notice of proposed rulemaking (NPRM) was published in the **Federal Register** on July 13, 2023 (88 FR 44760 through 44764). The comment period ended September 11, 2023. In the NPRM, we proposed to add a new provision to Part 305, ''Program Performance Measures, Standards, Financial Incentives and Penalties,'' to explain when OCSS may exercise its authority to provide short-term relief from certain performance requirements related to the PEP, support order establishment, and current collections performance standards when states are unable to meet those requirements due to the impact of natural disasters or other calamities on state child support program operations. Specifically, we proposed adding a new paragraph (f) to § 305.61, ''Penalty for failure to meet IV–D requirements,'' to explain when OCSS may exercise its authority, during and subsequent to natural disasters and other calamities, to temporarily modify the performance requirements for states to meet the PEP standard of 90 percent under 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections standard of 35 percent under 45 CFR 305.40(a)(3), to a lower level to avoid imposing a financial penalty on states. In addition, we proposed that OCSS may set aside adverse data reliability audit findings under section 452(g) of the Act during the same time period.

Response to Comments

OCSS received 16 sets of comments to the July 2023 NPRM from states, organizations, and other interested entities and individuals, which were posted on *www.regulations.gov.* OCSS reviewed and analyzed the comments and considered them in finalizing the rule. All comments received in response to this rulemaking were supportive of the proposed relief as outlined in the NPRM. We received several comments to the NPRM that included additional suggestions and recommendations, and we respond to those comments below.

Comment 1: Several commenters requested clarification around data reliability audit findings in relation to this proposed regulation. Some commenters had concerns regarding whether requests for relief from adverse data reliability audit findings related to the three performance measures that are the subject of this rule should coincide or be submitted subsequent to the request for relief from one or more performance requirements. One

[1] *https://www.acf.hhs.gov/css/policy-guidance/flexibilities-state-and-tribal-child-support-agencies-during-covid-19-pandemic.*

commenter requested clarification regarding the process for requesting relief from adverse data reliability audit findings and whether such relief can be sought without a prior or concurrent request for modification of performance requirements.

A commenter requested clarification regarding the types of adverse data reliability audit findings that could be set aside under the new rule. A commenter observed that the rule does not address the arrears or cost-effectiveness performance measures and, while acknowledging that failure to meet these performance measures does not result in penalties, such performance could still be implicated in data reliability audit findings.

A commenter requested clarification on whether substandard performance occurring prior to an approved performance modification period would carry over to the post performance modification period. One commenter asked for clarification on whether a state would still need to do a data reliability audit if data reliability errors were found, or if states could instead plan on doing the Data Reliability Review/data reliability audit on a state's regular schedule.

Response 1: Data reliability audits for the period(s) which performance requirement modifications are requested will continue to occur after a request is made under section 305.61(f). A state may submit a request to set aside adverse data reliability audit findings to avoid the imposition of a financial penalty subsequent to or concurrent with a request to modify performance requirements. A state can request relief from adverse data reliability audit findings without a request to modify performance requirements.

Relief from adverse data reliability audit findings to avoid the imposition of a financial penalty only applies to data related to the PEP, order establishment, and current collections performance measures, and only during those periods for which the state seeks and OCSS grants relief, as provided for under this rule. As such, the performance measures of arrearage collections and cost-effectiveness, which are not penalty performance measures under 45 CFR 305.40, are outside the scope of this rulemaking. States should make every effort to demonstrate how, and for what periods, the natural disaster or other calamity directly results in a reduction in performance. If the state expects a continued reduction in performance due to the natural disaster or calamity for subsequent Federal fiscal years, the state should submit a subsequent request for a reduction in the affected performance measures for each fiscal year.

The process to determine what type of audit a state will receive has not changed. States that could have been exempt from a data reliability audit will go back into the annual audit pool for the next audit cycle if, during the current audit cycle, they either fail to meet a performance standard, fail to report reliable data, or achieve marginal performance on any line evaluated for data reliability.

Comment 2: A number of commenters requested more information around timeframes to make the request for relief and timeframes for OCSS to respond to their request for relief. One commenter observed that there did not seem to be a timeframe attached to when an initial application for relief should be submitted and recommended that the rule include language similar to the requirement for submitting subsequent requests (''as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known to the state''). Another commenter stated that the requirement to submit a subsequent request as soon as the adverse effect is known should be clarified or deleted, and that a requirement of timeliness is overly strict and could allow for a denial based on an untimely request.

Another commenter recommended adding a clarification regarding whether a state can make the same request multiple years in a row.

Five commenters requested that the rule include a timeframe for OCSS to respond to state applications for relief, two of them recommending a period of 30 days. One commenter recommended the creation of a standardized request form to apply for relief. The commenter also suggested that such a form should include instructions on what specific or support information is needed.

Response 2: During times of natural disasters and other calamities, states will need flexibility in determining the impacts to their programs and adequate time and resources to gather the necessary data to substantiate the state's request for relief. Therefore, the regulation does not impose a specific timeframe for initial application or subsequent requests.

Similarly, we believe states should have the maximum flexibility to submit a request for relief in the form that the state determines is most reasonable. Each state's circumstances will differ in the type of disaster or calamity and impacts to performance. Creating a standardized form would reduce that flexibility for states. Additionally, states may request relief by following the procedures specified in paragraphs (f)(4), (5) and (6), and OCSS will provide timely communication regarding the state's request.

We have contemplated that a state could request relief on a fiscal year by fiscal year basis, following the same process outlined in the rule. As we have previously stated, a natural disaster or other calamity includes state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) and declared public health emergencies under section 319 of the Public Health Service Act (42 U.S.C. 247d). Therefore, the state must demonstrate, based on available data, that such natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance in subsequent fiscal years.

We agree with comments indicating that a timeframe for OCSS to respond to state applications for relief should be included in the rule. We have revised the final rule to include a 30-calendar day response time.

Comment 3: Some commenters requested the inclusion of language addressing equity and enforcement flexibility. One commenter asked OCSS to consider the adverse consequences of imposing financial penalties on states during emergent situations and urged the incorporation of language that recognizes the need for flexibility and prioritizes equity, to enable agencies to allocate resources where they are most needed. Another commenter requested clarification about whether child support programs could activate enforcement flexibility during natural disasters or other calamities, based on public need, even if the state knows that implementing this flexibility will reduce performance measures.

Response 3: We recognize natural disasters and other calamities may affect state child support program operations in a variety of ways and that states may need flexibility during emergent situations. As detailed in the rule, OCSS expects that a request to modify a state's performance requirements will include state-specific information describing the circumstances and justification for the requested relief, as well as the impact of the natural disaster or other calamity on the state's ability to comply with the standards. We also recognize that natural disasters and other calamities may not necessarily require relief from performance requirements. The current child support performance, audit, penalties, and incentives system is designed to drive performance. States

that experience individual challenges that impact performance, whether these challenges are within or outside the states' immediate control, are motivated to recover from setbacks and strive to achieve performance goals, as states have over the last two decades.

Comment 4: A few commenters asked for clarification about local, regional, and national emergencies, and whether joint requests could be made by more than one state in a particular affected region.

One commenter stated that although the information required to apply for relief is state-specific, there are national and global emergencies that impact all states and territories and that other emergencies may impact specific regions of the country. This commenter asked us to consider the option for states to submit a joint request for relief when more than one state is affected by a disaster.

Two commenters asked for clarification on how the rule would apply if a disaster only impacted one part of a state.

Response 4: While we understand that disasters can affect more than one state in certain regions, the rule is structured in a way that each state needs to provide information specific to that state to demonstrate that the disaster has directly impacted the state's ability to meet performance requirements or is expected to result in a reduction in performance. This is especially true with the data requirements, and each state, even within a region, may be impacted differently with respect to performance. It is not feasible for states to submit joint applications for relief, due to the unique impacts of an emergency on each state and the state-specific data required to substantiate the request for relief.

For those states where a natural disaster or other calamity is only impacting a part of the state, the state may apply for relief from performance requirements.

Comment 5: Several commenters suggested that OCSS provide the opportunity for an appeal if a state is denied the request to modify their performance requirements. An additional suggestion was that 45 CFR 301.14 could be used for this purpose.

Response 5: Adequate process already exists as part of the overall performance evaluation for a state to provide information and request consideration of special circumstances, so an administrative appeal before the Departmental Appeals Board of a denial of a state's request to modify its performance requirements is unnecessary. Under the existing process, if a state fails to meet their performance requirements, the state will be provided one year as their corrective action year as outlined under 45 CFR 305.61. During the corrective action year, OCSS will issue a warning letter to advise of the potential for a penalty if no improvement is made the following fiscal year, as outlined under 45 CFR 305.40, 305.61(a)(2) and 305.66. After the corrective action year, if a penalty is assessed, and the state is subject to the penalty, the state has the option to file an appeal with the Departmental Appeals Board, in accordance with 45 CFR 262.7.

The Departmental Appeals Board has limited jurisdiction under 45 CFR part 16, and for mandatory grants generally only penalties and disallowances are appealable. 45 CFR part 16, Appendix A. Its jurisdiction would not naturally extend to a denial of a state's request to modify its performance requirements.

Comment 6: A few states have requested that OCSS also include the option to provide IV–D agencies with an exception from the impact of increased Federal Medical Assistance Percentages rates on state-retained collections. Additionally, one other state agrees with the proposed rule, but requested that OCSS place limitations on the relief so that a state could not use this flexibility to gain an unfair advantage with respect to performance incentives. Another state suggested that OCSS allow data sharing among programs during times of national disasters and other calamities.

Response 6: These suggestions are beyond the scope of this rulemaking and would require legislative changes. OCSS does not have legislative authority. OCSS disagrees that placing additional limitations on the relief is necessary because the rule requires, in 45 CFR 305.61(f)(5), that the requesting state demonstrate to the satisfaction of the Secretary that the natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance, based on data provided by the state.

Comment 7: One state commented that OCSS should require states to submit a disaster plan as part of their request for relief.

Response 7: While we appreciate the intent behind this comment, OCSS disagrees that states should be required to provide disaster plans as a part of the request for relief. We believe states should have the maximum flexibility to submit a request for relief in the form that the state determines is most reasonable. Each state's circumstances will differ in the type of disaster or calamity and possible impacts to performance.

Comment 8: One commenter suggested revisions to two subsections of the regulatory language. First, the commenter suggested rewording subsection (f)(4)(ii) and removing the term ''impracticability of compliance'' as the term is inherently imprecise and does not help to establish whether a natural disaster or other calamity may have an impact on a state's ability to comply with the performance requirements. Second, the commenter suggested replacing the term ''will not'' with the term ''may not'' in subsection (5)(i) as it is overly strict to require states to demonstrate that they ''*will not meet one or more existing performance requirements,* such that a performance penalty would apply.''

Response 8: We agree with the suggested changes to these subsections and have revised the final rule to reflect that language. We made these changes to clarify ambiguous language and to remove overly restrictive conditions on requests for relief.

Comment 9: One commenter suggested providing consideration for those instances where a state is unable to produce preliminary data due to the natural disaster or other calamity. Another commenter requested the option for states to request an extension to the submission of annual and quarterly reports when disasters occur toward the end of a reporting period.

Response 9: The final rule authorizes OCSS to determine the modified performance requirements based on the preliminary data provided by the state under 45 CFR 305.32(f), and as such, the preliminary data are necessary for the state to demonstrate that the natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance. This final rule also allows OCSS to set aside adverse data reliability audit findings under section 452(g) for the same time period as the time period for which a modification of performance requirements is sought.

While we appreciate that a state's ability to meet reporting requirements may also be impacted by a natural disaster or other calamity, modifications to reporting deadlines are outside the scope of this rulemaking. During such events, additional flexibilities may be available to states beyond those available under title IV–D.

Paperwork Reduction Act

No new information collection requirements would be imposed by this regulation.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule meets the standards of Executive Order 13563 because it creates a short-term public benefit, at minimal cost to the Federal Government, by not imposing penalties against a state's TANF grant, during a time when public assistance funds are critically needed.

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this final rule is significant and was accordingly reviewed by OMB.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires Federal agencies to determine, to the extent feasible, a rule's impact on small entities, explore regulatory options for reducing any significant impact on a substantial number of such entities, and explain their regulatory approach. The Secretary certifies that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on state governments. State governments are not considered small entities under the RFA.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an annual expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation). That threshold level is currently approximately $177 million. This rule does not impose any mandates on state, local, or tribal governments, or the private sector, that will exceed this threshold in any year.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. OCSS believes it is not necessary to prepare a family policymaking assessment (*see* Pub. L. 105–277) because this regulation does not impose requirements on states or families and thus will not have any impact on family well-being.

Congressional Review Act

This final rule is not a major rule as defined in 5 U.S.C. 804(2).

Executive Order 13132

Executive Order 13132 prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism impact as defined in the Executive Order 13132.

Jeff Hild, Acting Assistant Secretary of the Administration for Children and Families approved this document on February 1, 2024.

List of Subjects in 45 CFR Part 305

Child support, program performance measures, standards, financial incentives, and penalties.

Dated: February 26, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the Department of Health and Human Services amends 45 CFR part 305 as set forth below:

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658a, and 1302.

■ 2. Amend § 305.61 by adding a new paragraph (f) to read as follows:

§ 305.61 Penalty for failure to meet IV–D requirements.

* * * * *

(f) During, and subsequent to, natural disasters and other calamities (*e.g.,* state chief executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act, 42 U.S.C. 247d), the Secretary may temporarily modify the performance measure requirements for a state to meet the paternity establishment percentage standard of 90 percent under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), the support order establishment standard of 40 percent under 45 CFR 305.40(a)(2), and the current collections standard of 35 percent under 45 CFR 305.40(a)(3), to lower levels to avoid imposing financial performance penalties on states, and may set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) during the same time period. For Federal fiscal years subsequent to September 30, 2022, the performance requirements for paternity establishment under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), for support order establishment under 45 CFR 305.40(a)(2), and for current collections under 45 CFR 305.40(a)(3)—may be modified by the Secretary to a lower level under the conditions described in this section.

(1) If a state experiences a natural disaster or other calamity (*e.g.,* state chief Executive officer-declared states of emergency, pandemics, events designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170), and declared public health emergencies under section 319 of the Public Health Service Act, 42 U.S.C. 247d), the state's chief executive officer (or his or her designee) may submit to the Secretary a request to modify one or more of the performance requirements specified under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), or under 45 CFR 305.40(a)(3).

(2) The state may also ask the Secretary to set aside adverse data reliability audit findings under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.61(a)(1)(ii) for the same time period as the time period for which a modification of performance requirements is sought.

(3) The request for a modification to the performance requirements must be submitted in accordance with the procedures specified in paragraphs (f)(4), (5) and (6) of this section. Any request other than one submitted with the initial application must be submitted as soon as the adverse effect of the natural disaster or other calamity giving rise to the request is known to the state.

(4) A request for a modification of one or more of the performance requirements must include the following:

(i) A narrative statement describing the circumstances and justification for the request to modify the state's performance requirement;

(ii) Information substantiating the impact of the natural disaster or other calamity on the state's ability to comply with the standards, including a description of the specific conditions caused by the natural disaster or other calamity that have, or may have, a significant impact on the state's ability to comply, and preliminary data provided by the state, as required under 45 CFR 305.32(f), showing reduced performance;

(iii) Information on the expected duration of the conditions that make compliance impracticable; and

(iv) Any other documentation or other information that the Secretary may require to make this determination.

(5) The state must demonstrate to the satisfaction of the Secretary that the natural disaster or other calamity has directly resulted in a reduction in performance or is expected to result in a reduction in performance, based on data provided by the state. In its request for a temporary modification to one or more performance requirements, the state must be able to demonstrate that it:

(i) Has not, or may not meet one or more existing performance requirements, such that a performance penalty would apply;

(ii) Has submitted preliminary data supporting this statement; and

(iii) Has provided all required information requested by the Secretary.

(6) The Secretary shall provide written communication of the decision to modify or decline to modify the performance standards, and the period for which any modified standards shall apply, within 30-calendar days after receipt of appropriate written communication from the chief executive officer.

(i) If approved, a temporary modification in a performance requirement will expire on the last day of the Federal fiscal year for which it was approved.

(ii) Adverse findings of data reliability audits of the state's performance data under 45 CFR 305.60 as reported during the period in which the performance requirement modification is approved will not result in a financial penalty pursuant to the state's request as specified in paragraph (f)(2) of this section.

(iii) Unless the state receives a written approval of its performance requirement modification request, the performance requirements under section 452(g) of the Act (42 U.S.C. 652(g)) and 45 CFR 305.40(a)(1), under 45 CFR 305.40(a)(2), and under 45 CFR 305.40(a)(3) remain in effect.

(iv) If the request for a performance requirement modification is denied, the denial is not subject to administrative appeal.

[FR Doc. 2024–04244 Filed 3–1–24; 8:45 am]

BILLING CODE 4184–41–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 17–59; WC Docket No. 17–97; FCC 23–18; FCC 23–37; FR ID 204126]

Advanced Methods To Target and Eliminate Unlawful Robocalls, Call Authentication Trust Anchor; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective and compliance dates; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of January 25, 2024, announcing the effective dates of amendments to its non-internet Protocol call authentication and robocall mitigation database rules. The document contained an incorrect **Federal Register** citation and an incorrect compliance date.

DATES: This correction is effective March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Erik Beith, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0756, or email: *erik.beith@fcc.gov*.

SUPPLEMENTARY INFORMATION: In the document published January 25, 2024, at 89 FR 4833, announcing the effective dates of amendments to its non-internet Protocol call authentication and robocall mitigation database rules, an incorrect **Federal Register** citation and an incorrect compliance date appeared in **DATES**. The **Federal Register** citation for the publication of the amendments to 47 CFR 64.6303(c) (amendatory instruction 9) and 47 CFR 64.6305(d), (e), (f), and (g) (amendatory instruction 12) is corrected to 88 FR 40096. The compliance date for the regulations at 47 CFR 4.6305(g) is corrected to May 28, 2024.

Correction

In the **Federal Register** of January 25, 2024, in FR Doc. 2024–01167, on page 4833, in the first column, correct the **DATES** caption to read: ''The amendments to 47 CFR 64.6303(c) (amendatory instruction 9) and 47 CFR 64.6305(d), (e), (f), and (g) (amendatory instruction 12), published at 88 FR 40096, June 21, 2023, and the amendments to 47 CFR 64.6305(d)(2)(ii) and (iii), (e)(2)(ii), and (f)(2)(iii) (amendatory instruction 5), published at 88 FR 43446, July 10, 2023, are effective February 26, 2024. The compliance date for 47 CFR 64.6305(g) is May 28, 2024.''

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–03987 Filed 3–1–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–172; MB Docket No. 23–197; RM–11949, 11973; FR ID 205736]

Radio Broadcasting Services; Puhi and Kekaha, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by allotting FM Channels 280A at Puhi, Hawaii, and 298C3 at Kekaha, Hawaii, as the communities' first local service. The staff engineering analysis indicates that Channel 280A at Puhi can be allotted consistent with the minimum distance separation requirements of the Commission's rules with a site restriction of 10.8 kilometers (6.7 miles) west of the community at reference coordinates are 21–58–24 NL and 159–29–45 WL and Channel 298C3 at Kekaha can be allotted consistent with the minimum distance separation requirements of the Commission's rules with no site restriction at reference coordinates are 22–02–00 NL and 159–38–00 WL.

DATES: Effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 23–197, adopted February 26, 2024, and released February 26, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend the Table of FM Allotments under Hawaii by adding in alphabetical order entries for ''Kekaha'' and ''Puhi'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) *Table of FM Allotments.*

TABLE 1 TO PARAGRAPH (b)

U.S. States				Channel No.
*	*	*	*	*
Hawaii				
Kekaha				298C3
Puhi				280A
*	*	*	*	*

[FR Doc. 2024–04402 Filed 3–1–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–173; MB Docket No. 23–198; RM–11950, 11972; FR ID 205737]

Radio Broadcasting Services; Koloa and Waimea, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by allotting FM Channels 264A at Koloa, Hawaii, and 224C3 at Waimea, Hawaii, as the communities' first local service. The staff engineering analysis indicates that Channel 264A at Koloa can be allotted consistent with the minimum distance separation requirements of the Commission's rules with a site restriction of 8.3 kilometers (5.2 miles) northwest of the community at reference coordinates are 21–58–24 NL and 159–29–45 WL and Channel 224C3 at Waimea can be allotted consistent with the minimum distance separation requirements of the Commission's rules with no site restriction at reference coordinates are 22–02–00 NL and 159–38–00 WL.

DATES: Effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 23–198, adopted February 26, 2024, and released February 26, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend the Table of FM Allotments under Hawaii by adding in alphabetical order entries for ''Koloa'' and ''Waimea'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) *Table of FM Allotments.*

TABLE 1 TO PARAGRAPH (b)

U.S. States				Channel No.
*	*	*	*	*
Hawaii				
*	*	*	*	*
Koloa				264A
*	*	*	*	*
Waimea				224C3
*	*	*	*	*

[FR Doc. 2024–04403 Filed 3–1–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 24–174; MB Docket No. 23–209; RM–11951, 11971; FR ID 205738]

Radio Broadcasting Services; Lihue and Princeville, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Table of FM Allotments, of the Federal Communications Commission's (Commission) rules, by allotting FM Channel 296A at Lihue, Hawaii, as the community's sixth local service and FM Channel 236C3 at Princeville, Hawaii,

as the community's first local service. The staff engineering analysis indicates that Channel 296A at Lihue can be allotted consistent with the minimum distance separation requirements of the Commission's rules with a site restriction of 2.5 kilometers (1.6 miles) north of the community at reference coordinates 22–00–00 NL and 159–21–00 WL and Channel 236C3 at Princeville can be allotted consistent with the minimum distance separation requirements of the Commission's rules with no site restriction at reference coordinates 22–12–00 NL and 159–30–00 WL.

DATES: Effective April 11, 2024.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2054, *Rolanda-Faye.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 23–209, adopted February 26, 2024, and released February 26, 2024. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.202(b), amend the Table of FM Allotments under Hawaii by adding in alphabetical order entries for ''Lihue'' and ''Princeville'' to read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) *Table of FM Allotments.*

TABLE 1 TO PARAGRAPH (b)

U.S. States				Channel No.
*	*	*	*	*
Hawaii				
*	*	*	*	*
Lihue				296A
Princeville				236C3
*	*	*	*	*

[FR Doc. 2024–04405 Filed 3–1–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240228–0062; RTID 0648–XD699]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustments to 2024 Specifications

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

ACTION: Temporary final rule; adjustment of specifications.

SUMMARY: In accordance with the regulations implementing the Atlantic Herring Fishery Management Plan, this action adjusts the 2024 harvest specifications for the herring fishery. Specifically, it adjusts catch limits in herring management areas 1A, 1B, and 2 to account for catch overages and an underage in those areas during 2022. This action is necessary to help prevent overfishing and support the harvest of optimum yield consistent with the requirements of the Fishery Management Plan.

DATES: Effective March 4, 2024.

ADDRESSES: Copies of supporting documents, including the 2023–2025 Atlantic Herring Specifications, are available from the Sustainable Fisheries Division, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930, telephone (978) 281–9315, or online at: *https://www.nefmc.org/management-plans/herring* and *https://www.fisheries.noaa.gov/species/atlantic-herring#management.*

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring harvest in the United States is managed under the Atlantic Herring Fishery Management Plan (FMP) developed by the New England Fishery Management Council and approved by NMFS. The FMP divides the herring annual catch limit (ACL) among three management areas, one of which has two sub-areas. It divides Area 1 (located in the Gulf of Maine (GOM)) into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The FMP considers the herring stock complex to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component.

NMFS published Amendment 4 to the FMP (76 FR 11373, March 2, 2011) to address ACL and accountability measure (AM) requirements. As a way to account for ACL/sub-ACL overages in the herring fishery, Amendment 4 established an AM that requires NMFS to deduct any ACL/sub-ACL overages from the ACL and corresponding sub-ACL of the year following the catch overage determination. Amendment 4 also specified that NMFS will announce overage deductions in the **Federal Register** prior to the start of the fishing year, if possible.

NMFS published Framework Adjustment 2 to the FMP and the 2013–2015 specifications for the herring fishery on October 4, 2013 (78 FR 61828). Among other measures, Framework 2 allowed for the carryover of unharvested catch (*i.e.,* underages) in the year following a fishing year's catch accounting determination. Provided that annual total catch does not exceed the ACL, up to 10 percent of each sub-ACL may be carried over and added to the following year's sub-ACL. The carryover provision allows a sub-ACL increase for a management area, but it does not allow a corresponding increase to the ACL.

NMFS published Framework Adjustment 9 to the FMP on July 19, 2022 (87 FR 42962). Among other

measures, Framework 9 revised the catch overage provision so that only overages greater than 10 percent of a sub-ACL must be deducted from the ACL and the corresponding sub-ACL in the year following the total catch accounting determination. Additionally, provided total catch does not exceed the ACL, overage deductions equal the overage amount above the 10-percent overage deduction threshold. For example, if the ACL is not exceeded, a 13-percent sub-ACL overage would require a 3-percent ACL and sub-ACL deduction.

NMFS published the 2023–2025 specification for the herring fishery on March 23, 2023 (88 FR 17397) to initially set sub-ACLs for each of the four management areas in the herring fishery.

Provisions Implemented Through This Final Rule

NMFS recently completed the catch accounting for 2022 and determined there were catch overages in Areas 1A, 1B, and 3 and a catch underage in Area 2. To account for the overages, this action implements allowable deductions for catch overages in Areas 1A and 1B from the Area 1A and 1B 2024 sub-ACLs and from the ACL. Catch in 2022 exceeded the 10-percent overage deduction threshold for Area 1A (12 percent); therefore, this action deducts 2 percent (42 metric tons (mt)) of the 2022 Area 1A overage from the 2024 Area 1A sub-ACL and ACL. Because the 2022 sub-ACL for Area 1B was zero, the full amount of the 2022 overage (6 mt) is deducted from the 2024 Area 1B sub-ACL and ACL. The overage in Area 3 (1 mt) is less than the overage deduction threshold (greater than 10 percent of the sub-ACL or 182 mt); therefore, this action makes no deductions to the 2024 Area 3 sub-ACL. To account for the underage, this action carries over unharvested 2022 Area 2 catch to the 2024 Area 2 sub-ACL but does not increase the ACL. Allowable carryover for Area 2 is up to 10 percent of 2022 sub-ACL (114 mt); therefore, this action carries over 114 mt of the 1,221 mt unharvested Area 2 catch to the 2024 Area 2 sub-ACL. Table 1 provides catch details for 2022 and the corresponding adjustments for the 2024 sub-ACLs. The ACL is reduced by overage deductions, but not increased by carryover; therefore, this action reduces the 2024 ACL by 48 mt for overages in Areas 1A and 1B that occurred in 2022.

TABLE 1—HERRING CATCH LIMITS, CATCH, OVERAGE DEDUCTIONS, AND CARRYOVER

[All values are in metric tons (mt)]

	Final 2022 sub-ACLs	2022 Catch	2022 Overages (+) underages (−)	Allowable deductions *	Allowable carryover **	Initial 2024 sub-ACLs	Adjusted 2024 sub-ACLs
Area 1A	2,075	2,325	+250	42	NA	5,546	5,504
Area 1B	0	6	+6	6	NA	825	819
Area 2	1,300	79	−1,221	NA	114	5,335	5,449
Area 3	1,824	1,825	+1	0	NA	7,484	7,484
ACL ***	4,813	4,234	NA	48	NA	19,189	19,141

* Allowable deductions are overage amounts exceeding 10 percent of the final 2022 sub-ACLs.
** Allowable carryover is limited to 10 percent of the initial 2022 sub-ACL. The initial sub-ACL for Area 2 was 1,139 mt before it was adjusted in-season to 1,300 mt.
*** The 2024 ACL is reduced by overage deductions from Areas 1A and 1B, but it is not increased by carryover.

NMFS calculated the amount of herring landings in 2022 based on dealer reports (Federal and state) of herring purchases, supplemented by vessel trip reports (VTR) and vessel monitoring system (VMS) reports (Federal and states of Maine and Massachusetts) of herring landings. NMFS generally uses dealer reports to estimate herring landings; however, if the amount of herring reported via VTR exceeds the amount of herring reported by the dealer by 10 percent or more, NMFS assumes the dealer report for that trip was in error and uses the VTR report instead. NMFS assigns herring landings to individual herring management areas using VMS reports or latitude and longitude coordinates from VTR reports when a VMS report is not available. NMFS uses recent fishing activity to assign landings to a management area if dealer reports do not have a corresponding VTR or VMS catch report.

NMFS estimates herring discards by extrapolating discards from herring trips observed by the Northeast Fisheries Observer Program to all herring trips (observed and unobserved) according to gear and herring management area. Because research set-aside (RSA) is removed from management area sub-ACLs at the beginning of the fishery year, when appropriate, NMFS tracks RSA catch but does not count it towards the herring sub-ACLs. No RSA was specified for 2022 or is specified for 2024.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

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. Notice and comment are impracticable, unnecessary, and contrary to the public interest because a delay would potentially impair achievement of the management plan's objectives of preventing overfishing and achieving optimum yield by impairing a vessels' ability to harvest available catch allocations. Allowing for prior notice and public comment on this adjustment is also impracticable because the adjustments need to be implemented as close to the January 1 start of the fishing year as possible. Further, prior notice and public comment is also unnecessary because this is a nondiscretionary action required by provisions of Amendment 4 and Frameworks 2, 6, 8, and 9 which were previously subject to public notice and comment. The adjustments required by these regulations are formulaic. This action simply effectuates these mandatory calculations. The proposed and final rules for Frameworks 2, 6, 9 and Amendment 4 explained the need and likelihood for adjustments to the sub-ACLs based on final catch and were subject to notice and opportunity to comment. Frameworks 2 and 8, specifically, provided prior notice of the need to distribute carryover catch. These actions provided a full opportunity for the public to comment on the substance and process of this action.

For the same reasons as noted above, there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date and make the rule effective upon publication in the **Federal Register**. To prevent confusion and potential overharvests, it will be in the best interest of the fleet and the herring resource to adjust the specifications as close to the start of the fishing year as possible. Management

Areas 1B and 2 open on January 1 and Area 1A opens on June 1. The adjustments in this action reduce catch in Areas 1A and 1B and increase catch in Area 2. Putting in place the adjusted specifications as soon as possible will provide the fleet with an opportunity to develop their business plans in sufficient time to avoid an overharvest in Areas 1A and 1B and facilitate the harvest of additional catch in Area 2.

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

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

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

Dated: February 28, 2024.

Samuel D. Rauch III,

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

[FR Doc. 2024–04521 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231215–0305; RTID 0648–XD770]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From Virginia to Massachusetts

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia is transferring a portion of its 2024 commercial summer flounder quota to the Commonwealth of Massachusetts. This adjustment to the 2024 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024 commercial quotas for Virginia and Massachusetts.

DATES: Effective March 1, 2024, through December 31, 2024.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2024 allocations were published on December 21, 2023 (88 FR 88266).

The final rule implementing amendment 5 to the Summer Flounder FMP, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfers or combinations would not preclude the overall annual quota from being fully harvested; (2) the transfers address an unforeseen variation or contingency in the fishery; and (3) the transfers are consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

Virginia is transferring 8,186 pounds (lb; 3,713 kilograms (kg)) to Massachusetts through a mutual agreement between the States. This transfer was requested to repay landings made by an out-of-state permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2024 are: Virginia, 1,879,801 lb (852,663 kg); and Massachusetts, 607,693 lb (275,645 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: February 28, 2024.

Everett Wayne Baxter,

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

[FR Doc. 2024–04524 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240227–0061; RTID 0648–XD436]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2024 and 2025 Harvest Specifications for Groundfish

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

ACTION: Final rule; harvest specifications and closures.

SUMMARY: NMFS announces final 2024 and 2025 harvest specifications, apportionments, and Pacific halibut prohibited species catch limits for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits for groundfish during the remainder of the 2024 and the start of the 2025 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The 2024 harvest specifications supersede those previously set in the final 2023 and 2024 harvest specifications, and the 2025 harvest specifications will be superseded in early 2025 when the final 2025 and 2026 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Harvest specifications and closures are effective at 1200 hours, Alaska local time (A.l.t.), March 4, 2024, through 2400 hours, A.l.t., December 31, 2025.

ADDRESSES: Electronic copies of the Final Alaska Groundfish Harvest Specifications Environmental Impact Statement (Final EIS), Record of Decision (ROD), and the annual Supplementary Information Reports (SIRs) to the EIS prepared for this action are available from *https://www.regulations.gov.* The 2023 Stock Assessment and Fishery Evaluation

(SAFE) report for the groundfish resources of the GOA, dated November 2023, and SAFE reports for previous years are available from the North Pacific Fishery Management Council (Council) at 1007 West Third Avenue, Suite 400, Anchorage, AK 99501, phone 907–271–2809, or from the North Pacific Groundfish SAFE Report web page at *https://www.fisheries.noaa.gov/alaska/population-assessments/north-pacific-groundfish-stock-assessments-and-fishery-evaluation.*

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7416.

SUPPLEMENTARY INFORMATION: NMFS manages the GOA groundfish fisheries in the exclusive economic zone of the GOA under the FMP. The Council prepared the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

The FMP and its implementing regulations require that NMFS, after consultation with the Council, specify the total allowable catch (TAC) for each target species, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (§ 679.20(a)(1)(i)(B) and § 679.20(a)(2)). Section 679.20(c)(1) further requires that NMFS publish and solicit public comment on proposed annual TACs and apportionments thereof, Pacific halibut prohibited species catch (PSC) limits, and seasonal allowances of pollock and Pacific cod. Upon consideration of those public comments, NMFS must publish a notification of final harvest specifications for up to 2 fishing years as annual TACs and apportionments, Pacific halibut PSC limits, and seasonal allowances of pollock and Pacific cod, per § 679.20(c)(3)(ii). The final harvest specifications set forth in tables 1 through 27 of this rule reflect the outcome of this process, as required at § 679.20(c).

The proposed 2024 and 2025 harvest specifications for groundfish of the GOA and Pacific halibut PSC limits were published in the **Federal Register** on December 7, 2023 (88 FR 85184). Comments were invited and accepted through January 8, 2024. NMFS received 2 letters raising 7 distinct comments during the public comment period for the proposed GOA groundfish harvest specifications. In December 2023, NMFS consulted with the Council regarding the 2024 and 2025 harvest specifications. After considering public comment at public meetings and submitted for the proposed rule (88 FR 85184), as well as current biological, ecosystem, and socioeconomic data, NMFS is implementing the final 2024 and 2025 harvest specifications, as recommended by the Council. For 2024, the sum of the TAC amounts is 520,020 mt. For 2025, the sum of the TAC amounts is 483,700 mt.

Other Actions Affecting the 2024 and 2025 Harvest Specifications

Amendment 122 to the Bering Sea and Aleutian Islands FMP: Pacific Cod Trawl Cooperative Program

NMFS published a final rule implementing Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (BSAI) Management Area (BSAI FMP) (88 FR 53704, August 8, 2023), establishing the Pacific Cod Trawl Cooperative Program (PCTC Program) to allocate BSAI Pacific cod quota share to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors. The PCTC Program is a limited access privilege program for the harvest of Pacific cod in the BSAI trawl catcher vessel (CV) sector.

The PCTC Program modifies existing GOA sideboard limits and associated GOA halibut PSC limits for non-exempt American Fisheries Act (AFA) CVs and LLP license holders and closes directed fishing where the revised sideboard limits are too small to support a directed fishery. All GOA non-exempt AFA CVs and associated AFA LLP licenses are sideboarded in aggregate for all GOA groundfish fishing activity and for GOA halibut PSC based on their GOA catch history during the qualifying years 2009 through 2019, except when participating in the Central Gulf of Alaska (Central GOA) Rockfish Program. In addition, the ratio used to apportion GOA halibut PSC limits is modified, and the five seasonal apportionments based on that sideboard ratio is reduced to a single aggregate annual amount. Amendment 122 also closes directed fishing to all GOA non-exempt AFA CVs and LLP licenses for the following species categories: Southeast Outside (SEO) District of the Eastern GOA pollock, Western GOA shallow-water flatfish, Central and Eastern GOA deep-water flatfish, Central GOA dusky rockfish, and Eastern GOA and Central GOA Pacific ocean perch. NMFS will no longer publish AFA Program sideboard limits for these specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications, and instead table 56 to 50 CFR part 679 lists that directed fishing for these species is prohibited to non-exempt AFA CVs. Amendment 122 and its implementing regulations affect the calculation and establishment of the groundfish sideboard limits and halibut PSC limits discussed below under the sections ''American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest Limits'' and ''Non-Exempt AFA Catcher Vessel Halibut PSC Limits.''

Acceptable Biological Catch (ABC) and TAC Specifications

In December 2023, the Council's Scientific and Statistical Committee (SSC), its Advisory Panel (AP), and the Council reviewed the most recent biological, ecosystem, socioeconomic, and harvest information about the condition of the GOA groundfish stocks. The Council's GOA Groundfish Plan Team (Plan Team) compiled and presented this information in the 2023 SAFE report for the GOA groundfish fisheries, dated November 2023 (see **ADDRESSES**). The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem by including risk tables and information from the GOA Ecosystem Status Report (ESR).

The ESRs compile and summarize information about the status of the Alaska marine ecosystems for the Plan Team, SSC, AP, Council, NMFS, and the public, and they are updated annually. These ESRs include ecosystem report cards, ecosystem assessments, and ecosystem status indicators (*i.e.,* climate indices, sea surface temperature), which together provide context for ecosystem-based fisheries management in Alaska. The ESRs inform stock assessments and are integrated in the annual harvest recommendations through inclusion in stock assessment-specific risk tables. The ESRs provide context for the SSC's recommendations for OFLs and ABCs, as well as for the Council's TAC recommendations. The SAFE reports and the ESRs are presented to the Plan Team and at the October and December Council meetings before the SSC, AP, and Council make groundfish harvest recommendations and aid NMFS in implementing these annual groundfish harvest specifications.

The SAFE report also includes information on the economic condition of the groundfish fisheries off Alaska through the Economic Status Report. The SAFE report provides information to the Council and NMFS for recommending and setting, respectively, annual harvest levels for each stock, documenting significant trends or changes in the resource, marine

ecosystems, and fisheries over time, and assessing the relative success of existing Federal fishery management programs. From these data and analyses, the Plan Team recommends, and the SSC sets, an overfishing level (OFL) and ABC for each species and species group. The 2023 SAFE report was made available for public review during the public comment period for the proposed harvest specifications.

In previous years, the greatest changes from the proposed to the final harvest specifications were based on recent NMFS stock surveys, which provide updated estimates of stock biomass and spatial distribution, and changes to the models used for producing stock assessments. At the November 2023 Plan Team meeting, NMFS scientists presented updated and new survey results, changes to stock assessment models, and accompanying stock assessment estimates for groundfish species and species groups that are included in the 2023 SAFE report per the stock assessment schedule found in the 2023 SAFE report introduction. The SSC reviewed this information at the December 2023 Council meeting. Changes from the proposed to the final 2024 and 2025 harvest specifications are discussed below.

The final 2024 and 2025 OFLs and ABCs are based on the best scientific information available, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass, and the final 2024 and 2025 TACs are based on the best scientific and socioeconomic information available. The FMP specifies the formulas, or tiers, to be used to compute OFLs and ABCs. The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers to define OFL and ABC amounts, with Tier 1 representing the highest level of information quality available and Tier 6 representing the lowest level of information quality available. The Plan Team used the FMP tier structure to calculate OFL and ABC amounts for each groundfish species. The SSC adopted the final 2024 and 2025 OFLs and ABCs recommended by the Plan Team, with the exception of the ABC for pollock in the combined Western and Central Regulatory Areas and the West Yakutat District of the Eastern Regulatory Area (the W/C/WYK), and the ABC apportionments by area for shortraker rockfish and other rockfish.

For pollock, the SSC did not accept the GOA Plan Team's recommended ABC because of concerns about discrepancies between model predicted and survey trends. Instead, the SSC recommended a reduction from max ABC for 2024.

For shortraker rockfish sub-area apportionments of ABC, the Plan Team deliberated on the author's recommended model change because the new apportionment method of using both trawl and longline indices may constrain fisheries within the Central GOA. The Plan Team recommended accepting the new apportionment method but applying a stair-step between the methods to alleviate concerns highlighted by the public during the meeting. The SSC received public testimony that also highlighted allocation limitations. Public testimony asserted that there is a high probability that the reduction in a Central GOA sub-area apportionment of ABC could result in fishery closure. Sub-area apportionments of ABCs may be a constraint when species are allocated to catch share programs or sectors through regulation. As there is no current conservation concern for shortraker rockfish, the SSC recommended the status quo apportionment method. The SSC acknowledges that this differs from the author and Plan Team recommendation for this stock as well as the SSC recommendation for GOA rougheye and blackspotted rockfish, which uses both trawl and longline indices for apportionment.

For other rockfish sub-area apportionments of ABC, the Plan Team recommended that the W/C and WYK sub-area ABCs be combined for 2025. The Plan Team rationale for this recommendation is that these non-target species are poorly sampled by the trawl survey, there are no major changes in fishing behavior, good species-specific catch data is available, and most of the biomass is in the Southeast Outside (SEO) District of the Eastern Regulatory Area where trawling is prohibited. Further, recent analyses suggest there is little to no genetic structure in rockfish in general, and evidence of local depletion has not been observed. The Plan Team recommended that the Council engage in the Spatial Management Policy for this stock. After discussing this recommendation and considering related public testimony, the SSC agreed with the Plan Team recommendation for 2024. This change will align with the ABC apportionment for GOA Demersal Shelf Rockfish (DSR) when they are moved to a separate assessment for the 2025 fishery.

For Pacific ocean perch, the Plan Team recommended specifying a GOA-wide OFL for consistency with stock definition and stock status determination criteria. The SSC agreed with the Plan Team's recommendation.

The Council adopted the SSC's OFLs and ABCs and the AP's TAC recommendations. The final TAC recommendations are based on the ABCs and are adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the required OY range of 116,000 to 800,000 mt.

The Council recommended 2024 and 2025 TACs that are equal to ABCs for pollock in the SEO District, sablefish, shallow-water flatfish in the Central GOA and WYK and SEO Districts, deep-water flatfish, rex sole, arrowtooth flounder in the Central GOA and WYK District, flathead sole in the Central GOA and WYK and SEO Districts, Pacific ocean perch; northern rockfish, shortraker rockfish, dusky rockfish, rougheye and blackspotted rockfish, demersal shelf rockfish, thornyhead rockfish, other rockfish in the W/C/WYK, Atka mackerel, big skate, longnose skate, other skates, sharks, and octopuses in the GOA. The Council recommended TACs for 2024 and 2025 that are less than the ABCs for pollock, Pacific cod, shallow-water flatfish in the Western Regulatory Area (Western GOA), arrowtooth flounder in the Western GOA and SEO District, flathead sole in the Western GOA, and other rockfish in the SEO District. For sub-area apportionments of ABCs, refer to tables 1 and 2.

The combined W/C/WYK pollock TAC and the GOA Pacific cod TACs are set to accommodate the State of Alaska's (State's) guideline harvest levels (GHLs) so that the ABCs for pollock and Pacific cod are not exceeded. The Western GOA shallow-water flatfish, Western GOA arrowtooth flounder, and Western GOA flathead sole TACs are set to allow for increased harvest opportunities for these target species while conserving the halibut PSC limit for use in other, more fully utilized fisheries. Similarly, the SEO District arrowtooth flounder TAC is set lower than ABC to conserve halibut PSC limit for use in other fisheries or because there is limited commercial interest and participation in this fishery. The other rockfish TAC in the SEO District is set to reduce the amount of discards of the species in that complex.

The final 2024 and 2025 harvest specifications approved by the Secretary of Commerce are unchanged from those recommended by the Council and are consistent with the preferred harvest

strategy alternative outlined in the FMP, as well as the Final EIS and ROD, because they were set through the harvest specifications process, none of the TACs exceed the recommended ABCs, and the sum of all TACs is within the OY range (see **ADDRESSES**).

NMFS finds that the Council's recommended OFLs, ABCs, and TACs are consistent with the biological condition of the groundfish stocks as described in the final 2023 SAFE report, while also accounting for ecosystem and socioeconomic information presented in the 2023 SAFE report (which includes the GOA ESR). NMFS also finds that the Council's recommendations for TACs are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the sum of all TACs within the OY range. NMFS reviewed the Council's recommended TACs and apportionments, and NMFS approves these harvest specifications under § 679.20(c)(3)(ii). The apportionment of TAC amounts among gear types and sectors, processing sectors, and seasons is discussed below.

Tables 1 and 2 list the final 2024 and 2025 OFLs, ABCs, TACs, and area apportionments of groundfish in the GOA. The 2024 harvest specifications set in this final action supersede the 2024 harvest specifications previously set in the final 2023 and 2024 harvest specifications (88 FR 13238, March 2, 2023). The 2025 harvest specifications will be superseded in early 2025 when the final 2025 and 2026 harvest specifications are published. Pursuant to this final action, the 2024 harvest specifications therefore will apply for the remainder of the current year (2024), while the 2025 harvest specifications are projected only for the following year and will be superseded in early 2025 by the final 2025 and 2026 harvest specifications. Because this final action will be superseded in early 2025 by the publication of the final 2025 and 2026 harvest specifications, it is projected that this final action will implement the harvest specifications for the GOA for approximately 1 year.

Specification and Apportionment of TAC Amounts

NMFS's apportionment of groundfish species are based on the distribution of biomass among the regulatory areas over which NMFS manages the species. Additional regulations that govern the apportionment of pollock, Pacific cod, and sablefish and are described below.

The ABC for the pollock stock in the combined W/C/WYK includes the amount for the GHL established by the State for the Prince William Sound (PWS) pollock fishery. The Plan Team, SSC, AP, and Council have recommended that the sum of all State waters and Federal waters pollock removals from the GOA not exceed ABC recommendations. For 2024 and 2025, the SSC recommended and the Council approved the W/C/WYK pollock ABC, including the amount to account for the State's PWS GHL. At the November 2023 Plan Team meeting, State fisheries managers recommended setting the PWS pollock GHL at 2.5 percent of the annual W/C/WYK pollock ABC. For 2024, this yields a PWS pollock GHL of 4,769 mt, an increase of 18 percent from the 2023 PWS pollock GHL of 4,027 mt. For 2025, the PWS pollock GHL is 3,942 mt, a decrease of 17 percent from the 2024 PWS pollock GHL of 4,769 mt. After the GHL reductions, the 2024 and 2025 pollock ABCs for the combined W/C/WYK areas are then apportioned between four statistical areas (Areas 610, 620, 630, and 640) as both ABCs and TACs, as described below and detailed in tables 1 and 2. The ABCs and TACs for the four statistical areas, plus the State PWS GHL, do not exceed the combined W/C/WYK ABC.

Apportionments of pollock to the W/C/WYK areas are considered to be ''apportionments of annual catch limits (ACLs)'' rather than ''ABCs.'' This more accurately reflects that such apportionments address management, rather than biological or conservation, concerns. In addition, apportionments of the ACL in this manner allow NMFS to balance any transfer of TAC among Areas 610, 620, and 630 pursuant to § 679.20(a)(5)(iv)(B) to ensure that the combined apportionments of ACL and ABC for the W/C/WYK, as well as the W/C/WYK TAC, are not exceeded.

NMFS establishes pollock TACs in the Western (Area 610) and Central (Areas 620 and 630) Regulatory Areas and the West Yakutat (Area 640) and the SEO (Area 650) Districts of the GOA (see tables 1 and 2). NMFS also establishes seasonal apportionments of the annual pollock TACs in the Western and Central Regulatory Areas of the GOA among Statistical Areas 610, 620, and 630. Additional detail on area apportionments and seasonal allowances is provided in the *Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components* section of this rule; tables 3 and 4 list these amounts.

The 2024 and 2025 Pacific cod TACs are set to accommodate the State's GHLs for Pacific cod in State waters in the Western and Central Regulatory Areas, as well as in PWS (in the Eastern Regulatory Area). The Plan Team, SSC, AP, and Council recommended that the sum of all State waters and Federal waters Pacific cod removals from the GOA not exceed ABC recommendations. The Council recommended setting the 2024 and 2025 Pacific cod TACs in the Western, Central, and Eastern Regulatory Areas to account for State GHLs. Therefore, the 2024 Pacific cod TACs are less than the ABCs by the following amounts: (1) Western GOA, 2,624 mt; (2) Central GOA, 5,148 mt; and (3) Eastern GOA, 734 mt. The 2025 Pacific cod TACs are less than the ABCs by the following amounts: (1) Western GOA, 2,291 mt; (2) Central GOA, 4,495 mt; and (3) Eastern GOA, 641 mt. These amounts reflect the State's 2024 and 2025 GHLs in these areas, which are 30 percent of the Western GOA ABC and 25 percent of the Eastern and Central GOA ABCs.

The Western and Central GOA Pacific cod TACs are allocated among various gear and operational sectors. NMFS also establishes seasonal apportionments of the annual Pacific cod TACs in the Western and Central Regulatory Areas. The Pacific cod sector and seasonal apportionments are discussed in detail in the *Annual and Seasonal Apportionments of Pacific Cod TAC* section and in tables 5 and 6 of this rule.

The Council's recommendation for sablefish area apportionments takes into account the prohibition on the use of trawl gear in the SEO District of the Eastern Regulatory Area (§ 679.7(b)(1)) and makes available 5 percent of the combined Eastern Regulatory Area TACs to vessels using trawl gear for use as incidental catch in other trawl groundfish fisheries in the WYK District (§ 679.20(a)(4)(i)). Tables 7 and 8 list the final 2024 and 2025 allocations of sablefish TAC to fixed gear and trawl gear in the GOA.

Changes From the Proposed 2024 and 2025 Harvest Specifications in the GOA

In October 2023, the Council's recommendations for the proposed 2024 and 2025 harvest specifications (88 FR 85184, December 7, 2023) were based largely on information contained in the final 2022 SAFE report for the GOA groundfish fisheries, dated November 2022. The final 2022 SAFE report for the GOA is available from the Council (see **ADDRESSES**). The Council proposed that the final OFLs, ABCs, and TACs established for the 2024 groundfish fisheries (88 FR 13238, March 2, 2023) be used for the proposed 2024 and 2025 harvest specifications (88 FR 85184, December 7, 2023) pending completion

and review of the 2023 SAFE report at the Council's December 2023 meeting.

As described previously, the SSC recommended the final 2024 and 2025 OFLs and ABCs as recommended by the Plan Team, with the exception of the 2024 pollock ABC and the shortraker rockfish and other rockfish ABC apportionments by subareas. The Council adopted as its recommendations the SSC's OFL and ABC recommendations and the AP's TAC recommendations for 2024 and 2025.

The final 2024 TACs are higher than the proposed 2024 TACs published in the proposed 2024 and 2025 harvest specifications (88 FR 85184, December 7, 2023) for pollock, Pacific cod, sablefish, shallow-water flatfish, deep-water flatfish, rex sole, arrowtooth flounder, flathead sole, Pacific ocean perch, northern rockfish, dusky rockfish, rougheye and blackspotted rockfish, other rockfish, and Atka mackerel. The final 2024 TACs are lower than the proposed 2024 TACs for shortraker rockfish, big skate, longnose skate, and other skates.

The final 2025 TACs are higher than the proposed 2025 GOA TACs for Pacific cod, sablefish, shallow-water flatfish, deep-water flatfish, rex sole, arrowtooth flounder, flathead sole, Pacific ocean perch, rougheye and blackspotted rockfish, other rockfish, and Atka mackerel. The final 2025 TACs are lower than the proposed 2025 TACs for pollock, northern rockfish, shortraker rockfish, dusky rockfish, big skates, longnose skates, and other skates. For the remaining target species (*i.e.,* demersal shelf rockfish, thornyhead rockfish, sharks, and octopus), the Council recommended the final 2024 and 2025 TACs that are the same as the proposed 2024 and 2025 TACs.

Additional information explaining the changes between the proposed and final ABCs is included in the final 2023 SAFE report, which was not completed and available when the Council made its proposed ABC and TAC recommendations in October 2023. At that time, the most recent stock assessment information was contained in the final 2022 SAFE report. For the final specifications, the final 2023 SAFE report contains the best and most recent scientific information on the condition of the groundfish stocks, harvest information, and ecosystem and socioeconomic information, as previously discussed in this preamble, and is available for review (see **ADDRESSES**). The Council considered the 2023 SAFE report in December 2023 when it made recommendations for the final 2024 and 2025 harvest specifications. In the GOA, the total final 2024 TAC amount is 520,020 mt, an increase of 9.1 percent from the total proposed 2024 TAC amount of 476,537 mt. The total final 2025 TAC amount is 483,700 mt, an increase of 1.5 percent from the total proposed 2025 TAC amount of 476,537 mt. Table 1a summarizes the difference between the proposed and final TACs.

Annual stock assessments incorporate a variety of new or revised inputs, such as survey data or catch information, as well as changes to the statistical models used to estimate a species' biomass and population trend. Changes to biomass and ABC estimates are primarily based on fishery catch updates to species' assessment models.

The changes for individual species or species groups from the proposed 2024 TACs to the final 2024 TACs are within a range of plus 57 percent or minus 32 percent, and the changes from the proposed 2025 TACs to the final 2025 TACs are within a range of plus 57 percent or minus 32 percent. Differences in TACs are based on changes in the estimates of overall biomass in the stock assessment for 2024 and 2025, as compared to the estimates previously made for 2023 and 2024. For 2024, the species or species group with TAC increases greater than 10 percent are pollock, Pacific cod, deep-water flatfish, rougheye and blackspotted rockfish, and Atka mackerel. For 2025, the species or species group with TAC increases greater than ten percent are Pacific cod, deep-water flatfish, rougheye and blackspotted rockfish, and Atka mackerel. Based on changes in the estimates of biomass, the species group with TAC percentage decreases greater than ten percent are other skates for 2024 and 2025. For all other species and species groups, changes from the proposed 2024 and 2025 TACs to the final 2024 and 2025 TACs are a 10 percent or less change (either increase or decrease). These TAC changes correspond to associated changes in the OFLs and ABCs, as recommended by the SSC, AP, and Council.

Detailed information providing the basis for the changes described above are contained in the final 2023 SAFE report. The final TACs are based on the best scientific information available, including biological and socioeconomic information. These TACs are specified in compliance with the harvest strategy from the FMP and Final EIS and as described in the proposed and final rules for the 2024 and 2025 harvest specifications.

TABLE 1a—COMPARISON OF PROPOSED AND FINAL 2024 AND 2025 GOA TOTAL ALLOWABLE CATCH LIMITS

[Values are rounded to the nearest metric ton and percentage]

Species	2024 and 2025 proposed TAC	2024 Final TAC	2024 Final minus 2024 proposed TAC	Percentage difference	2025 Final TAC	2025 Final minus 2025 proposed TAC	Percentage difference
Pollock	168,416	195,720	27,304	16	168,416	−4,922	−3
Pacific cod	16,668	23,766	7,098	43	16,668	4,089	25
Sablefish	21,095	22,596	1,501	7	21,095	1,600	8
Shallow-water flatfish	45,425	45,478	53	0	45,425	666	1
Deep-water flatfish	5,719	7,062	1,343	23	5,719	1,234	22
Rex sole	21,097	21,364	267	1	21,097	206	1
Arrowtooth flounder	93,389	94,141	752	1	93,389	547	1
Flathead sole	35,839	35,880	41	0	35,839	548	2
Pacific ocean perch	36,196	39,719	3,523	10	36,196	2,158	6
Northern rockfish	4,741	4,815	74	2	4,741	−95	−2
Shortraker rockfish	705	647	−58	−8	705	−58	−8
Dusky rockfish	7,520	7,624	104	1	7,520	−295	−4
Rougheye/blackspotted rockfish	772	1,037	265	34	772	269	35
Demersal shelf rockfish	283	283	0	0	283	0	0
Thornyhead rockfish	1,628	1,628	0	0	1,628	0	0
Other rockfish	1,610	1,653	43	3	1,610	43	3

TABLE 1a—COMPARISON OF PROPOSED AND FINAL 2024 AND 2025 GOA TOTAL ALLOWABLE CATCH LIMITS—Continued

[Values are rounded to the nearest metric ton and percentage]

Species	2024 and 2025 proposed TAC	2024 Final TAC	2024 Final minus 2024 proposed TAC	Percentage difference	2025 Final TAC	2025 Final minus 2025 proposed TAC	Percentage difference
Atka mackerel	3,000	4,700	1,700	57	3,000	1,700	57
Big skate	2,867	2,835	−32	−1	2,867	−32	−1
Longnose skate	2,712	2,536	−176	−6	2,712	−176	−6
Other skates	984	665	−319	−32	984	−319	−32
Sharks	4,891	4,891	0	0	4,891	0	0
Octopuses	980	980	0	0	980	0	0
Total	476,537	520,020	43,483	9.1	483,700	7,163	1.5

The final 2024 and 2025 TAC amounts for the GOA are within the OY range established for the GOA and do not exceed the ABC for any species or species group. The ABC does not exceed the OFL for any species or species group. Tables 1 and 2 list the final OFL, ABC, and TAC amounts for GOA groundfish for 2024 and 2025, respectively.

TABLE 1—FINAL 2024 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Pollock [2]	Shumagin (610)	n/a	38,882	38,882
	Chirikof (620)	n/a	90,937	90,937
	Kodiak (630)	n/a	50,587	50,587
	WYK (640)	n/a	5,565	5,565
	W/C/WYK (subtotal) [2]	269,916	190,740	185,971
	SEO (650)	12,998	9,749	9,749
	Total	282,914	200,489	195,720
Pacific cod [3]	W	n/a	8,745	6,121
	C	n/a	20,590	15,442
	E	n/a	2,937	2,203
	Total	38,712	32,272	23,766
Sablefish [4]	W	n/a	4,699	4,699
	C	n/a	9,651	9,651
	WYK	n/a	2,926	2,926
	SEO	n/a	5,320	5,320
	Subtotal TAC	n/a	n/a	22,596
	Total	55,084	47,146	n/a
Shallow-water flatfish [5]	W	n/a	23,337	13,250
	C	n/a	27,783	27,783
	WYK	n/a	2,778	2,778
	SEO	n/a	1,667	1,667
	Total	68,121	55,565	45,478
Deep-water flatfish [6]	W	n/a	237	237
	C	n/a	2,655	2,655
	WYK	n/a	1,856	1,856
	SEO	n/a	2,314	2,314
	Total	8,387	7,062	7,062
Rex sole	W	n/a	3,367	3,367
	C	n/a	13,639	13,639
	WYK	n/a	1,453	1,453
	SEO	n/a	2,905	2,905

TABLE 1—FINAL 2024 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
	Total	25,978	21,364	21,364
Arrowtooth flounder	W	n/a	30,409	14,500
	C	n/a	64,871	64,871
	WYK	n/a	7,870	7,870
	SEO	n/a	16,099	6,900
	Total	142,485	119,249	94,141
Flathead sole	W	n/a	13,273	8,650
	C	n/a	21,307	21,307
	WYK	n/a	3,876	3,876
	SEO	n/a	2,047	2,047
	Total	49,414	40,503	35,880
Pacific ocean perch [7]	W	n/a	1,787	1,787
	C	n/a	28,757	28,757
	WYK	n/a	2,110	2,110
	SEO	n/a	7,065	7,065
	Total	47,466	39,719	39,719
Northern rockfish [8]	W	n/a	2,535	2,535
	C	n/a	2,280	2,280
	E	n/a	0	0
	Total	5,750	4,815	4,815
Shortraker rockfish [9]	W	n/a	34	34
	C	n/a	189	189
	E	n/a	424	424
	Total	863	647	647
Dusky rockfish [10]	W	n/a	145	145
	C	n/a	7,365	7,365
	WYK	n/a	84	84
	SEO	n/a	30	30
	Total	9,281	7,624	7,624
Rougheye and Blackspotted rockfish [11]	W	n/a	197	197
	C	n/a	315	315
	E	n/a	525	525
	Total	1,555	1,037	1,037
Demersal shelf rockfish [12]	SEO	376	283	283
Thornyhead rockfish [13]	W	n/a	314	314
	C	n/a	693	693
	E	n/a	621	621
	Total	2,170	1,628	1,628
Other rockfish [14 15]	W/C/WYK	n/a	1,353	1,353
	SEO	n/a	2,421	300
	Total	4,977	3,774	1,653
Atka mackerel	GW	6,200	4,700	4,700
Big skate [16]	W	n/a	745	745
	C	n/a	1,749	1,749
	E	n/a	341	341
	Total	3,780	2,835	2,835
Longnose skate [17]	W	n/a	104	104

TABLE 1—FINAL 2024 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
	C	n/a	1,894	1,894
	E	n/a	538	538
	Total	3,380	2,536	2,536
Other skates [18]	GW	887	665	665
	GW	6,521	4,891	4,891
	GW	1,307	980	980
Total		765,608	599,784	520,020

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] The total for the W/C/WYK Regulatory Areas pollock ABC is 190,740 mt. After deducting 2.5 percent (4,769 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 185,971 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in table 3 (final 2024 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances). In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock are not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned, after seasonal apportionment to the jig sector, as follows: (1) 63.84 percent to the A season and 36.16 percent to the B season and (2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 5 lists the final 2024 Pacific cod seasonal apportionments and sector allocations.

[4] The sablefish OFL and ABC are set Alaska-wide (55,084 mt and 47,146 mt, respectively), and the Alaska-wide totals are included in the total OFL and ABC in table 1. Additionally, sablefish TAC is allocated to trawl and fixed gear in 2024 and trawl gear in 2025. Table 7 lists the final 2024 allocations of sablefish TACs.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Northern rockfish" means *Sebastes polyspinis.* For management purposes, the 1 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the other rockfish species group.

[9] "Shortraker rockfish" means *Sebastes borealis.*

[10] "Dusky rockfish" means *Sebastes variabilis.*

[11] "Rougheye and blackspotted rockfish" mean *Sebastes aleutianus* (rougheye) and *S. melanostictus* (blackspotted).

[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[13] "Thornyhead rockfish" means *Sebastolobus* species.

[14] "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, "other rockfish" also includes northern rockfish, *S. polyspinis.*

[15] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means other rockfish and demersal shelf rockfish. The "other rockfish" species group in the SEO District only includes "other rockfish."

[16] "Big skate" means *Beringraja binoculata.*

[17] "Longnose skate" means *Raja rhina.*

[18] "Other skates" mean *Bathyraja spp.*

TABLE 2—FINAL 2025 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Pollock [2]	Shumagin (610)	n/a	32,144	32,144
	Chirikof (620)	n/a	75,179	75,179
	Kodiak (630)	n/a	41,821	41,821
	WYK (640)	n/a	4,601	4,601
	W/C/WYK (subtotal) [2]	182,891	157,687	153,745
	SEO (650)	12,998	9,749	9,749
	Total	195,889	167,436	163,494
Pacific cod [3]	W	n/a	7,638	5,347
	C	n/a	17,981	13,486
	E	n/a	2,565	1,924
	Total	33,970	28,184	20,757

TABLE 2—FINAL 2025 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Sablefish [4]	W	n/a	4,719	4,719
	C	n/a	9,693	9,693
	WYK	n/a	2,940	2,940
	SEO	n/a	5,343	5,343
	Subtotal TAC	n/a	n/a	22,695
	Total	55,317	47,350	n/a
Shallow-water flatfish [5]	W	n/a	23,782	13,250
	C	n/a	28,311	28,311
	WYK	n/a	2,831	2,831
	SEO	n/a	1,699	1,699
	Total	69,354	56,623	46,091
Deep-water flatfish [6]	W	n/a	234	234
	C	n/a	2,614	2,614
	WYK	n/a	1,827	1,827
	SEO	n/a	2,278	2,278
	Total	8,257	6,953	6,953
Rex sole	W	n/a	3,363	3,363
	C	n/a	13,624	13,624
	WYK	n/a	1,439	1,439
	SEO	n/a	2,877	2,877
	Total	25,900	21,303	21,303
Arrowtooth flounder	W	n/a	30,323	14,500
	C	n/a	64,688	64,688
	WYK	n/a	7,848	7,848
	SEO	n/a	16,053	6,900
	Total	142,074	118,912	93,936
Flathead sole	W	n/a	13,521	8,650
	C	n/a	21,702	21,702
	WYK	n/a	3,949	3,949
	SEO	n/a	2,086	2,086
	Total	50,322	41,258	36,387
Pacific ocean perch [7]	W	n/a	1,726	1,726
	C	n/a	27,768	27,768
	WYK	n/a	2,038	2,038
	SEO	.....	6,822	6,822
	Total	45,835	38,354	38,354
Northern rockfish [8]	W	n/a	2,446	2,446
	C	n/a	2,200	2,200
	E	n/a	.....	.....
	Total	5,548	4,646	4,646
Shortraker rockfish [9]	W	n/a	34	34
	C	n/a	189	189
	E	n/a	424	424
	Total	863	647	647
Dusky rockfish [10]	W	n/a	137	137
	C	n/a	6,979	6,979
	WYK	n/a	81	81
	SEO	n/a	28	28
	Total	8,796	7,225	7,225

TABLE 2—FINAL 2025 OFLS, ABCS, AND TACS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT, WESTERN, CENTRAL, EASTERN REGULATORY AREAS, THE WEST YAKUTAT AND SOUTHEAST OUTSIDE DISTRICTS OF THE EASTERN REGULATORY AREA, AND GULFWIDE DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are rounded to the nearest metric ton]

Species	Area [1]	OFL	ABC	TAC
Rougheye and Blackspotted rockfish [11]	W	n/a	198	198
	C	n/a	317	317
	E	n/a	526	526
	Total	1,566	1,041	1,041
Demersal shelf rockfish [12]	SEO	376	283	283
Thornyhead rockfish [13]	W	n/a	314	314
	C	n/a	693	693
	E	n/a	621	621
	Total	2,170	1,628	1,628
Other rockfish [14 15]	W/C/WYK	n/a	1,353	1,353
	SEO	n/a	2,421	300
	Total	4,977	3,774	1,653
Atka mackerel	GW	6,200	4,700	4,700
Big skate [16]	W	n/a	745	745
	C	n/a	1,749	1,749
	E	n/a	341	341
	Total	3,780	2,835	2,835
Longnose skate [17]	W	n/a	104	104
	C	n/a	1,894	1,894
	E	n/a	538	538
	Total	3,380	2,536	2,536
Other skates [18]	GW	887	665	665
Sharks	GW	6,521	4,891	4,891
Octopus	GW	1,307	980	980
Total		673,289	562,224	483,700

[1] Regulatory areas and districts are defined at § 679.2. (W = Western Gulf of Alaska; C = Central Gulf of Alaska; E = Eastern Gulf of Alaska; WYK = West Yakutat District; SEO = Southeast Outside District; GW = Gulf-wide).

[2] The total for the W/C/WYK Regulatory Areas pollock ABC is 157,687 mt. After deducting 2.5 percent (3,942 mt) of that ABC for the State's pollock GHL fishery, the remaining pollock ABC of 153,745 mt (for the W/C/WYK Regulatory Areas) is apportioned among four statistical areas (Areas 610, 620, 630, and 640). These apportionments are considered subarea ACLs, rather than ABCs, for specification and reapportionment purposes. The ACLs in Areas 610, 620, and 630 are further divided by season, as detailed in table 4 (final 2025 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances). In the West Yakutat (Area 640) and Southeast Outside (Area 650) Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned, after seasonal apportionment to the jig sector, as follows: (1) 63.84 percent to the A season and 36.16 percent to the B season and (2) 64.16 percent to the A season and 35.84 percent to the B season in the Western and Central Regulatory Areas of the GOA, respectively. Pacific cod TAC in the Eastern Regulatory Area of the GOA is allocated 90 percent to vessels harvesting Pacific cod for processing by the inshore component and 10 percent to vessels harvesting Pacific cod for processing by the offshore component. Table 6 lists the final 2025 Pacific cod seasonal apportionments and sector allocations.

[4] The sablefish OFL and ABC are set Alaska-wide (55,317 mt and 47,350 mt, respectively), and the Alaska-wide totals are included in the total OFL and ABC in table 2. Additionally, sablefish TAC is allocated only to trawl gear for 2025. Table 8 lists the final 2025 allocation of sablefish TACs to trawl gear.

[5] "Shallow-water flatfish" means flatfish not including "deep-water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] "Deep-water flatfish" means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Northern rockfish" means *Sebastes polyspinis.* For management purposes, the 1 mt apportionment of ABC to the WYK District of the Eastern Gulf of Alaska has been included in the "other rockfish" species group.

[9] "Shortraker rockfish" means *Sebastes borealis.*

[10] "Dusky rockfish" means *Sebastes variabilis.*

[11] "Rougheye and blackspotted rockfish" mean *Sebastes aleutianus* (rougheye) and *S. melanostictus* (blackspotted).

[12] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[13] "Thornyhead rockfish" means *Sebastolobus* species.

[14] "Other rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), *S. reedi* (yellowmouth), *S. entomelas* (widow), and *S. flavidus* (yellowtail). In the Eastern GOA only, "other rockfish" also includes northern rockfish, *S. polyspinis.*

[15] In 2024 and prior years, ''other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District meant other rockfish and demersal shelf rockfish, and the ''other rockfish'' species group in the SEO District only included ''other rockfish.'' Starting with the 2024 stock assessment for the 2025 harvest specifications, the ''other rockfish'' species group will be specified GOA-wide (as one GOA-wide species group), and the demersal shelf rockfish species group will be specified for the Western and Central Regulatory Areas/West Yakutat District and for the SEO District (as two separate species groups).

[16] ''Big skate'' means *Beringraja binoculata.*

[17] ''Longnose skate'' means *Raja rhina.*

[18] ''Other skates'' mean *Bathyraja* spp.

Apportionment of Reserves

Section 679.20(b)(2) requires NMFS to set aside 20 percent of each TAC for pollock, Pacific cod, flatfish, sharks, and octopuses in reserve for possible apportionment at a later date during the fishing year. For 2024 and 2025, NMFS proposed reapportionment of all the reserves in the proposed 2024 and 2025 harvest specifications published in the **Federal Register** on December 7, 2023 (88 FR 85184). NMFS did not receive any public comments on the proposed reapportionments. For the final 2024 and 2025 harvest specifications, NMFS reapportions, as proposed, all the reserves for pollock, Pacific cod, flatfish, sharks, and octopuses back to the original TAC limit from which the reserve was derived (§ 679.20(b)(3)). This is being done because NMFS expects, based on recent harvest patterns, that such reserves are not necessary or that the entire TAC for each of these species will be caught. The TACs listed in tables 1 and 2 reflect reapportionments of reserve amounts to the original TAC limit for these species and species groups, *i.e.,* each final TAC for the above-mentioned species or species groups contains the full TAC recommended by the Council.

Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area and is further allocated for processing by inshore and offshore components. The pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630. These apportionments are divided into two equal seasonal allowances of 50 percent to the A season (January 20 through May 31) and 50 percent to the B season (September 1 through November 1) (§§ 679.20(a)(5)(iv)(B) and 679.23(d)(2)).

Effective in 2021, regulatory changes revised the number of GOA pollock seasons to two seasons from four seasons (85 FR 38093, June 25, 2020). The GOA pollock stock assessment continues to use a four-season methodology to determine pollock distribution in the Western and Central Regulatory Areas of the GOA to maintain continuity in the historical pollock apportionment time-series. Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of pollock biomass determined by the most recent NMFS surveys, pursuant to § 679.20(a)(5)(iv)(A). The pollock chapter of the 2023 SAFE report (see **ADDRESSES**) contains a comprehensive description of the apportionment and reasons for the minor changes from past apportionments. For purposes of specifying pollock TAC between two seasons for the Western and Central Regulatory Areas of the GOA, NMFS has summed the A and B season apportionments and the C and D season apportionments, using the four-season methodology, as calculated in the 2023 GOA pollock assessment. This yields the seasonal amounts specified for the A season and the B season, respectively.

Within any fishing year, the amount by which a pollock seasonal allowance is underharvested or overharvested may be added to, or subtracted from, the subsequent seasonal allowance for the Western and Central Regulatory Areas in a manner to be determined by the Regional Administrator (§ 679.20(a)(5)(iv)(B)). The rollover amount is limited to 20 percent of the subsequent seasonal TAC apportionment for the statistical area. Any unharvested pollock above the 20-percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas and in an amount no more than 20 percent of the seasonal TAC apportionment in those statistical areas (§ 679.20(a)(5)(iv)(B)). The pollock TACs in the WYK and the SEO Districts of 5,565 mt and 9,749 mt, respectively, in 2024, and 4,601 mt and 9,749 mt, respectively, in 2025, are not allocated by season.

Tables 3 and 4 list the final 2024 and 2025 seasonal biomass distribution of pollock in the Western and Central Regulatory Areas, area apportionments, and seasonal allowances. The amounts of pollock for processing by the inshore and offshore components are not shown. Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all GOA regulatory areas and all seasonal allowances to vessels catching pollock for processing by the inshore component after subtraction of pollock amounts projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. Thus, the amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount that will be taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed by § 679.20(e) and (f). At this time, these incidental catch amounts of pollock are unknown and will be determined during the fishing year during the course of fishing activities by the offshore component.

TABLE 3—FINAL 2024 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton [1]]

Season [2]	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total [3]
A (January 20–May 31)	5,422	70,918	13,863	90,203
B (September 1–November 1)	33,460	20,019	36,724	90,203

TABLE 3—FINAL 2024 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC—Continued

[Values are rounded to the nearest metric ton [1]]

Season [2]	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total [3]
Annual Total	38,882	90,937	50,587	180,406

[1] Area apportionments and seasonal allowances may not total precisely due to rounding.
[2] As established by § 679.23(d)(2), directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following two seasons: January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.
[3] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

TABLE 4—FINAL 2025 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton [1]]

Season [2]	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total [3]
A (January 20–May 31)	4,483	58,629	11,460	74,572
B (September 1–November 1)	27,661	16,550	30,361	74,572
Annual Total	32,144	75,179	41,821	149,144

[1] Area apportionments and seasonal allowances may not total precisely due to rounding.
[2] As established by § 679.23(d)(2), directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following two seasons: January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.
[3] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Annual and Seasonal Apportionments of Pacific Cod TAC

Pursuant to § 679.20(a)(12)(i), NMFS seasonally allocates the 2024 and 2025 Pacific cod TACs in the Western and Central Regulatory Areas of the GOA among gear and operational sectors. In the Western and Central Regulatory Areas, a portion of the annual TAC is apportioned to the A season for hook-and-line, pot, and jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10, and a portion of the annual TAC is apportioned to the B season for jig gear from June 10 through December 31, for hook-and-line and pot gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.20(a)(12) and 679.23(d)(3)). NMFS also allocates the Pacific cod TACs annually between the inshore (90 percent) and offshore (10 percent) components in the Eastern Regulatory Area of the GOA (§ 679.20(a)(6)(ii)).

In the Central GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, then among CVs less than 50 feet (15.2 meters (m)) in length overall using hook-and-line gear, then among CVs equal to or greater than 50 feet (15.2 m) in length overall using hook-and-line gear, then among catcher/processors (CPs) using hook-and-line gear, then among CVs using trawl gear, then among CPs using trawl gear, and then among vessels using pot gear (§ 679.20(a)(12)(i)(B)). In the Western GOA, the Pacific cod TAC is apportioned seasonally first to vessels using jig gear, then among CVs using hook-and-line gear, then among CPs using hook-and-line gear, then among CVs using trawl gear, then among CPs using trawl gear, and then among vessels using pot gear (§ 679.20(a)(12)(i)(A)). Excluding seasonal apportionments to the jig sector, NMFS seasonally apportions the remainder of the annual Pacific cod TACs in the Western GOA as 63.84 percent to the A season and 36.16 percent to the B season, and in the Central GOA as 64.16 percent to the A season and 35.84 percent to the B season.

Under § 679.20(a)(12)(ii), any overage or underage of the Pacific cod season allowance from the A season may be subtracted from, or added to, the subsequent B season allowance. In addition, any portion of the hook-and-line, trawl, pot, or jig sector allocations that is determined by NMFS as likely to go unharvested by a sector may be reallocated to other sectors for harvest during the remainder of the fishing year consistent with the reallocation priorities prescribed in regulation and the capability of a sector to harvest the remaining TAC.

Pursuant to § 679.20(a)(12)(i)(A) and (B), a portion of the annual Pacific cod TACs in the Western and Central GOA will be allocated to vessels with a Federal fisheries permit that use jig gear before the TACs are apportioned among other non-jig sectors. In accordance with the FMP, the annual jig sector allocations may increase to up to 6 percent of the annual Western and Central GOA Pacific cod TACs, depending on the annual performance of the jig sector (see table 1 in the final rule implementing Amendment 83 to the FMP for a detailed discussion of the jig sector allocation process (76 FR 74670, December 1, 2011)). Jig sector allocation increases are established for a minimum of 2 years. Jig sector allocation decreases are established for 1 year.

NMFS has evaluated the historical harvest performance of the jig sector in the Western and Central GOA and is establishing the 2024 and 2025 Pacific cod apportionments to this sector based on its historical harvest performance through 2023. NMFS did not evaluate the 2020 performance of the jig sectors in the Western and Central GOA because directed fishing was prohibited for all Pacific cod sectors in 2020 (84 FR 70438, December 23, 2019). Because of the closure, catch for the jig sectors could not reach 90 percent of the annual allocation that is required for a

performance increase in the following year's allocation (87 FR 74102, December 2, 2022). For 2024 and 2025, NMFS allocates the jig sector 3.5 percent of the annual Pacific cod TAC in the Western GOA. The 2024 and 2025 allocations consist of a base allocation of 1.5 percent of the Western GOA Pacific cod TAC and performance increases of 2.0 percent. For 2024 and 2025, NMFS allocates the jig sector 2.0 percent of the annual Pacific cod TAC in the Central GOA. The 2024 and 2025 allocations consist of a base allocation of 1.0 percent of the Central GOA Pacific cod TAC and a performance increase of 1.0 percent. The 2025 allocations of the annual Pacific cod TACs in the Western and Central GOA to jig gear may change based on the harvest performance of the sector in 2024, which NMFS will evaluate in the 2025 and 2026 harvest specifications.

For 2024 and 2025, NMFS is apportioning the jig sector allocations for the Western and Central GOA between the A season (60 percent) and the B season (40 percent), pursuant to § 679.20(a)(12)(i). This is the same jig sector seasonal apportionment implemented in prior groundfish harvest specifications for the GOA and is consistent with Amendment 83 to the FMP (76 FR 44700, July 26, 2011).

Tables 5 and 6 list the seasonal apportionments and allocations of the 2024 and 2025 Pacific cod TACs.

TABLE 5—FINAL 2024 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	214	n/a	129	n/a	86
Hook-and-line CV	83	0.70	41	0.70	41
Hook-and-line CP	1,170	10.9	644	8.90	526
Trawl CV	2,268	31.54	1,863	6.86	405
Trawl CP	142	0.90	53	1.50	89
All Pot CV and Pot CP	2,245	19.80	1,170	18.20	1,075
Total	6,121	63.84	3,899	36.16	2,222
Central GOA:					
Jig (2.0% of TAC)	309	n/a	185	n/a	124
Hook-and-line <50 CV	2,210	9.32	1,410	5.29	800
Hook-and-line ≥50 CV	1,015	5.61	849	1.10	166
Hook-and-line CP	772	4.11	622	1.00	151
Trawl CV [1]	6,293	25.29	3,828	16.29	2,465
Trawl CP	635	2.00	303	2.19	332
All Pot CV and Pot CP	4,208	17.83	2,698	9.98	1,510
Total	15,442	64.16	9,894	35.84	5,548
Eastern GOA	.....	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	2,203	1,983		220	

[1] Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 588 mt, of the annual Central GOA TAC (see table 28c to 50 CFR part 679). This apportionment is deducted from the Trawl CV B season allowance (see table 12: Final 2024 Apportionments of Rockfish Secondary Species in the Central GOA to Catcher Vessel and Catcher/Processor Cooperatives).

TABLE 6—FINAL 2025 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	187	N/A	112	N/A	75
Hook-and-line CV	72	0.70	36	0.70	36
Hook-and-line CP	1,022	10.9	562	8.90	459
Trawl CV	1,981	31.54	1,627	6.86	354
Trawl CP	124	0.90	46	1.50	77
All Pot CV and Pot CP	1,961	19.80	1,022	18.20	939

TABLE 6—FINAL 2025 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS—Continued

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Total	5,347	63.84	3,406	36.16	1,941
Central GOA:					
Jig (2.0% of TAC)	270	N/A	162	N/A	108
Hook-and-line <50 CV	1,930	9.32	1,231	5.29	699
Hook-and-line ≥50 CV	886	5.61	741	1.10	145
Hook-and-line CP	675	4.11	543	1.00	132
Trawl CV [1]	5,496	25.29	3,343	16.29	2,153
Trawl CP	555	2.00	265	2.19	290
All Pot CV and Pot CP	3,675	17.83	2,356	9.98	1,318
Total	13,486	64.16	8,641	35.84	4,845
Eastern GOA	.....	Inshore (90% of Annual TAC)		Offshore (10% of Annual TAC)	
	1,924	1,731		192	

[1] Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 514 mt, of the annual Central GOA TAC (see table 28c to 50 CFR part 679). This apportionment is deducted from the Trawl CV B season allowance (see table 13: Final 2025 Apportionments of Rockfish Secondary Species in the Central GOA to Catcher Vessel and Catcher/Processor Cooperatives).

Allocations of the Sablefish TAC Amounts to Vessels Using Fixed and Trawl Gear

Section 679.20(a)(4)(i) and (ii) require allocations of sablefish TACs for each of the regulatory areas and districts to fixed and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to fixed gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to fixed gear, and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish using trawl gear while directed fishing for other target species (§ 679.20(a)(4)(i)).

In recognition of the prohibition against trawl gear in the SEO District of the Eastern Regulatory Area, the Council recommended, and NMFS approves, specifying for incidental catch the allocation of 5 percent of the combined Eastern Regulatory Area sablefish TAC to trawl gear in the WYK District of the Eastern Regulatory Area. The remainder of the WYK District sablefish TAC is allocated to vessels using fixed gear. NMFS allocates 100 percent of the sablefish TAC in the SEO District to vessels using fixed gear. This results in 2024 allocations of 412 mt to trawl gear and 2,514 mt to fixed gear in the WYK District, a 2024 allocation of 5,320 mt to fixed gear in the SEO District, and a 2025 allocation of 414 mt to trawl gear in the WYK District. Table 7 lists the allocations of the 2024 sablefish TACs to fixed and trawl gear. Table 8 lists the allocations of the 2025 sablefish TACs to trawl gear.

The Council recommended that a trawl sablefish TAC be established for 2 years so that retention of incidental catch of sablefish by trawl gear could commence in January in the second year of the groundfish harvest specifications. Both the 2024 and 2025 trawl allocations are specified in these final harvest specifications in tables 7 and 8, respectively.

The Council also recommended that the fixed gear sablefish TAC be established annually to ensure that this Individual Fishing Quota (IFQ) fishery is conducted concurrently with the halibut IFQ fishery and is based on the most recent survey information. Since there is an annual assessment for sablefish and since the final harvest specifications are expected to be published before the IFQ season begins in March 2024, NMFS specifies the fixed gear sablefish TAC annually, rather than for 2 years, to ensure that the sablefish IFQ fishery is conducted concurrently with the halibut IFQ fishery. Concurrent sablefish and halibut IFQ fisheries reduce the potential for discards of halibut and sablefish in those fisheries. Accordingly, table 7 lists the 2024 fixed gear allocations, and the 2025 fixed gear allocations will be specified in the 2025 and 2026 harvest specifications.

With the exception of the trawl gear allocations that are provided to the Rockfish Program (see table 28c to 50 CFR part 679), directed fishing for sablefish with trawl gear in the GOA is closed during the fishing year. Also, fishing for groundfish with trawl gear is prohibited prior to January 20 (§ 679.23(c)). Therefore, it is not likely that the sablefish allocation to trawl gear will be reached before the effective date of these final 2024 and 2025 harvest specifications.

TABLE 7—FINAL 2024 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO FIXED AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Western	4,699	3,759	940
Central [1]	9,651	7,721	1,930
West Yakutat [2]	2,926	2,514	412
Southeast Outside	5,320	5,320	0
Total	22,596	19,313	3,283

[1] The trawl allocation of sablefish in the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (993 mt). See table 28c to 50 CFR part 679 and table 12: Final 2024 Apportionments of Rockfish Secondary Species in the Central GOA to Catcher Vessel and Catcher/Processor Cooperatives. This results in 937 mt being available for the non-Rockfish Program trawl fisheries.

[2] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts) sablefish TAC as incidental catch to trawl gear in the West Yakutat District.

TABLE 8—FINAL 2025 SABLEFISH TAC AMOUNTS IN THE GULF OF ALASKA AND ALLOCATIONS TO TRAWL GEAR [1]

[Values are rounded to the nearest metric ton]

Area/district	TAC	Fixed gear allocation	Trawl gear allocation
Western	4,719	n/a	944
Central [2]	9,693	n/a	1,939
West Yakutat [3]	2,940	n/a	414
Southeast Outside	5,343	n/a	0
Total	22,695	0	3,297

[1] The Council recommended that the final 2025 harvest specifications for the fixed gear sablefish Individual Fishing Quota fisheries not be specified in the final 2024 and 2025 harvest specifications. The final 2025 harvest specifications for fixed gear will be specified in the 2025 and 2026 harvest specifications.

[2] The trawl allocation of sablefish in the Central Regulatory Area is further apportioned to the Rockfish Program cooperatives (997 mt). See table 28c to 50 CFR part 679 and table 13: Final 2025 Apportionments of Rockfish Secondary Species in the Central GOA to Catcher Vessel and Catcher/Processor Cooperatives. This results in 942 mt being available for the non-Rockfish Program trawl fisheries.

[3] The trawl allocation is based on allocating 5 percent of the combined Eastern Regulatory Area (West Yakutat and Southeast Outside Districts) sablefish TAC as incidental catch to trawl gear in the West Yakutat District.

Allocations, Apportionments, and Sideboard Limits for the Rockfish Program

These final 2024 and 2025 harvest specifications for the GOA include the fishery cooperative allocations and sideboard limitations established by the Rockfish Program. Rockfish Program participants are primarily trawl CVs and trawl CPs, with limited participation by vessels using longline gear. The Rockfish Program assigns quota share and cooperative quota to participants for primary species (Pacific ocean perch, northern rockfish, and dusky rockfish) and secondary species (Pacific cod, rougheye and blackspotted rockfish, sablefish, shortraker rockfish, and thornyhead rockfish), allows a participant holding a LLP license with rockfish quota share to form a rockfish cooperative with other persons, and allows holders of CP LLP licenses to opt out of the fishery. The Rockfish Program also has an entry-level fishery for rockfish primary species for vessels using longline gear. Longline gear includes hook-and-line, jig, troll, and handline gear.

Under the Rockfish Program, rockfish primary species in the Central GOA are allocated to participants after deducting for incidental catch needs in other directed groundfish fisheries (§ 679.81(a)(2)). Participants in the Rockfish Program also receive a portion of the Central GOA TAC of specific secondary species. In addition to groundfish species, the Rockfish Program assigns a portion of the halibut PSC limit (191.4 mt) from the third season deep-water species fishery allowance for the GOA trawl fisheries to Rockfish Program participants (§ 679.81(d) and table 28d to 50 CFR part 679). The Rockfish Program also establishes sideboard limits to restrict the ability of harvesters operating under the Rockfish Program to increase their participation in other, non-Rockfish Program fisheries. These restrictions and halibut PSC limits are discussed in the *Rockfish Program Groundfish Sideboard and Halibut PSC Limitations* section of this rule.

Section 679.81(a)(2)(ii) and table 28e to 50 CFR part 679 require allocations of 5 mt of Pacific ocean perch, 5 mt of northern rockfish, and 50 mt of dusky rockfish to the entry-level longline fishery in 2024 and 2025. The allocations for the entry-level longline fishery may increase incrementally each year if the catch in the previous year exceeds 90 percent of the allocation of a species. The incremental increase in the allocation would continue each year until it reaches the maximum percent of the TAC assigned to the Rockfish Program for that species. In 2023, the catch of Pacific ocean perch, northern rockfish, and dusky rockfish did not attain the 90 percent threshold, and the final allocations for 2024 therefore remain the same as the 2023 allocations. The remainder of the TACs for the rockfish primary species are allocated to the CV and CP cooperatives (§ 679.81(a)(2)(iii)). Table 9 lists the allocations of the 2024 and 2025 TACs for each rockfish primary species to the entry-level longline fishery, the potential incremental increases for future years, and the maximum percent of the TACs assigned to the Rockfish Program that may be allocated to the rockfish entry-level longline fishery.

TABLE 9—FINAL 2024 AND INITIAL 2025 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES TO THE ENTRY LEVEL LONGLINE FISHERY IN THE CENTRAL GULF OF ALASKA

Rockfish primary species	2024 and 2025 allocations (metric tons)	Incremental increase in 2025 if >90% of 2024 allocation is harvested (metric tons)	Up to maximum percent of TAC (%)
Pacific ocean perch	5	5	1
Northern rockfish	5	5	2
Dusky rockfish	50	20	5

Section 679.81 requires allocations of rockfish primary species among various sectors of the Rockfish Program. Tables 10 and 11 list the final 2024 and 2025 allocations of rockfish primary species in the Central GOA to the entry-level longline fishery, and rockfish CV and CP cooperatives in the Rockfish Program. NMFS also is setting aside incidental catch amounts (ICAs) for other directed fisheries in the Central GOA of 3,500 mt of Pacific ocean perch, 300 mt of northern rockfish, and 250 mt of dusky rockfish. These amounts are based on recent average incidental catches of these species in the Central GOA by other groundfish fisheries.

Allocations among vessels belonging to CV or CP cooperatives are not included in these final harvest specifications. Rockfish Program applications for CV cooperatives and CP cooperatives are not due to NMFS until March 1 of each calendar year; therefore, NMFS cannot calculate 2024 and 2025 allocations in conjunction with these final harvest specifications (§ 679.81(f)). After receiving the Rockfish Program applications, NMFS will calculate the 2024 allocations for CV and CP cooperatives, as set forth in § 679.81(b), (c), and (e). NMFS will announce the 2024 allocations after March 1.

TABLE 10—FINAL 2024 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to the rockfish cooperatives [2]
Pacific ocean perch	28,757	3,500	25,257	5	25,252
Northern rockfish	2,280	300	1,980	5	1,975
Dusky rockfish	7,365	250	7,115	50	7,065
Total	38,402	4,050	34,352	60	34,292

[1] Longline gear includes hook-and-line, jig, troll, and handline gear (§ 679.2).
[2] Rockfish cooperatives include vessels in CV and CP cooperatives (§ 679.81).

TABLE 11—FINAL 2025 ALLOCATIONS OF ROCKFISH PRIMARY SPECIES IN THE CENTRAL GULF OF ALASKA TO THE ENTRY LEVEL LONGLINE FISHERY AND ROCKFISH COOPERATIVES IN THE ROCKFISH PROGRAM

[Values are rounded to the nearest metric ton]

Rockfish primary species	Central GOA annual TAC	Incidental catch allowance	TAC minus ICA	Allocation to the entry level longline [1] fishery	Allocation to the rockfish cooperatives [2]
Pacific ocean perch	27,768	3,500	24,268	5	24,263
Northern rockfish	2,200	300	1,900	5	1,895
Dusky rockfish	6,979	250	6,729	50	6,679
Total	36,947	4,050	32,837	60	32,837

[1] Longline gear includes hook-and-line, jig, troll, and handline gear (§ 679.2).
[2] Rockfish cooperatives include vessels in CV and CP cooperatives (§ 679.81).

Section 679.81(c) and table 28c to 50 CFR part 679 require allocations of rockfish secondary species to CV and CP cooperatives in the Central GOA. CV cooperatives receive allocations of Pacific cod, sablefish from the trawl gear allocation, and thornyhead rockfish. CP cooperatives receive allocations of sablefish from the trawl gear allocation, rougheye and blackspotted rockfish, shortraker rockfish, and thornyhead rockfish. Tables 12 and 13 list the apportionments of the 2024 and 2025 TACs of rockfish secondary species in the Central GOA to CV and CP cooperatives.

TABLE 12—FINAL 2024 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	15,442	3.81	588	0.00	0
Sablefish	9,651	6.78	654	3.51	339
Shortraker rockfish	189	0.00	0	40.00	76
Rougheye/blackspotted rockfish	315	0.00	0	58.87	185
Thornyhead rockfish	693	7.84	54	26.50	184

TABLE 13—FINAL 2025 APPORTIONMENTS OF ROCKFISH SECONDARY SPECIES IN THE CENTRAL GOA TO CATCHER VESSEL AND CATCHER/PROCESSOR COOPERATIVES

[Values are rounded to the nearest metric ton]

Rockfish secondary species	Central GOA annual TAC	Catcher vessel cooperatives		Catcher/processor cooperatives	
		Percentage of TAC	Apportionment (mt)	Percentage of TAC	Apportionment (mt)
Pacific cod	13,486	3.81	514	0.00	0
Sablefish	9,693	6.78	657	3.51	340
Shortraker rockfish	189	0.00	n/a	40.00	76
Rougheye/blackspotted rockfish	317	0.00	n/a	58.87	187
Thornyhead rockfish	693	7.84	54	26.50	184

Halibut PSC Limits

Section 679.21(d) establishes annual halibut PSC limit apportionments to trawl gear and hook-and-line gear and authorizes the establishment of apportionments for pot gear. In December 2023 the Council recommended and NMFS approves halibut PSC limits of 1,705 mt for trawl gear, 256 mt for hook-and-line gear, and 9 mt for the demersal shelf rockfish (DSR) rockfish fishery in the SEO District for both 2024 and 2025, consistent with § 679.21.

The DSR fishery in the SEO District is defined at § 679.21(d)(2)(ii)(A). This fishery is apportioned 9 mt of the halibut PSC limit in recognition of its small-scale harvests of groundfish (§ 679.21(d)(2)(i)(A)). The separate halibut PSC limit for the DSR fishery is intended to prevent that fishery from being impacted from the halibut PSC incurred by other GOA fisheries. NMFS estimates low halibut bycatch in the DSR fishery because: (1) the duration of the DSR fishery and the gear soak times are short; (2) the DSR fishery occurs in the winter when there is less overlap in the distribution of DSR and halibut; and (3) the directed commercial DSR fishery has a low DSR TAC. The State of Alaska sets the commercial GHL for the DSR fishery after deducting estimates of DSR incidental catch in all fisheries (including halibut and subsistence) and allocation to the sport DSR fishery. In 2023, the commercial GHL fishery for DSR was closed due to concerns about declining DSR biomass.

The FMP authorizes the Council and NMFS to exempt specific gear from the halibut PSC limits. NMFS, after consultation with the Council, exempts pot gear, the sablefish IFQ fixed gear fishery categories, and jig gear from the non-trawl halibut PSC limit for 2024 and 2025. The Council recommended, and NMFS approves, these exemptions because: (1) the pot gear fisheries have low annual halibut bycatch mortality; (2) IFQ program regulations prohibit discard of halibut if any halibut IFQ permit holder on board a catcher vessel holds unused halibut IFQ for that vessel category and the IFQ regulatory area in which the vessel is operating (§ 679.7(f)(11)); (3) some sablefish IFQ fishermen hold halibut IFQ permits and are therefore required to retain the halibut they catch while fishing sablefish IFQ; and (4) NMFS estimates negligible halibut mortality for the jig gear fisheries given the small amount of groundfish harvested by jig gear, the selective nature of jig gear, and the high survival rates of halibut caught and released with jig gear.

The best information available on estimated halibut bycatch consists of data collected by fisheries observers during 2023. The estimated halibut bycatch mortality through December 31, 2023 is 289 mt for trawl gear and 37 mt for hook-and-line gear for a total halibut mortality of 326 mt. The estimated halibut bycatch mortality was calculated using groundfish and halibut catch data from the NMFS Alaska Region's catch accounting system. This accounting system contains historical and recent catch information compiled from each Alaska groundfish fishery.

Section 679.21(d)(4)(i) and (ii) authorize NMFS to seasonally apportion the halibut PSC limits after consultation with the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) seasonal distribution of halibut; (2) seasonal distribution of target groundfish species relative to halibut distribution; (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species; (4) expected bycatch rates on a seasonal basis; (5) expected changes in directed groundfish fishing seasons; (6) expected actual start of fishing effort; and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry. The Council considered information from the 2023 SAFE report, NMFS catch data, State of Alaska catch data, International Pacific Halibut Commission (IPHC) stock assessment and mortality data, and

public testimony when apportioning the halibut PSC limits. NMFS concurs with the Council's recommendations listed in table 14, which shows the final 2024 and 2025 Pacific halibut PSC limits, allowances, and apportionments.

Section 679.21(d)(4)(iii) and (iv) specify that any unused amounts, or overages, of a seasonal apportionment of a halibut PSC limit will be added to, or deducted from, the next respective seasonal apportionment within the fishing year.

TABLE 14—FINAL 2024 AND 2025 PACIFIC HALIBUT PROHIBITED SPECIES CATCH (PSC) LIMITS, ALLOWANCES, AND APPORTIONMENTS

[Values are in metric tons]

Trawl gear			Hook-and-line gear [1]				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20–April 1	30.5	520	January 1–June 10	86	220	January 1–December 31	9
April 1–July 1	20.0	341	June 10–September 1	2	5		
July 1–August 1	27.0	460	September 1–December 31	12	31		
August 1–October 1	7.5	128					
October 1–December 31	15.0	256					
Total		1,705			256		9

[1] The Pacific halibut prohibited species catch (PSC) limit for hook-and-line gear is assigned to the DSR fishery in the SEO District and to the hook-and-line fisheries other than the DSR fishery. The fixed gear sablefish IFQ fishery is exempt from halibut PSC limits, as are pot and jig gear for all groundfish fisheries.

Section 679.21(d)(3)(ii) authorizes further apportionment of the trawl halibut PSC limit to trawl fishery categories listed in § 679.21(d)(3)(iii). The annual apportionments are based on each category's proportional share of the anticipated halibut bycatch mortality during the fishing year and optimization of the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are: (1) a deep-water species fishery, composed of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder; and (2) a shallow-water species fishery, composed of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species'' (sharks and octopuses) (§ 679.21(d)(3)(iii)). Halibut mortality incurred while directed fishing for skates with trawl gear accrues towards the shallow-water species fishery halibut PSC limit (69 FR 26320, May 12, 2004).

NMFS will combine available trawl halibut PSC limit apportionments during a portion of the second season deep-water and shallow-water species fisheries for use in either fishery from May 15 through June 30 (§ 679.21(d)(4)(iii)(D)). This is intended to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. This provides the deep-water and shallow-water species trawl fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year.

Table 15 lists the final 2024 and 2025 apportionments of trawl halibut PSC limits between the trawl gear deep-water and shallow-water species fishery categories.

Table 28d to 50 CFR part 679 specifies the amount of the trawl halibut PSC limit that is assigned to the CV and CP sectors that are participating in the Rockfish Program. This includes 117.3 mt of halibut PSC limit to the CV sector and 74.1 mt of halibut PSC limit to the CP sector. These amounts are assigned from the trawl deep-water species fishery's halibut PSC third seasonal apportionment. After the combined CV and CP halibut PSC limit allocation of 191.4 mt to the Rockfish Program, 148.6 mt remains for the trawl deep-water species fishery's halibut PSC third seasonal apportionment.

Section 679.21(d)(4)(iii)(B) limits the amount of the halibut PSC limit assigned to Rockfish Program participants that could be re-apportioned to the last seasonal apportionment for the general GOA trawl fisheries during the current fishing year to no more than 55 percent of the unused annual halibut PSC limit apportioned to Rockfish Program participants. The remainder of the unused Rockfish Program halibut PSC limit is unavailable for use by any person for the remainder of the fishing year (§ 679.21(d)(4)(iii)(C)).

TABLE 15—FINAL 2024 AND 2025 APPORTIONMENT OF PACIFIC HALIBUT PROHIBITED SPECIES CATCH LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water	Deep-water [1]	Total
January 20–April 1	385	135	520
April 1–July 1	85	256	341
July 1–August 1	120	340	460
August 1–October 1	53	75	128
Subtotal January 20–October 1	643	806	1,449
October 1–December 31 [2]			256
Total			1,705

[1] Vessels participating in cooperatives in the Central GOA Rockfish Program will receive 191.4 mt of the third season (July 1 through August 1) deep-water species fishery halibut PSC apportionment (see table 28d to 50 CFR part 679.

[2] There is no apportionment between trawl shallow-water and deep-water species fishery categories during the fifth season (October 1 through December 31).

Section 679.21(d)(2)(i)(B) requires that the ''other hook-and-line fishery'' halibut PSC limit apportionment to vessels using hook-and-line gear must be apportioned between CVs and CPs in accordance with § 679.21(d)(2)(iii) in conjunction with these harvest specifications. The halibut PSC apportionment is based on the Western and Central GOA Pacific cod allocations, which vary annually based on the proportion of the Pacific cod biomass between the Western, Central, and Eastern GOA. Updated information in the final 2023 SAFE report describes this distributional calculation, which apportions ABC among GOA regulatory areas on the basis of the three most recent stock surveys. For 2024 and 2025, the distribution of the total GOA Pacific cod ABC is 27.1 percent to the Western GOA, 63.8 percent to the Central GOA, and 9.1 percent to the Eastern GOA. Therefore, the calculations made in accordance with § 679.21(d)(2)(iii) incorporate the most recent information on GOA Pacific cod distribution and allocations with respect to establishing the annual halibut PSC limits for the CV and CP hook-and-line sectors of the ''other hook-and-line fishery.'' Additionally, the annual halibut PSC limits for both the CV and CP sectors of the ''other hook-and-line fishery'' are divided into three seasonal apportionments, using seasonal percentages of 86 percent, 2 percent, and 12 percent.

For 2024 and 2025, NMFS apportions halibut PSC limits of 149 mt and 107 mt to the hook-and-line CV and hook-and-line CP sectors, respectively. Table 16 lists the final 2024 and 2025 apportionments of halibut PSC limits between the hook-and-line CV and the hook-and-line CP sectors of the ''other hook-and-line fishery.''

No later than November 1 of each year, NMFS will calculate the projected unused amount of halibut PSC limit by either of the CV or CP hook-and-line sectors that comprise the two sectors of the ''other hook-and-line fishery'' for the remainder of the year. The projected unused amount of halibut PSC limit is made available to the other sector for the remainder of that fishing year (§ 679.21(d)(2)(iii)(C)), if NMFS determines that an additional amount of halibut PSC is necessary for that sector to continue its directed fishing operations.

TABLE 16—FINAL 2024 AND 2025 APPORTIONMENTS OF THE ''OTHER HOOK-AND-LINE FISHERY'' ANNUAL HALIBUT PROHIBITED SPECIES CATCH ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

''Other than DSR'' allowance	Hook-and-line sector	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
256	Catcher Vessel	149	January 1–June 10	86	128
			June 10–September 1	2	3
			September 1–December 31	12	18
	Catcher/Processor	107	January 1–June 10	86	92
			June 10–September 1	2	2
			September 1–December 31	12	13

Estimates of Halibut Biomass and Stock Condition

The IPHC annually assesses the abundance and potential yield of the Pacific halibut stock using all available data from the commercial and sport fisheries, other removals, and scientific surveys. Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2023 Pacific halibut stock assessment (December 2023), available on the IPHC website at *https://www.iphc.int.* The IPHC considered the 2023 Pacific halibut stock assessment at its January 2024 annual meeting when it set the 2024 commercial halibut fishery catch limits.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator uses observed halibut incidental catch rates, halibut discard mortality rates (DMRs), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. Halibut incidental catch rates are based on observed estimates of halibut incidental catch in the groundfish fishery. DMRs are estimates of the proportion of incidentally caught halibut that do not survive after being returned to the sea. The cumulative halibut mortality that accrues to a particular halibut PSC limit is the product of a DMR multiplied by the estimated halibut PSC. DMRs are estimated using the best scientific information available in conjunction with the annual GOA stock assessment process. The DMR methodology and findings are included as an appendix to the annual GOA groundfish SAFE report.

In 2016, the DMR estimation methodology underwent revisions per the Council's directive. An interagency halibut working group (IPHC, Council, and NMFS staff) developed improved estimation methods that have undergone review by the GOA Plan Team, SSC, and the Council. A summary of the revised methodology is contained in the GOA proposed 2017 and 2018 harvest specifications (81 FR 87881, December 6, 2016), and the comprehensive discussion of the working group's statistical methodology is available from the Council (see **ADDRESSES**). The DMR working group's revised methodology is intended to improve estimation accuracy, transparency, and transferability in the methodology used for calculating DMRs. The working group will continue to consider improvements to the methodology used to calculate halibut mortality, including potential changes to the reference period (the period of data used for calculating the DMRs). The new methodology continues to ensure that NMFS is using DMRs that accurately reflect halibut mortality, which will inform the sectors of their estimated halibut mortality and allow sectors to respond with methods that could reduce mortality and, eventually, the DMR for that sector.

At the December 2023 meeting, the SSC, AP, and Council concurred with the revised DMR estimation methodology, and NMFS adopts for 2024 and 2025 the DMRs calculated under the revised methodology, which uses an updated 2-year and 4-year reference period depending on data availability. The final 2024 and 2025 DMRs in this rule are unchanged from the DMRs in the proposed 2024 and 2025 harvest specifications (88 FR 85184, December 7, 2023). Table 17 lists these final 2024 and 2025 DMRs.

TABLE 17—FINAL 2024 AND 2025 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Values are percent of halibut assumed to be dead]

Gear	Sector	Groundfish fishery	Halibut discard mortality rate (percent)
Pelagic trawl	Catcher vessel	All	100
	Catcher/processor	All	100
Non-pelagic trawl	Catcher vessel	Rockfish Program	56
	Catcher vessel	All others	69
	Mothership and catcher/processor	All	83
Hook-and-line	Catcher/processor	All	11
	Catcher vessel	All	10
Pot	Catcher vessel and catcher/processor	All	26

Chinook Salmon Prohibited Species Catch Limits

There are Chinook salmon PSC limits for the directed pollock trawl fishery in the Western and Central GOA. NMFS is required to close the directed pollock fishery in the Western and Central Regulatory Areas of the GOA if the applicable Chinook salmon PSC limit in that regulatory area will be reached (§ 679.21(h)(8)). The annual Chinook salmon PSC limits in the directed pollock fishery of 6,684 salmon in the Western GOA and 18,316 salmon in the Central GOA are set at § 679.21(h)(2).

There is also an established initial annual PSC limit of 7,500 Chinook salmon for the trawl non-pollock groundfish fisheries in the Western and Central GOA. This limit is apportioned among the 3 sectors that conduct directed fishing for groundfish species other than pollock: 3,600 Chinook salmon to trawl CPs; 1,200 Chinook salmon to trawl CVs participating in the Rockfish Program; and 2,700 Chinook salmon to trawl CVs not participating in the Rockfish Program (§ 679.21(h)(4)). NMFS will monitor the Chinook salmon PSC in the trawl non-pollock groundfish fisheries and close an applicable sector if it will reach its Chinook salmon PSC limit.

The Chinook salmon PSC limit for two sectors, trawl CPs and trawl CVs not participating in the Rockfish Program, may be increased in subsequent years based on the performance of these two sectors and their ability to minimize their use of their respective Chinook salmon PSC limits during a calendar year. If either or both of these 2 sectors limited its use of Chinook salmon PSC to the specified threshold amount (3,120 for trawl CPs and 2,340 for Non-Rockfish Program trawl CVs), that sector will receive an incremental increase to its Chinook salmon PSC limit (§ 679.21(h)(4)). In 2023, the trawl CP sector did not exceed 3,120 Chinook salmon PSC; therefore, the 2024 trawl CP sector Chinook salmon PSC limit will be 4,080 Chinook salmon. In 2023, the Non-Rockfish Program trawl CV sector did not exceed 2,340 Chinook salmon PSC; therefore, the 2024 Non-Rockfish Program trawl CV sector Chinook salmon PSC limit will be 3,060 Chinook salmon.

American Fisheries Act (AFA) Catcher/Processor and Catcher Vessel Groundfish Harvest Limits

Section 679.64 establishes groundfish harvesting and processing sideboard limitations on AFA CPs and CVs in the GOA. These sideboard limits are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA as compared to those fishermen and processors who receive exclusive harvesting and processing privileges under the AFA. Section 679.7(k)(1)(ii) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from harvesting any species of groundfish in the GOA. Additionally, § 679.7(k)(1)(iv) prohibits listed AFA CPs and CPs designated on a listed AFA CP permit from processing any pollock harvested in a directed pollock fishery in the GOA and any groundfish harvested in Statistical Area 630 of the GOA.

AFA CVs that are less than 125 feet (38.1 meters) length overall, have annual landings of pollock in the Bering Sea and Aleutian Islands of less than 5,100 mt, and have made at least 40 landings of GOA groundfish from 1995 through 1997 are exempt from GOA CV groundfish sideboard limits (§ 679.64(b)(2)(ii)). Sideboard limits for non-exempt AFA CVs in the GOA are based on their traditional harvest levels of TAC in groundfish fisheries covered by the FMP. Section 679.64(b)(3)(iv) establishes the CV groundfish sideboard limits in the GOA based on the aggregate retained catch by non-exempt AFA CVs of each sideboard species from 2009 through 2019 divided by the TAC for that species available to catcher vessels from 2009 through 2019. Under the PCTC Program, NMFS modified the calculation of the sideboard ratios for non-exempt AFA CVs, using the qualifying years of 2009 through 2019 (88 FR 53704, August 8, 2023). Previously, sideboard limits were based on the ratio of catch to the TAC during the years 1995 through 1997.

Non-exempt AFA CVs are prohibited in regulation from directed fishing for specific groundfish species or species groups subject to sideboard limits (§ 679.20(d)(1)(iv)(D) and Table 56 to 50 CFR part 679) (84 FR 2723, February 8, 2019). Under the PCTC Program, NMFS also promulgated regulations to prohibit non-exempt AFA CVs from directed fishing for additional groundfish species or species groups subject to sideboard limits (88 FR 53704, August 8, 2023). All of these prohibitions are found in the revised Table 56 to 50 CFR part 679. Sideboard limits for species or species groups not listed in Table 56 continue to be calculated and included in the GOA annual harvest specifications.

Tables 18 and 19 list the final 2024 and 2025 groundfish sideboard limits for non-exempt AFA CVs. NMFS will deduct all targeted or incidental catch of sideboard species made by non-exempt AFA CVs from the sideboard limits listed in tables 18 and 19.

TABLE 18—FINAL 2024 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 2009–2019 non-exempt AFA CV retained catch to 2009–2019 TAC	Final 2024 TACs [3]	Final 2024 non-exempt AFA CV sideboard limit
Pollock	A Season: January 20–May 31	Shumagin (610)	0.057	5,422	309
		Chirikof (620)	0.064	70,918	4,539
		Kodiak (630)	0.091	13,862	1,261
	B Season: September 1–November 1	Shumagin (610)	0.057	33,460	1,907
		Chirikof (620)	0.064	20,019	1,281
		Kodiak (630)	0.091	36,725	3,342
	Annual	WYK (640)	0.026	5,565	145
Pacific cod	A Season: [1] January 1–June 10	W	0.009	3,899	35
		C	0.011	9,894	109
	B Season: [2] September 1–December 31	W	0.009	2,222	20
		C	0.011	5,548	61
Flatfish, shallow-water	Annual	C	0.011	27,783	306
Rex sole	Annual	C	0.014	13,639	191
Arrowtooth flounder	Annual	C	0.011	64,871	714
Flathead sole	Annual	C	0.007	21,307	149

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.
[3] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.

TABLE 19—FINAL 2025 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Apportionments by season/gear	Area/component	Ratio of 2009–2019 non-exempt AFA CV retained catch to 2009–2019 TAC	Final 2025 TAC [3]	Final 2025 non-exempt AFA CV sideboard limit
Pollock	A Season: January 20–May 31	Shumagin (610)	0.057	4,483	256
		Chirikof (620)	0.064	58,629	3,752
		Kodiak (630)	0.091	11,460	1,043
	B Season: September 1–November 1	Shumagin (610)	0.057	27,661	1,577
		Chirikof (620)	0.064	16,550	1,059
		Kodiak (630)	0.091	30,361	2,763
	Annual	WYK (640)	0.026	4,601	120
Pacific cod	A Season: [1] January 1–June 10	W	0.009	3,406	31
		C	0.011	8,641	95
	B Season: [2] September 1–December 31	W	0.009	1,941	17
		C	0.011	4,845	53
Flatfish, shallow-water	Annual	C	0.011	28,311	311
Rex sole	Annual	C	0.014	13,624	191
Arrowtooth flounder	Annual	C	0.011	64,688	712
Flathead sole	Annual	C	0.007	21,702	152

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.
[3] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.

Non-Exempt AFA Catcher Vessel Halibut PSC Limits

The non-exempt AFA catcher vessels and the associated LLP licenses PSC limit for halibut in the GOA will be an annual amount based on a static ratio of 0.072, which was derived from the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 2009 through 2019 (§ 679.64(b)(4)(ii)). This change was implemented with the PCTC Program (88 FR 53704, August 8, 2023). Prior to the PCTC Program, the halibut PSC sideboard limits for non-exempt AFA CVs in the GOA were based on the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 1995 through 1997 divided by the retained catch of all vessels in that fishery from 1995 through 1997. Table 20 lists the final 2024 and 2025 non-exempt AFA CV halibut PSC sideboard limits for vessels using trawl gear in the GOA.

TABLE 20—FINAL 2024 AND 2025 NON-EXEMPT AFA CV HALIBUT PROHIBITED SPECIES CATCH (PSC) SIDEBOARD LIMITS FOR VESSELS USING TRAWL GEAR IN THE GOA

Ratio (percent)	Annual trawl gear halibut PSC limit (mt)	Annual non-exempt AFA CV halibut PSC limit (mt)
0.072	1,705	123

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limits for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization (CR) Program to expand their level of participation in the GOA groundfish fisheries. Sideboard limits restrict these vessels' catch to their collective historical landings in each GOA groundfish fishery (except the fixed-gear sablefish fishery). Sideboard limits also apply to catch made using an LLP license derived from the history of a restricted vessel, even if that LLP license is used on another vessel.

The basis for these sideboard limits is described in detail in the final rules implementing the major provisions of the CR Program, including Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP) (70 FR 10174, March 2, 2005), Amendment 34 to the Crab FMP (76 FR 35772, June 20, 2011), Amendment 83 to the GOA FMP (76 FR 74670, December 1, 2011), Amendment 45 to the Crab FMP (80 FR 28539, May 19, 2015), and a rulemaking to prohibit non-AFA crab vessels from directed fishing for all groundfish species or species groups subject to sideboard limits, except for Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas (§ 680.22(e)(1)(iii)) (84 FR 2723, February 8, 2019).

Tables 21 and 22 list the final 2024 and 2025 groundfish sideboard limitations for non-AFA crab vessels. All targeted or incidental catch of sideboard species made by non-AFA crab vessels or associated LLP licenses will be deducted from these sideboard limits.

TABLE 21—FINAL 2024 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2024 TACs	Final 2024 non-AFA crab vessel sideboard limit
Pacific cod	A Season: January 1–June 10	Western Pot CV	0.0997	3,899	389
		Central Pot CV	0.0474	9,894	469
	B Season: September 1–December 31	Western Pot CV	0.0997	2,222	221
		Central Pot CV	0.0474	5,548	263

TABLE 22—FINAL 2025 GOA NON-AMERICAN FISHERIES ACT CRAB VESSEL GROUNDFISH SIDEBOARD LIMITS

[Values are rounded to the nearest metric ton]

Species	Season	Area/gear	Ratio of 1996–2000 non-AFA crab vessel catch to 1996–2000 total harvest	Final 2025 TACs	Final 2025 non-AFA crab vessel sideboard limit
Pacific cod	A Season: January 1–June 10	Western Pot CV	0.0997	3,406	340
		Central Pot CV	0.0474	8,641	410
	B Season: September 1–December 31	Western Pot CV	0.0997	1,941	193
		Central Pot CV	0.0474	4,845	230

Rockfish Program Groundfish Sideboard and Halibut PSC Limitations

The Rockfish Program establishes three classes of sideboard provisions: CV groundfish sideboard restrictions, CP rockfish sideboard restrictions, and CP opt-out vessel sideboard restrictions (§ 679.82(c)(1)). These sideboards are intended to limit the ability of rockfish harvesters to expand into other GOA groundfish fisheries.

CVs participating in the Rockfish Program may not participate in directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat District and Western GOA from July 1 through July 31. Also, CVs may not participate in directed fishing for arrowtooth flounder, deep-water flatfish, and rex sole in the GOA from July 1 through July 31 (§ 679.82(d)).

CPs participating in Rockfish Program cooperatives are restricted by rockfish and halibut PSC sideboard limits. These CPs are prohibited from directed fishing for dusky rockfish, Pacific ocean perch, and northern rockfish in the West Yakutat District and Western GOA from July 1 through July 31 (§ 679.82(e)(2)). Prior to 2021, CPs participating in Rockfish Program cooperatives were restricted by rockfish sideboard limits in the Western GOA. A final rule that implemented Amendment 111 to the FMP (86 FR 11895, March 1, 2021) removed from regulation the Western GOA rockfish sideboard limits for Rockfish Program CPs. That rule also revised and clarified the establishment of the West Yakutat District rockfish sideboard ratios in regulation. The rockfish sideboard ratio for each rockfish fishery in the West Yakutat District is an established percentage of the TAC for CPs in the directed fishery for dusky rockfish and Pacific ocean perch (§ 679.82(e)(4)). These percentages are confidential.

Holders of CP-designated LLP licenses that opt out of participating in a Rockfish Program cooperative will be able to access that portion of each rockfish sideboard limit that is not assigned to rockfish cooperatives (§ 679.82(e)(7)).

Under the Rockfish Program, the CP sector is subject to halibut PSC sideboard limits for the trawl deep-water and shallow-water species fisheries (§ 679.82(e)(3) and (5)). Halibut PSC sideboard ratios by fishery are set forth in § 679.82(e)(5). The CP sector halibut PSC sideboard limits are effective from July 1 through July 31 (§ 679.82(c)(4), (e)(6)). No halibut PSC sideboard limits apply to the CV sector, as CVs participating in cooperatives receive a portion of the annual halibut PSC limit. CPs that opt out of the Rockfish Program are able to access that portion of the deep-water and shallow-water species fishery halibut PSC sideboard limit not assigned to CP rockfish cooperatives. The sideboard provisions for CPs that elect to opt out of participating in a rockfish cooperative are described in § 679.82(c), (e), and (f). Sideboard limits are linked to the catch history of specific vessels; however, some of these vessels may choose to opt out of the Rockfish Program. After March 1, NMFS will determine which CPs have opted-out of the Rockfish

Program in 2024, and NMFS will know the ratios and amounts used to calculate opt-out sideboard ratios. NMFS will then calculate any applicable opt-out sideboards for 2024 and announce these limits after March 1. Table 23 lists the final 2024 and 2025 Rockfish Program halibut PSC sideboard limits for the CP sector.

TABLE 23—FINAL 2024 AND 2025 ROCKFISH PROGRAM HALIBUT PSC SIDEBOARD LIMITS FOR THE CATCHER/PROCESSOR SECTOR

[Values are rounded to the nearest metric ton]

Sector	Shallow-water species fishery halibut PSC sideboard ratio (percent)	Deep-water species fishery halibut PSC sideboard ratio (percent)	2024 and 2025 halibut mortality limit (mt)	Annual shallow-water species fishery halibut PSC sideboard limit (mt)	Annual deep-water species fishery halibut PSC sideboard limit (mt)
Catcher/processor	0.1	2.5	1,705	2	43

Amendment 80 Program Groundfish and PSC Sideboard Limits

Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (Amendment 80 Program) established a limited access privilege program for the non-AFA trawl CP sector. The Amendment 80 Program established groundfish and halibut PSC catch limits for Amendment 80 Program participants to limit the ability of participants eligible for the Amendment 80 Program to expand their harvest efforts in the GOA.

Section 679.92 establishes groundfish harvesting sideboard limits on all Amendment 80 program vessels, other than the fishing vessel (F/V) ''Golden Fleece'', to amounts no greater than the limits listed in table 37 to 50 CFR part 679. Under § 679.92(d), the F/V ''Golden Fleece'' is prohibited from directed fishing for pollock, Pacific cod, Pacific ocean perch, dusky rockfish, and northern rockfish in the GOA.

Groundfish sideboard limits for Amendment 80 Program vessels operating in the GOA are based on their average aggregate harvests from 1998 through 2004 (72 FR 52668, September 14, 2007). Tables 24 and 25 list the final 2024 and 2025 groundfish sideboard limits for Amendment 80 Program vessels. NMFS will deduct all targeted or incidental catch of sideboard species made by Amendment 80 Program vessels from the sideboard limits in tables 24 and 25.

TABLE 24—FINAL 2024 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2024 TAC (mt)	2024 Amendment 80 vessel sideboard limit (mt)
Pollock [1]	A Season: January 20–May 31	Shumagin (610)	0.003	5,422	16
		Chirikof (620)	0.002	70,918	142
		Kodiak (630)	0.002	13,862	28
	B Season: September 1–November 1	Shumagin (610)	0.003	33,460	100
		Chirikof (620)	0.002	20,019	40
		Kodiak (630)	0.002	36,725	73
	Annual	WYK (640)	0.002	5,565	11
Pacific cod	A Season [2]: January 1–June 10	W	0.020	3,899	78
		C	0.044	9,894	435
	B Season [3]: September 1–December 31	W	0.020	2,222	44
		C	0.044	5,548	244
	Annual	WYK	0.034	2,203	75
Pacific ocean perch	Annual	W	0.994	1,787	1,776
		WYK	0.961	2,110	2,028
Northern rockfish	Annual	W	1.000	2,535	2,535
Dusky rockfish	Annual	W	0.764	145	111
		WYK	0.896	84	75

[1] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.
[2] The Pacific cod A season for trawl gear does not open until January 20.
[3] The Pacific cod B season for trawl gear closes November 1.

TABLE 25—FINAL 2025 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2025 TAC (mt)	2025 Amendment 80 vessel sideboard limit (mt)
Pollock [1]	A Season: January 20–May 31	Shumagin (610)	0.003	4,483	83
		Chirikof (620)	0.002	58,629	33
		Kodiak (630)	0.002	11,460	61
	B Season: September 1–November 1	Shumagin (610)	0.003	27,661	96
		Chirikof (620)	0.002	16,550	150
		Kodiak (630)	0.002	30,361	84
	Annual	WYK (640)	0.002	4,601	9

TABLE 25—FINAL 2025 GOA GROUNDFISH SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by season	Area	Ratio of Amendment 80 sector vessels 1998–2004 catch to TAC	2025 TAC (mt)	2025 Amendment 80 vessel sideboard limit (mt)
Pacific cod	A Season [2]: January 1–June 10	W	0.020	3,406	68
		C	0.044	8,641	150
	B Season [3]: September 1–December 31	W	0.020	1,941	39
		C	0.044	4,845	213
	Annual	WYK	0.034	1,924	65
Pacific ocean perch	Annual	W	0.994	1,726	1,716
		WYK	0.961	2,038	1,959
Northern rockfish	Annual	W	1.000	2,446	2,446
Dusky rockfish	Annual	W	0.764	137	105
		WYK	0.896	81	73

[1] The Western and Central GOA and WYK District area apportionments of pollock are considered ACLs.
[2] The Pacific cod A season for trawl gear does not open until January 20.
[3] The Pacific cod B season for trawl gear closes November 1.

The halibut PSC sideboard limits for Amendment 80 Program vessels in the GOA are based on the historic use of halibut PSC by Amendment 80 Program vessels in each PSC target category from 1998 through 2004. These values are slightly lower than the average historic use to accommodate two factors: allocation of halibut PSC cooperative quota under the Rockfish Program and the exemption of the F/V *Golden Fleece* from this restriction (§ 679.92(b)(2)). Table 26 lists the final 2024 and 2025 halibut PSC sideboard limits for Amendment 80 Program vessels. These tables incorporate the maximum percentages of the halibut PSC sideboard limits that may be used by Amendment 80 Program vessels as contained in table 38 to 50 CFR part 679. Any residual amount of a seasonal Amendment 80 halibut PSC sideboard limit may carry forward to the next season limit (§ 679.92(b)(2)).

TABLE 26—FINAL 2024 AND 2025 HALIBUT PSC SIDEBOARD LIMITS FOR AMENDMENT 80 PROGRAM VESSELS IN THE GOA

[Values are rounded to nearest metric ton]

Season	Season dates	Target fishery	Historic Amendment 80 use of the annual halibut PSC limit catch (ratio)	2024 and 2025 annual halibut PSC limit (mt)	2024 and 2025 Amendment 80 vessel halibut PSC limit
1	January 20–April 1	shallow-water	0.0048	1,705	8
		deep-water	0.0115	1,705	20
2	April 1–July 1	shallow-water	0.0189	1,705	32
		deep-water	0.1072	1,705	183
3	July 1–August 1	shallow-water	0.0146	1,705	25
		deep-water	0.0521	1,705	89
4	August 1–October 1	shallow-water	0.0074	1,705	13
		deep-water	0.0014	1,705	2
5	October 1–December 31	shallow-water	0.0227	1,705	39
		deep-water	0.0371	1,705	63
Total					474

Directed Fishing Closures

Pursuant to § 679.20(d)(1)(i), if the Regional Administrator determines (1) that any allocation or apportionment of a target species or species group allocated or apportioned to a fishery will be reached; or (2) with respect to pollock and Pacific cod, that an allocation or apportionment to an inshore or offshore component or sector allocation will be reached, then the Regional Administrator may establish a directed fishing allowance (DFA) for that species or species group. If the Regional Administrator establishes a DFA and that allowance is or will be reached before the end of the fishing season or year, NMFS will prohibit directed fishing for that species or species group in the specified GOA subarea, regulatory area, or district (§ 679.20(d)(1)(iii)).

The Regional Administrator has determined that the TACs for the species and species groups listed in table 27 are necessary to account for the incidental catch of these species in other anticipated groundfish fisheries for the 2024 and 2025 fishing years.

TABLE 27—2024 AND 2025 DIRECTED FISHING CLOSURES IN THE GOA

[Amounts for incidental catch in other directed fisheries are in metric tons]

Target	Area/component/gear	Incidental catch amount and year (if amounts differ by year)
Pollock	all/offshore	not applicable.[1]
Sablefish[2]	all/trawl	3,283 (2024). 3,297 (2025).
Pacific cod	Western, CV, HAL	83 (2024), 72 (2025).
	Western, CP, trawl	142 (2024), 124 (2025).
	Central, CP, trawl	635 (2024), 555 (2025).
Shortraker rockfish[2]	All	647.
Rougheye/blackspotted rockfish.[2]	All	1,037 (2024). 1,041 (2025).
Thornyhead rockfish[2]	All	1,628.
Other rockfish	All	1,653.
Atka mackerel	All	4,700.
Big skate	All	2,853.
Longnose skate	All	2,536.
Other skates	All	665.
Sharks	All	4,891.
Octopuses	All	980.

[1] Pollock is closed to directed fishing in the GOA by the offshore component under § 679.20(a)(6)(i).

[2] Closures are not applicable to participants in cooperatives conducted under the Central GOA Rockfish Program because cooperatives are prohibited from exceeding their allocations (§ 679.7(n)(6)(viii)).

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the DFA for the species or species groups listed in table 27 as zero mt. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for those species and species groups, areas, gear types, and components in the GOA listed in table 27 effective at 1200 hours, A.l.t., March 4, 2024, through 2400 hours, A.l.t., December 31, 2025.

Closures implemented under the 2023 and 2024 GOA harvest specifications for groundfish (88 FR 13238, March 2, 2023) remain effective under authority of these final 2024 and 2025 harvest specifications and until the date specified in those closure notifications. Closures are posted at the following website under the Alaska filter for Management Areas: *https://www.fisheries.noaa.gov/rules-and-announcements/bulletins.*

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found at 50 CFR part 679. NMFS may implement other closures during the 2024 and 2025 fishing years as necessary for effective conservation and management.

Comments and Responses

NMFS received two comment letters with seven unique comments during the public comment period for the proposed GOA groundfish harvest specifications (88 FR 85184, December 7, 2023). One comment letter was from an individual and the other was from a non-governmental organization. NMFS's responses to the seven unique comments raised in the comment letters are addressed below.

Comment 1: The GOA harvest specifications do not consider the impact of offshore wind on the marine environment.

Response: This is outside of the scope of the harvest specifications. The final rule implementing the harvest specifications sets the OFL, ABC, and TAC for target species in the GOA, but does not regulate or authorize offshore wind. There is no current or planned offshore wind project in Alaska State waters or EEZ waters off of Alaska.

Comment 2: Salmon are important for the cultural well-being of Alaska native tribes. Climate change is negatively affecting salmon and additive pressure from the pollock fishery is exacerbating their declines. Maintaining the status quo TAC for pollock harvest will result in continued bycatch and impacts to salmon and halibut as the pollock industry catches more individual salmon and halibut as bycatch than directed and subsistence fishermen of Alaska are allocated for their survival and livelihoods.

Response: NMFS recognizes that salmon are paramount to the cultural well-being for indigenous peoples of Alaska. NMFS also recognizes that climate change is affecting the survival of western Alaska Chinook and chum salmon in their freshwater and marine life stages.

The annual TAC setting process is a robust, expansive process that involves significant scientific input and includes consideration of current environmental and ecosystem factors (like climate change) and other marine resources (like salmon and halibut). Scientists from the AFSC prepare the assessment using statistical analyses of fish populations and draft the written assessment for a species or species group, which for GOA pollock is a full assessment updated annually. The assessments for the GOA are informed by the most recent survey and harvest data available, including multiple surveys conducted annually and biennially in the GOA. The stock assessment then undergoes rigorous review by the scientists and resource managers on the Plan Team and SSC.

During this annual TAC setting process, the Plan Team, SSC, AP, and Council review several sources comprising the best scientific information available—the ESR, ESPs, stock assessments, and Plan Team reports—and use all these materials as reference in their OFL and ABC (the biological reference points), and TAC (the harvest target/limit), recommendations to NMFS. NMFS reviews the same information for its annual decision to implement the OFL, ABC, and TAC for GOA groundfish. Updates on salmon abundance estimates, commercial salmon catch, and the physical environment are included in the ESR and ESP. For an overview of the ESR and ESP, refer to the response to Comment 3.

The stock assessment author and Plan Team make a recommendation for OFL and ABC for each species and species group, and the SSC may concur with this recommendation or make a

different recommendation. Ultimately, the SSC recommends the OFL and ABC that inform the setting of the TAC for each species and species group since TAC cannot exceed ABC (Section 3.2.3.4.1 of the FMP; 50 CFR 600.310(g)(4)). This ensures that TAC for each species and species group does not exceed the scientific recommendations for ABC and OFL.

OFL and ABC are calculated using prescribed methods set forth in the FMP. The FMP specifies a series of six tiers to define OFL and ABC amounts based on the level of reliable information available to fishery scientists. Tier 1 represents the highest level of information quality available, while Tier 6 represents the lowest. The methods for calculating OFL and ABC (including the ABC control rule) become more precautionary depending on the tier and stock status. For example, with less reliable information the larger the buffer between OFL and ABC. As stock status declines the OFL and ABC are reduced.

The specification of ABC is informed by the ecosystem, environmental, and socioeconomic factors presented in the stock assessment and the ESRs, specifically the stock-specific risk table prepared for each stock as well as an additional ecosystem considerations section prepared for full/operational assessments. For GOA pollock, the ecosystem considerations section is included in the ESP prepared with the stock assessment, and the GOA pollock assessment also includes an overview of bycatch of salmon and halibut in the GOA pollock fishery. The 2023 ESRs for the Alaska ecosystems provide information on the status of salmon in the GOA ecosystem including updated information on the abundance of salmon, fish condition, and run sizes. The specification of the pollock TAC is therefore based on the best scientific information available on the status of the pollock stock and accounts for ecosystem, environmental, and socioeconomic factors, including bycatch of non-target species like salmon.

In the groundfish fisheries, salmon and halibut are a non-target species and are considered a prohibited species. For the GOA pollock fisheries, there are separate Chinook salmon PSC limits for the Western GOA (6,684 salmon) and Central GOA (18,316 salmon). There is also a trawl non-pollock limit for Chinook salmon in the Western and Central GOA. The limit is 7,500 Chinook and is further apportioned to trawl CPs (3,600), trawl CVs participating in the Central GOA Rockfish Program (1,200), and trawl CVs not participating in the Rockfish Program (2,700). NMFS monitors Chinook PSC and will close a sector or fishery if the PSC limit is reached. For halibut, the regulations set a halibut PSC limit for trawl gear of 1,705 mt, and the estimated halibut bycatch mortality through December 31, 2023 is 289 mt for trawl gear. NMFS also posts weekly PSC reports on the web page at *https://www.fisheries.noaa.gov/alaska/commercial-fishing/fisheries-catch-and-landings-reports-alaska*.

Additionally, NMFS releases a report of the genetic stock composition of Chinook salmon in the GOA trawl fisheries on an annual basis. The latest report was presented to the Council in April 2023 using data from the 2021 and 2022 pollock trawl fisheries. The report showed that the majority of Chinook salmon encountered and sampled originate from South and East of the Alaska Peninsula. That report is available at *https://meetings.npfmc.org/CommentReview/DownloadFile?p=a5e7366b-bb9f-429a-b1b2-636ecfd1f442.pdf&fileName=C2a%20GOA%20Chinook%20Genetics%202021-2022.pdf*.

Ultimately, NMFS manages bycatch in the GOA pollock fishery through a variety of tools. These tools include the PSC limits (which are announced in these annual harvest specifications), and a comprehensive monitoring program to collect data on bycatch, including salmon bycatch. The information from this monitoring program is used to estimate how many Chinook and chum salmon are caught as bycatch from trawl vessels, where those fish came from, and whether a potential violation of law occurred.

NMFS acknowledges the western Alaska salmon crisis and the impact it is having on culture and food security throughout western Alaska. Science indicates climate change as the primary driver of poor salmon returns in western Alaska. Scientists from NMFS continue to study the impacts of climate change on salmon and halibut. For example, scientists from NMFS and the State of Alaska found that recent heat wave events created conditions where energy allocation and prey quality was affected and added stress to western Alaska chum salmon at critical life stages, see *https://www.int-res.com/abstracts/meps/v726/p149-160/*.

The Council and NMFS are committed to continued improvements in bycatch management with a goal of minimizing bycatch at all levels of abundance for target species (pollock) and PSC. NMFS and the Council are currently engaged in a comprehensive process to evaluate existing measures and develop alternatives that may be necessary to further reduce chum salmon bycatch in the Bering Sea pollock fishery. More information on this process can be found at *https://www.npfmc.org/fisheries-issues/bycatch/salmon-bycatch/*. However, the Chinook salmon and Pacific halibut PSC limits and the conditions that affect the limits are set in regulations, and changes to those regulations are outside of the scope of the annual harvest specification process. NMFS believes that changes to bycatch management of all prohibited species, including Chinook salmon, chum salmon, and Pacific halibut, are best accomplished through the Council process to recommend FMP amendments and regulations that NMFS would implement if consistent with the Magnuson-Stevens Act, the FMP, and other applicable law.

Comment 3: Management of fisheries, including TAC setting and PSC limits, should include ecosystem based fishery management.

Response: The annual process for specifying TAC for groundfish in the GOA is a scientifically-driven process informed by the best available information on the status of the marine ecosystems off Alaska. Each year, an ESR is prepared for the GOA ecosystem (as well as for the Bering Sea and Aleutian Islands ecosystems). The intent of the ESRs is to provide the Plan Team, SSC, AP, Council, and NMFS, as well as the public, with a broad overview of the current status of the marine ecosystems. The ESRs are drafted by scientists and staff from NOAA, other Federal and state agencies, academic institutions, tribes, and non-profits, and they compile and summarize information about the status of the Alaska marine ecosystems and represent the best scientific information available.

The ESRs include information on the physical environment and oceanography, climate data, biological data, marine resources, and socio-ecological dimensions to provide context for the specification of OFL, ABC, and TAC. For example, the 2024 ESR for the GOA includes a synthesis of ecosystem status indicators in the physical environment (such as sea surface temperature, sea level pressure anomalies, and ocean transport); habitat (including ocean acidification); analysis of primary production (such as phytoplankton) and zooplankton; trends for non-target species and discards, including sea jellies, forage fish like herring and eulachon, and squid; updated information on salmon; groundfish condition and distribution; benthic communities; a seabird

synthesis and seabird-derived forage fish indicators; marine mammals, including humpback whales and Steller sea lions; ecosystem and community indicators; and fishing indicators, including a sustainability index. The 2024 GOA ESR is available at *https://apps-afsc.fisheries.noaa.gov/REFM/docs/2023/GOAecosys.pdf*.

Information from the ESRs are integrated in stock assessments, primarily through the risk tables that are prepared for each stock. The risk table includes evaluation of four considerations: assessment-related, population dynamics, and environmental/ecosystem, and fishery performance. The risk table is meant to inform the specification of ABC by accounting for additional scientific uncertainty that is not addressed in the stock assessment model used to calculate OFL and ABC based on the stock's tier and the corresponding OFL and ABC control rules in the FMP. Because TAC cannot exceed ABC, reductions in ABC based on the risk table result in additional precaution in the catch limits for groundfish of the GOA. The risk table can highlight changes in ecosystem conditions. For example, in the 2019 Pacific cod SAFE report, the risk table assessed three considerations that were elevated to level 2. As a result of the elevated risk, authors recommending setting the ABC below the maximum. Further, because the 2019 GOA Pacific cod stock was estimated to be below 20 percent of the projected unfished spawning biomass ($B_{20\%}$), directed fishing was prohibited during the 2020 fishing year for the conservation of western Distinct Population Segment Steller sea lions (84 FR 70438, December 23, 2019). This prohibition is set in regulations (§ 679.20(d)(4)).

Some stock assessments, GOA pollock, GOA Pacific cod, and AK Sablefish, also include an ESP. The ESP was developed as a framework for organizing and evaluating ecosystem and socioeconomic information about an individual stock. The ESP informs environmental and ecosystem considerations, population dynamics, and fisheries performance in the risk table on pollock. For example, the ESP for GOA pollock is cited in the pollock SAFE for both temperature and catch per unit effort (CPUE). Temperature is within the optimal range for pollock life history stages in 2023 and CPUE is consistent with the abundance trend of exploitable biomass. The GOA pollock ESP is available at *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2023/GOApollock_appA.pdf*.

The information from the ESRs, stock assessments, and ESPs allows the Plan Team, SSC, AP, Council, and NMFS to respond to ecosystem changes and stock changes in the GOA and to adjust the harvest specifications as necessary. This is consistent with the FMP and the preferred harvest strategy analyzed in the Final EIS and implemented each year for the specification of TAC. The Final EIS contemplated that ABCs could be reduced based on ecosystem considerations (Chapter 11 of Final EIS). The harvest strategy is designed such that the most recent information would be used each year in setting the annual harvest specification. The process is flexible to incorporate current information on stock abundance and environmental, ecosystem, and socioeconomic factors (like physical and ecosystem changes associated with climate change). Similarly, the FMP contemplates ongoing consideration of relevant factors, like ecosystem considerations and climate change, through the development of SAFE reports (Section 3.2 of the FMP). The use of the most recent, best available information in the SAFE reports allows the Council and NMFS to respond to changes in stock condition and environmental, ecosystem, and socioeconomic factors in the GOA and to adjust the harvest specifications as appropriate, which is also consistent with National Standard 2 of the Magnuson-Stevens Act to use the best scientific information available (16 U.S.C. 1851(a)(2)).

NMFS is committed to supporting science and research to continue to move the process into effective ecosystem-based management by refining the existing tools and developing new tools for incorporating ecosystem and socioeconomic information.

As noted in response to Comment 2, PSC limits and the conditions that affect the limits are set in regulations, and changes to those regulations are outside of the scope of the annual harvest specification process.

Comment 4: NMFS must account for climate change in its decision making.

Response: Climate change is accounted for in NMFS's decisionmaking on the annual implementation of the harvest specifications, consistent with the harvest strategy in the FMP and analyzed in the Final EIS. The Final EIS analyzed alternatives for an implementing framework for the BSAI and GOA harvest strategy and evaluated the potential effects of those alternatives on the human environment (see response to Comment 6). The Final EIS examined existing physical and oceanographic conditions in the BSAI and GOA, and addressed regime shifts, warming and loss of sea ice, and acidification (Chapter 3.5 of the Final EIS), as well as systemic ecosystem impacts. (Chapter 11 of the Final EIS).

Moreover, the framework process for the preferred harvest strategy under the Final EIS allows for the effects of climate change to be considered in the annual process for setting the harvest specifications. As addressed in response to Comment 3, the annual ESR is part of the SAFE reports that the Council and its Plan Teams, SSC, and AP annually review prior to the review of the stock assessments and advancing recommendations to NMFS for the annual OFLs, ABCs, and TACs. The purpose of the ESRs is to provide the Council, scientific community, and the public, as well as NMFS, with annual information about ecosystem status and trends, and they include physical oceanography, biological data, and socio-ecological dimensions, primarily collected from AFSC surveys with collaboration from a range of government and non-government partners. The ESRs provide the scientific review body (the SSC) with context for the annual biological reference points (OFLs and ABCs), and for the Council's final TAC recommendations for groundfish (which are constrained by those biological reference points). Information from the ESRs are also integrated into the annual harvest recommendations through inclusion in stock assessment-specific risk tables. There are many examples of climate change considerations presented in the GOA ESR, including: sea surface temperatures and marine heatwaves driven by long-term climate change; status and trends of key physical indicators of climate change that could impact the survival and condition of certain species like salmon, such as ocean temperatures; deoxygenation from climate change and patterns and trends in oxygen in the GOA; implications from ocean acidification for sensitive species and fisheries, including Tanner crab and salmon; shifting migration dates for salmon in terms of juvenile and adult migration patterns; and trends in zooplankton population and lipid content, as well as juvenile salmon size and condition, in Southeast Alaska as part of an effort to investigate how climate change may affect nearshore ecosystems in relation to juvenile salmon and associated biophysical factors.

In some instances, the Plan Teams and SSC have recommended ABC reductions based on climate change

considerations. As explained in response to Comment 3, stock assessments use a stock-assessment specific risk table that is applied by evaluating the severity of four types of considerations that could be used to support a scientific recommendation to reduce the ABC (assessment-related, population dynamics, environmental/ecosystem, and fishery performance). For example, for the 2019 stock assessment for Pacific cod, patterns in distribution, growth, and size were associated with warmer ocean conditions and the cumulative effects from a series of recent warm years. As a result, environmental and ecosystem considerations were assigned a level 2 in the risk table.

Finally, the FMP indicated that the ongoing consideration of factors like climate change would be addressed annually in the SAFE reports (Section 3.2.2.2 of the FMP), as is currently the case with both individual stock assessments and the ESRs. As a result, the annual harvest specifications process, which implements the preferred harvest strategy under the Final EIS, allows for the consideration of the best scientific information available on climate change (16 U.S.C. 1851(a)(2)).

Comment 5: The TAC for pollock should reflect the true environmental cost of trawling.

Response: The SAFE report chapter for GOA pollock evaluates annually the GOA pollock fishery's effects on the ecosystem, as well as ecosystem effects on the pollock stock (see section titled ''Environmental/Ecosystem considerations'' in the SAFE report chapter: *https://apps-afsc.fisheries.noaa.gov/Plan_Team/2023/GOApollock.pdf*). In addition, ecosystem considerations, as well as the impact on communities and incidentally caught species, are considered and updated annually in the ESRs and ESPs, including the GOA pollock ESP. The Final EIS supporting the harvest specifications also evaluated environmental and ecosystem considerations, and the environmental impacts of the GOA pollock fishery have been analyzed in a number of subsequent NEPA documents, including the EA for Amendment 93 to the GOA FMP.

Comment 6: The Alaska Groundfish Harvest Specifications EIS is outdated and NMFS must prepare a new or supplemental EIS on the harvest specifications.

Response: Groundfish harvests are managed subject to annual limits on the retained and discarded amounts of each species and species group. The ''harvest strategy'' is the method used to calculate these annual limits, referred to as ''harvest specifications,'' and the process of establishing them is referred to as the ''specifications process.'' NMFS prepared the Alaska Groundfish Harvest Specifications Final EIS to analyze the environmental, social, and economic impacts of alternatives harvest strategies used to determine the annual harvest specifications for the federally managed groundfish fisheries in the GOA and BSAI management areas.

The purpose of the harvest strategy is to provide for orderly and controlled commercial fishing for groundfish; promote sustainable incomes to the fishing, fish processing, and support industries; support sustainable fishing communities; and provide sustainable flows of fish products to consumers. The harvest strategy balances groundfish harvest in the fishing year with ecosystem needs (such as non-target fish stocks, marine mammals, seabirds, and habitat). Importantly, the harvest strategy and specification process are designed to use the best available scientific information developed each year through the annual SAFE (including the ESR process) to calculate the status determination criteria, assess the status of each stock, and set the TACs.

In a ROD, NMFS selected one of the alternative harvest strategies: to set TACs that fall within the range of ABCs recommended through the harvest specifications process that includes review by the Plan Team and SSC. NMFS concluded that the preferred harvest strategy analyzed in the Final EIS and selected in the ROD provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. NMFS has not changed the harvest strategy or specifications process from what was analyzed in the Final EIS.

Each year the harvest strategy uses the best scientific information available in the annual SAFE reports to derive the annual harvest specifications, which include TACs and PSC limits. Through this process, each year, the Council's Groundfish Plan Teams use updated stock assessments to calculate biomass, OFLs, and ABCs for each species and species group for specified management areas. The OFLs and ABCs are published with the harvest specifications, and provide the foundation for the Council and NMFS to develop the TACs. The OFLs and ABCs reflect fishery science, applied in light of the requirements of the FMPs. The Council bases its TAC recommendations on those of its AP, which are consistent with the SSC's OFL and ABC recommendations (meaning, the TAC recommendations cannot exceed the SSC's ABC and OFL recommendations).

The Final EIS evaluates the consequences of alternative harvest strategies on ecosystem components and on the ecosystem as a whole. The Final EIS evaluates the alternatives for their effects within the action area. The environmental consequences of each alternative were considered for target species, non-specified species, forage species, prohibited species, marine mammals, seabirds, Essential Fish Habitat, ecosystem relationships, the economy, and environmental justice. These considerations were evaluated based on the conditions as they existed at the time the Final EIS was developed, but the Final EIS also anticipated potential changes in these conditions that could be incorporated, as appropriate, through the annual implementation of the harvest strategy. Each year since 2007 relevant changes (new information, changed circumstances, potential changes to the action) are considered with the primary purpose of evaluating the need to supplement the Final EIS.

NEPA implementing regulations at 40 CFR 1502.9(d) instruct agencies to prepare supplements to either draft or final environmental impact statements if there remains a major Federal action left to occur and: (i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Ultimately, an agency is required ''to take a 'hard look' at the new information to assess whether supplementation might be necessary.'' *Norton* v. *S. Utah Wilderness All.,* 542 U.S. 55, 72–73 (2004).

A SIR for the Final EIS is prepared each year to take that ''hard look'' and document the evaluation and decision whether an SEIS is necessary to implement the annual groundfish harvest specifications, consistent with NEPA regulations (40 CFR 1502.9(d)) and NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act and Related Authorities (Companion Manual for NOAA Administrative Order 216–6A).

The Companion Manual authorizes the use of a SIR to document a review of new information or circumstances and determine the sufficiency of the existing NEPA analysis for implementing a component or step of the action analyzed in that existing analysis.

The SIR prepared each year for the annual harvest specifications analyzes the information contained in the most recent SAFE reports and all information available to NMFS and the Council to determine whether an SEIS should be prepared. The SAFE reports represent the best scientific information available for the harvest specifications. Included in the SAFE reports are the groundfish stock assessments and any ESPs, the ESRs, and the Economic Status Report. To date, no annual SIR to the Final EIS has concluded that an SEIS is necessary.

The SIR recognizes the preferred harvest strategy analyzed in the Final EIS and selected in the ROD was built on an annual process to compile and utilize the most recent, best scientific information available on species abundance and condition, harvest and survey data, environmental and ecosystem factors, and socio-economic conditions. The Final EIS contemplated the annual process included flexibility that allows for the implementation of annual harvest specifications that reflect new information and changing circumstances in the context of the considerations in the Final EIS. NMFS has determined that the 2024 and 2025 harvest specifications for the BSAI and GOA are consistent with the preferred alternative harvest strategy analyzed in the Harvest Specifications EIS because they were set through the harvest specifications process, are within the optimum yield established for both the BSAI and the GOA, and do not set TAC to exceed the ABC for any single species or species group.

The SIR assessed new information and circumstances. Based on the SIR, NMFS concluded that the best available, most recent information presented on species abundance and condition, environmental and ecosystem factors, and socio-economic conditions and used to set the 2024 and 2025 harvest specifications does not represent a significant change relative to the environmental impacts of the preferred harvest strategy analyzed in the Harvest Specifications EIS.

The Harvest Specifications EIS identified reasonably foreseeable future actions, which inform the analysis in the SIR regarding new circumstances and which include catch share management, traditional fisheries management tools, ecosystem-sensitive management, and actions by other Federal, state, and international agencies and private actions. This section of the SIR assessed information and circumstances regarding bycatch management of salmon, crab, and halibut; habitat impacts; seabirds; and marine mammals, including ESA-listed species like Steller sea lions, humpback whales, sperm whales, and fin whales, and unlisted species like northern fur seals and killer whales. In this assessment, the SIR relied on the 2023 SAFE reports, other analyses prepared to support NMFS management actions, updated catch and bycatch data, and other best available scientific information to conclude any new information and circumstances do not present a seriously different picture of the likely environmental harms of the action to occur—the annual implementation of the 2024 and 2025 groundfish harvest specifications—beyond what was considered in the Harvest Specifications EIS. More details are provided in the SIR (see **ADDRESSES**).

Based on the SIR prepared in conjunction with these harvest specifications, NMFS determined that the 2024 and 2025 groundfish harvest specifications do not constitute a substantial change in the proposed action analyzed in the Final EIS and will not affect the human environment in a significant manner or to a significant extent not already considered in the Harvest Specifications EIS. Accordingly, supplementation of the Final EIS was not required for NMFS to approve and implement the 2024 and 2025 groundfish harvest specifications of the BSAI and GOA.

Comment 7: NMFS should develop a programmatic EIS and initiate a NEPA analysis that includes government-to-government consultation with Alaska Native Tribes, or otherwise supplement the Alaska Groundfish Programmatic Supplemental Environmental Impact Statement.

Response: As outlined in response to response to Comment 6, NMFS prepared the Alaska Groundfish Harvest Specifications Final EIS to analyze alternatives to implement the FMP's harvest strategy and specifications process, which outlines the method and process used to determine the annual harvest specifications for the federally managed groundfish fisheries in the GOA and BSAI management areas. NMFS also must specify PSC allowances in the annual harvest specifications. The Final EIS evaluates the consequences of alternative harvest strategies on ecosystem components and on the ecosystem as a whole, as well as their effects within the action area. Ultimately, from the analysis in the Final EIS, NMFS selected a preferred harvest strategy that NMFS uses each year for the specifications process. Each year, NMFS also evaluates whether supplementation of that Final EIS is required, consistent with NEPA regulations, to implement the harvest specifications. Based on the SIR prepared in conjunction with these harvest specifications, NMFS determined that supplementation of the Alaska Groundfish Harvest Specifications Final EIS was not required. NMFS therefore implements these harvest specifications consistent with the Alaska Groundfish Harvest Specifications Final EIS.

Separate from the Final EIS for the Alaska Groundfish Harvest Specifications, the Council and NMFS prepared the Alaska Groundfish Programmatic Supplemental Environmental Impact Statement (PSEIS). The PSEIS evaluated alternative policies and objectives for the management of the groundfish fisheries in the BSAI and GOA. The action analyzed in the PSEIS is different from the action analyzed in the Alaska Groundfish Harvest Specifications Final EIS, and as explained above NMFS implements the harvest specifications consistent with the Final EIS analyzing that action. In addition to the preparation of the Harvest Specifications Final EIS, since the PSEIS the Council and NMFS have prepared for FMP amendments and regulatory changes the appropriate NEPA analyses to support the implementation of those specific FMP or regulatory changes.

Finally, the Council and NMFS are now considering a new action to revise the management policies and objectives for the groundfish fisheries, as well as for all Council-managed fisheries, off Alaska. The Council requested that NMFS initiate the development of a Programmatic EIS to analyze alternatives for the revisions of policies, objectives, and goals for all Council-managed fisheries in June of 2023. In 2024–2025, the Council and NMFS will decide on the direction and structure of alternatives analyzed under a Programmatic EIS, and NMFS will begin the NEPA scoping process. There will be multiple public meetings, in addition to Council-hosted workshops, to support the development and analysis of alternatives, and NMFS will work with Alaska Native Tribes to ensure meaningful and timely government-to-government consultation consistent with Executive Order 13175 and NOAA Procedures for Government-to-Government Consultation with

Federally Recognized Indian Tribal Governments.

Classification

NMFS is issuing this final rule pursuant to section 305(d) of the Magnuson-Stevens Act. Through previous actions, the FMP and regulations are designed to authorize NMFS to take this action. See 50 CFR part 679. The NMFS Assistant Administrator has determined that the final harvest specifications are consistent with the FMP and with the Magnuson-Stevens Act and other applicable laws.

This final rule is exempt from review under Executive Order 12866 because it only implements annual catch limits in the GOA.

NMFS prepared an EIS for the Alaska groundfish harvest specifications and alternative harvest strategies (see **ADDRESSES**) and made it available to the public on January 12, 2007 (72 FR 1512). On February 13, 2007, NMFS issued the ROD for the Final EIS identifying the selected alternative (Alternative 2). NMFS prepared a SIR for this action to provide a subsequent assessment of the action and to address the need to prepare a Supplemental EIS (SEIS; 40 CFR 1501.11(b); § 1502.9(d)(1)). Copies of the Final EIS, ROD, and annual SIRs for this action are available from NMFS (see **ADDRESSES**). The Final EIS analyzes the environmental, social, and economic consequences of the groundfish harvest specifications and alternative harvest strategies on resources in the action area. Based on the analysis in the Final EIS, NMFS concluded that the preferred Alternative (Alternative 2) provides the best balance among relevant environmental, social, and economic considerations and allows for continued management of the groundfish fisheries based on the most recent, best scientific information. The preferred alternative is a harvest strategy in which TACs are set at a level within the range of ABCs recommended through the Council harvest specifications process by the Council's SSC. The sum of the TACs also must achieve the OY specified in the FMP and regulations. While the specific numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant.

The annual SIR evaluates the need to prepare a SEIS for the 2024 and 2025 groundfish harvest specifications. An SEIS must be prepared if a major Federal action remains to occur and: (1) the agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (2) significant new circumstances or information exist relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(d)(1)). After reviewing the most recent, best available information, including the information contained in the SIR and SAFE report, the Regional Administrator has determined that (1) the 2024 and 2025 harvest specifications, which were set according to the preferred harvest strategy, do not constitute a substantial change in the action; and (2) the information presented does not indicate that there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Any new information and circumstances do not present a seriously different picture of the likely environmental harms of the action to occur—the implementation of these harvest specifications—beyond what was considered in the Final EIS, and the 2024 and 2025 harvest specifications will result in environmental, social, and economic impacts within the scope of those analyzed and disclosed in the Final EIS. Therefore, a SEIS is not necessary to implement the 2024 and 2025 harvest specifications.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law, to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis (FRFA). The following constitutes the FRFA prepared for these final 2024 and 2025 harvest specifications.

Section 604 of the RFA describes the required contents of a FRFA: (1) a statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis (IRFA), a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the 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; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

A description of this action, its purpose, and its legal basis are contained at the beginning of the preamble to this final rule and are not repeated here.

NMFS published the proposed rule on December 7, 2023 (88 FR 85184). NMFS prepared an IRFA to accompany the proposed action and included the IRFA in the proposed rule. The comment period closed on January 8, 2024. No comments were received on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the Small Business Administration did not file any comments on the proposed rule.

The entities directly regulated by this action are: (1) entities operating vessels with groundfish Federal fishing permits (FFPs) catching FMP groundfish in Federal waters; (2) all entities operating vessels, regardless of whether they hold groundfish FFPs, catching FMP groundfish in the State-waters parallel fisheries; and (3) all entities operating vessels fishing for halibut inside 3 miles (5.6 km) of the shore (whether or not they have FFPs).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of $11 million for all its affiliated operations worldwide.

Using the most recent data available (2022), the estimated number of directly regulated small entities includes approximately 677 individual CV and CP entities with gross revenues meeting the small entity criteria. This includes an estimated 674 small CV entities and

3 small CP entities in the GOA groundfish sector. The determination of entity size is based on vessel revenues and affiliated group revenues. This determination also includes an assessment of fisheries cooperative affiliations, although actual vessel ownership affiliations have not been completely established. However, the estimate of these 677 CVs and CPs may be an overstatement of the number of small entities because of the complexity of analyzing the linkages and affiliations across these vessels, particularly since many of them conduct operations in Federal and State fisheries. The CVs had average gross revenues that varied by gear type. Average gross revenues for hook-and-line CVs, pot gear CVs, and trawl gear CVs are estimated to be $450,000, $860,000, and $1.38 million, respectively. Average gross revenues for hook-and-line CPs and pot gear CPs are estimated to be $7.40 million and $6.87 million, respectively. Trawl gear CP entity revenue data are confidential.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

This action implements the final 2024 and 2025 harvest specifications, apportionments, and halibut PSC limits for the groundfish fishery of the GOA. This action is necessary to establish harvest limits for groundfish during the 2024 and 2025 fishing years and is taken in accordance with the FMP prepared by the Council pursuant to the Magnuson-Stevens Act. The establishment of the final harvest specifications is governed by the Council and NMFS's harvest strategy for the catch of groundfish in the GOA. The harvest strategy was selected previously from among five alternatives, with the preferred alternative harvest strategy being one in which the TACs fall within the range of ABCs recommended through the Council harvest specifications process by the SSC. Under this preferred alternative harvest strategy, TACs are recommended to NMFS by the Council, utilizing recommendations from the AP, and are within the range of ABCs recommended by the SSC. The sum of the TACs must achieve the OY specified in the FMP. While the specific TAC numbers that the harvest strategy produces may vary from year to year, the methodology used for the preferred harvest strategy remains constant. This final action implements the preferred alternative harvest strategy previously chosen by the Council and NMFS to set TACs that fall within the range of ABCs recommended through the Council harvest specifications process and as recommended by the Council, after considerations from the Council's AP. This TAC determination method is consistent with previous years.

The final 2024 and 2025 TACs associated with preferred harvest strategy are those recommended by the Council in December 2023. OFLs and ABCs for the species were based on recommendations prepared by the Council's Plan Team, and reviewed and recommended by the Council's SSC. The Council based its TAC recommendations on those of its AP, and those recommendations are consistent with the SSC's OFL and ABC recommendations. The sum of all TACs remains within the OY for the GOA consistent with § 679.20(a)(1)(i)(B).

The final 2024 and 2025 OFLs and ABCs are based on the best available biological information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods to calculate stock biomass. The final 2024 and 2025 TACs are based on the best available biological and socioeconomic information. The final 2024 and 2025 OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2023 SAFE report, which is the most recent, completed SAFE report, as well as the ecosystem and socioeconomic information presented in the 2023 SAFE report (including the GOA ESR). Accounting for the most recent information to set the final OFLs, ABCs, and TACs is consistent with the objectives for this action, as well as National Standard 2 of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(2)) that actions shall be based on the best scientific information available. The SAFE report also includes information on the economic condition of the groundfish fisheries off Alaska through the Economic Status Report. Data are available through 2022.

Under this action, the final ABCs reflect harvest amounts that are less than the specified overfishing levels. The final TACs are within the range of final ABCs recommended by the SSC and do not exceed the biological limits recommended by the SSC (the ABCs and overfishing levels). For most species and species groups in the GOA, the Council recommended, and NMFS sets, final TACs equal to final ABCs, which is intended to maximize harvest opportunities in the GOA, unless other conservation or management reasons support setting TAC amounts less than the ABCs.

For the following species and species groups, the Council recommended, and NMFS sets, TACs that are less than the ABCs for pollock, Pacific cod, shallow-water flatfish in the Western GOA, arrowtooth flounder in the Western GOA and SEO District, flathead sole in the Western GOA, and other rockfish in the SEO District. These specific reductions were reviewed and recommended by the Council's AP, and the Council in turn adopted the AP's recommendations for the final 2024 and 2025 TACs.

Increasing TACs for some species may not result in increased harvest opportunities for those species. This is due to a variety of reasons. There may be a lack of commercial or market interest in some species. Additionally, there are fixed, and therefore constraining, PSC limits associated with the harvest of the GOA groundfish species that can lead to an underharvest of flatfish TACs. For this reason, the shallow-water flatfish, arrowtooth flounder, and flathead sole TACs in the Western GOA are set to allow for harvest opportunities for these target species while conserving the halibut PSC limit for use in other fisheries, including other groundfish fisheries or the halibut IFQ directed fishery. Similarly, the arrowtooth flounder TAC in the SEO District is set lower than ABC to conserve halibut PSC limit for use in other fisheries or because there is limited commercial interest in this fishery. The other rockfish TAC in the SEO District is set to support incidental catch in other fisheries. Finally, the TACs for two species (pollock and Pacific cod) cannot be set equal to ABC, as the TAC must be reduced to account for the State's GHLs in these fisheries. The W/C/WYK Regulatory Area pollock combined TAC and the GOA Pacific cod TACs are therefore set to account for the State's GHLs for the State waters pollock and Pacific cod fisheries so that the ABCs are not exceeded.

Based upon the best available scientific data, and in consideration of the Council's objectives of this action, there are no significant alternatives to the final rule that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the final rule on small entities. This action is economically beneficial to entities operating in the GOA, including small entities. The action specifies TACs for commercially valuable species in the GOA and allows for the continued prosecution of the fishery, thereby creating the opportunity for fishery revenue. After public process, during which the Council and NMFS solicited input from stakeholders, the Council

concluded and NMFS likewise determines that these final harvest specifications would best accomplish the stated objectives articulated in the preamble for this final rule and in applicable statutes and would minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in the date of effectiveness for this rule because delaying this rule is contrary to the public interest. The Plan Team review of the 2023 SAFE report occurred in November 2023, and, based on the 2023 SAFE report, the Council considered and recommended the final harvest specifications in December 2023. Accordingly, NMFS's review of the final 2024 and 2025 harvest specifications could not begin until after the December 2023 Council meeting and after the public comment period closed on January 8, 2024.

For all fisheries not currently closed because the TACs established under the final 2023 and 2024 harvest specifications (88 FR 13238, March 2, 2023) have not yet been reached, it is possible that they would be closed prior to the expiration of a 30-day delayed effectiveness period, because those fisheries have nearly reached those previously set TACs. Some affected fisheries therefore could close soon, as they are already close to reaching their TACs, and such closures would cause unnecessary economic harm to the fisheries in the cases where this final rule increases some of the groundfish TACs. If implemented immediately, this final rule would allow these fisheries to continue fishing, because some of the new TACs implemented by this rule are higher than the TACs under which they are currently fishing.

In addition, immediate effectiveness of this action is required to provide consistent management and conservation of fishery resources based on the best available scientific information. This is particularly pertinent for those species that have lower 2024 ABCs and TACs than those established in the final 2023 and 2024 harvest specifications (88 FR 13238, March 2, 2023). If implemented immediately, this rule would ensure that NMFS can properly manage those fisheries for which this rule sets lower 2024 ABCs and TACs, which are based on the most recent biological information on the condition of stocks. The changes between the proposed 2024 ABCs and TACs are discussed earlier in the *Changes from the Proposed 2024 and 2025 Harvest Specifications in the GOA* section of this rule.

Certain fisheries, such as those for pollock, are intensive, fast-paced fisheries. Other fisheries, such as those for sablefish, flatfish, rockfish, Atka mackerel, skates, sharks, and octopuses, are critical either as directed fisheries or as incidental catch in other fisheries. Thus, for those species that have higher 2024 TACs than under the final 2023 and 2024 harvest specifications (88 FR 13238, March 2, 2023) than the TACs established by this final rule, there is some risk of exceeding these TAC limits. U.S. fishing vessels have demonstrated the capacity to catch the TAC allocations in many of these fisheries. If the date of effectiveness of this rule were to be delayed 30 days and a TAC was reached during those 30 days, NMFS would be required to close directed fishing or prohibit retention for the applicable species. Such closures and unnecessary discards would cause confusion to the industry and potential economic harm to fishermen, undermining the intent of this rule. Waiving the 30-day delay in the date of effectiveness allows NMFS to prevent this potential economic harm that could occur, should the previously set 2024 TACs (as set under the final 2023 and 2024 harvest specifications) be reached during such a delay. In addition, determining which fisheries may close in advance is nearly impossible because these fisheries are affected by several factors, including fishing effort, weather, movement of fishery stocks, and market price, which cannot be predicted. Furthermore, the closure of one fishery has a cascading effect on other fisheries; the closure would free up fishing vessels, allowing them to move from closed fisheries to open fisheries, thereby increasing the fishing capacity in those open fisheries, and potentially causing them to close sooner.

In fisheries subject to declining sideboard limits, a failure to implement the updated sideboard limits before the initial season's end could deny the intended economic protection to the sectors that do not have sideboards. Conversely, in fisheries with increasing sideboard limits, economic benefit could be denied to the sideboard-limited sectors.

If the final harvest specifications are not effective by March 15, 2024, which is the start of the 2024 Pacific halibut season as specified by the IPHC, the fixed gear sablefish fishery will not begin concurrently with the Pacific halibut IFQ season. This would result in confusion for the industry and economic harm from unnecessary discard of sablefish that are caught along with Pacific halibut, as both fixed gear sablefish and Pacific halibut are managed under the same IFQ program. Immediate effectiveness of these final 2024 and 2025 harvest specifications will allow the sablefish IFQ fishery to begin concurrently with the Pacific halibut IFQ season.

Finally, immediate effectiveness also provides the fishing industry the earliest possible opportunity to plan and conduct its fishing operations with respect to new information about TACs. Therefore, in accordance with 5 U.S.C. 553(d)(3), NMFS finds good cause to waive the 30-day delay in the date of effectiveness for this rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The tables contained in this final rule are provided online and serve as the plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary purpose is to announce the final 2024 and 2025 harvest specifications and prohibited species bycatch allowances for the groundfish fisheries of the GOA. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2024 and 2025 fishing years, and to accomplish the goals and objectives of the FMP. This action affects all fishermen who participate in the GOA fisheries. The specific OFL, ABC, TAC, and PSC amounts are provided in tables in this final rule to assist the reader. This final rule also contains plain language summaries of the underlying relevant regulations supporting the harvest specifications and the harvest of groundfish in the GOA that the reader may find helpful.

Information to assist small entities in complying with this final rule is provided online. The OFL, ABC, TAC, and PSC tables are individually available online at *https://www.fisheries.noaa.gov/alaska/sustainable-fisheries/alaska-groundfish-harvest-specifications*. Explanatory information on the relevant regulations supporting the harvest specifications is also found in footnotes to the tables. Harvest specification changes are also available

from the same online source, which includes applicable **Federal Register** notices, information bulletins, and other supporting materials. NMFS will announce closures of directed fishing in the **Federal Register** and information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Authority: 16 U.S.C. 773 *et seq.;* 16 U.S.C. 1540(f), 1801 *et seq.;* 16 U.S.C. 3631 *et seq.;* Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L 109–479.

Dated: February 28, 2024.

Samuel D. Rauch, III,

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

[FR Doc. 2024–04516 Filed 3–1–24; 8:45 am]

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Proposed Rules

Federal Register
Vol. 89, No. 43
Monday, March 4, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–0228; Project Identifier MCAI–2022–00599–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations for certain brake accumulators are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD would also require determining the accumulated landings on the affected brake accumulators. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 18, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–0228; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–0228; Project Identifier MCAI–2022–00599–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mark Taylor, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–25, dated May 3, 2022 (Transport Canada AD CF–2022–25) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states that new or more restrictive airworthiness limitations (life limits) for certain brake accumulators have been developed, following in-service failures of brake accumulators on other types of airplanes with similar components. A brake accumulator surpassing a life limit could fail and result in loss of hydraulic pressure on the associated hydraulic system, which services the main and emergency/parking brakes on the main landing gear. The unsafe condition, if not addressed, could result in reduced or total loss of available braking and a possible runway excursion.

The FAA is proposing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2024–0228.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier service information. This service information specifies new or more restrictive airworthiness limitations for the No. 2 and No. 3 brake accumulators having certain part numbers. These documents are distinct since they apply to different airplane configurations.

- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Featuring Global Vision Flight Deck Time Limits/Maintenance Checks (TLMC), Publication No. GL 5000 GVFD TLMC, Revision 16, dated December 19, 2023, which includes Tasks 32–43–37–101, ''Discard the No. 2 Brake Accumulator, Part No. GW415–1250–1'' and 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–1/–3.'' (For obtaining the tasks for Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, use Document Identification No. GL 5000 GVFD TLMC.)
- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Time Limits/Maintenance Checks, Publication No. BD–700 TLMC, Revision 26, dated December 19, 2023, which includes Tasks 32–43–37–101, ''Discard the No. 2 Brake Accumulator, Part No. GW415–1250–1'' and 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–1/–3.'' (For obtaining the tasks for Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 5000 TLMC.)
- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6000 Time Limits/Maintenance Checks, Publication No. GL 6000 TLMC, Revision 16, dated December 19, 2023, which includes Tasks 32–43–37–101, ''Discard the No. 2 Brake Accumulator, Part No. GW415–1250–1'' and 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–1/–3.'' (For obtaining the tasks for Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, use Document Identification No. GL 6000 TLMC.)
- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express Time Limits/Maintenance Checks, Publication No. BD–700 TLMC, Revision 35, dated December 19, 2023, which includes Tasks 32–43–37–101, ''Discard the No. 2 Brake Accumulator, Part No. GW415–1250–1'' and 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–1/–3.'' (For obtaining the tasks for Bombardier Global Express TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 700 TLMC.)
- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express XRS Time Limits/Maintenance Checks, Publication No. BD–700 XRS TLMC, Revision 22, dated December 19, 2023, which includes Tasks 32–43–37–101, ''Discard the No. 2 Brake Accumulator, Part No. GW415–1250–1'' and 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–1/–3.'' (For obtaining the tasks for Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, use Document Identification No. GL XRS TLMC.)
- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5500 Time Limits/Maintenance Checks, Publication No. GL 5500 TLMC, Revision 5, dated December 19, 2023, which includes Task 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–3.'' (For obtaining the task for Bombardier Global 5500 TLMC, Publication No. GL 5500 TLMC, use Document Identification No. GL 5500 TLMC.)
- Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6500 Time Limits/Maintenance Checks, Publication No. GL 6500 TLMC, Revision 5, dated December 19, 2023, which includes Task 32–44–05–101, ''Discard the No. 3 Brake Accumulator, Part No. GW415–1200–3.'' (For obtaining the task for Bombardier Global 6500 TLMC, Publication No. GL 6500 TLMC, use Document Identification No. GL 6500 TLMC.)

The FAA also reviewed the following service information, which specifies procedures for determining the accumulated landings on the brake accumulators. Knowing the accumulated landings is necessary to comply with the life limit. These documents are distinct because they apply to different airplane configurations.

- Bombardier Service Bulletin 700–1A11–32–030, Revision 02, dated March 2, 2023.
- Bombardier Service Bulletin 700–32–043, Revision 02, dated March 2, 2023.
- Bombardier Service Bulletin 700–32–5020, Revision 02, dated March 2, 2023.
- Bombardier Service Bulletin 700–32–5506, Revision 02, dated March 2, 2023.
- Bombardier Service Bulletin 700–32–6020, Revision 02, dated March 2, 2023.
- Bombardier Service Bulletin 700–32–6506, Revision 02, dated March 2, 2023.

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**.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations for certain brake accumulators. This proposed AD also would require determining the accumulated landings on the affected brake accumulators.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 117 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the maintenance or inspection program

takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1.5 work-hours × $85 per hour = $128	$0	$128	$14,976

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2024–0228; Project Identifier MCAI–2022–00599–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 18, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, serial numbers 9002 through 9998 inclusive, and 60001 through 60046 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks; 32, Landing Gear.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations for certain brake accumulators are necessary. The FAA is issuing this AD to address brake accumulators that could surpass a life limit and fail, resulting in loss of hydraulic pressure on the associated hydraulic system, which services the main and emergency/parking brakes on the main landing gear. The unsafe condition, if not addressed, could result in reduced or total loss of available braking and a possible runway excursion.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information in the tasks specified in table 1 to paragraph (g) of this AD of Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the applicable Time Limits/Maintenance Checks (TLMC) Manual. The initial compliance time for doing the tasks is at the time specified in the tasks specified in table 1 to paragraph (g) of this AD, or within 90 days after the effective date of this AD, whichever occurs later.

BILLING CODE 4910–13–P

Table 1 to Paragraph (g)—Applicable TLMC Manuals and Service Bulletins

Airplane Model and TLMC Manual	Task Number 32-43-37-101 (Discard the No. 2 Brake Accumulator, Part No. GW415-1250-1) TLMC Revision	Task Number 32-44-05-101 (Discard the No. 3 Brake Accumulator, Part No. GW415-1200-1/-3) TLMC Revision	Bombardier Service Bulletin Number
BD-700-1A10 Bombardier Global Express TLMC, Publication No. BD-700 TLMC[1]	Revision 35, dated December 19, 2023	Revision 35, dated December 19, 2023	700-32-043, Revision 02, dated March 2, 2023
BD-700-1A10 Bombardier Global Express XRS TLMC, Publication No. BD-700 XRS TLMC[2]	Revision 22, dated December 19, 2023	Revision 22, dated December 19, 2023	700-32-043, Revision 02, dated March 2, 2023
BD-700-1A10 Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC[3]	Revision 16, dated December 19, 2023	Revision 16, dated December 19, 2023	700-32-6020, Revision 02, dated March 2, 2023
BD-700-1A10 Bombardier Global 6500 Time Limits/Maintenance Checks, Publication No. GL 6500 TLMC[4]	No action required by this AD because all airplanes were delivered with this task in their maintenance or inspection program and must comply with the task as part of the approved type design	Revision 5, dated December 19, 2023	700-32-6506, Revision 02, dated March 2, 2023
BD-700-1A11 Bombardier Global 5000 TLMC, Publication No. BD-700 TLMC[5]	Revision 26, dated December 19, 2023	Revision 26, dated December 19, 2023	700-1A11-32-030, Revision 02, dated March 2, 2023

Airplane Model and TLMC Manual	Task Number 32-43-37-101 (Discard the No. 2 Brake Accumulator, Part No. GW415-1250-1) TLMC Revision	Task Number 32-44-05-101 (Discard the No. 3 Brake Accumulator, Part No. GW415-1200-1/-3) TLMC Revision	Bombardier Service Bulletin Number
BD-700-1A11 Bombardier Global 5000 Featuring Global Vision Flight Deck TLMC, Publication No. GL 5000 GVFD TLMC[6]	Revision 16, dated December 19, 2023	Revision 16, dated December 19, 2023	700-32-5020, Revision 02, dated March 2, 2023
BD-700-1A11 Bombardier Global 5500 TLMC, Publication No. GL 5500 TLMC[7]	No action required by this AD because all airplanes were delivered with this task in their maintenance or inspection program and must comply with the task as part of the approved type design	Revision 5, dated December 19, 2023	700-32-5506, Revision 02, dated March 2, 2023

[1] For obtaining the tasks for Bombardier Global Express TLMC, Publication No. BD-700 TLMC, use Document Identification No. GL 700 TLMC.

[2] For obtaining the tasks for Bombardier Global Express XRS TLMC, Publication No. BD-700 XRS TLMC, use Document Identification No. GL XRS TLMC.

[3] For obtaining the tasks for Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, use Document Identification No. GL 6000 TLMC.

[4] For obtaining the task for Bombardier Global 6500 Time Limits/Maintenance Checks, Publication No. GL 6500 TLMC, use Document Identification No. GL 6500 TLMC.

[5] For obtaining the tasks for Bombardier Global 5000 TLMC, Publication No. BD-700 TLMC, use Document Identification No. GL 5000 TLMC.

[6] For obtaining the tasks for Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, use Document Identification No. GL 5000 GVFD TLMC.

[7] For obtaining the task for Bombardier Global 5500 TLMC, Publication No. GL 5500 TLMC, use Document Identification No. GL 5500 TLMC.

BILLING CODE 4910–13–C

(h) Determination of Accumulated Landings

Within 90 days after the effective date of this AD, determine the accumulated landings on the installed No. 2 and No. 3 brake accumulators in accordance with Paragraph 2.A. of the Accomplishment Instructions of the applicable service bulletin specified in table 1 to paragraph (g) of this AD.

(i) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraphs (j)(1) through (12) of this AD.

(1) Bombardier Service Bulletin 700–1A11–32–030, dated October 27, 2021.

(2) Bombardier Service Bulletin 700–1A11–32–030, Revision 01, dated March 8, 2022.

(3) Bombardier Service Bulletin 700–32–043, dated October 27, 2021.

(4) Bombardier Service Bulletin 700–32–043, Revision 01, dated March 8, 2022.

(5) Bombardier Service Bulletin 700–32–5020, dated October 27, 2021.

(6) Bombardier Service Bulletin 700–32–5020, Revision 01, dated March 8, 2022.

(7) Bombardier Service Bulletin 700–32–5506, dated October 27, 2021.

(8) Bombardier Service Bulletin 700–32–5506, Revision 01, dated March 8, 2022.

(9) Bombardier Service Bulletin 700–32–6020, dated October 27, 2021.

(10) Bombardier Service Bulletin 700–32–6020, Revision 01, dated March 8, 2022.

(11) Bombardier Service Bulletin 700–32–6506, dated October 27, 2021.

(12) Bombardier Service Bulletin 700–32–6506, Revision 01, dated March 8, 2022.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-AVS-NYACO-COS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(l) Additional Information

(1) Refer to Transport Canada AD CF–2022–25, dated May 3, 2022, or related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2024–0228.

(2) For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–1A11–32–030, Revision 02, dated March 2, 2023.

(ii) Bombardier Service Bulletin 700–32–043, Revision 02, dated March 2, 2023.

(iii) Bombardier Service Bulletin 700–32–5020, Revision 02, dated March 2, 2023.

(iv) Bombardier Service Bulletin 700–32–5506, Revision 02, dated March 2, 2023.

(v) Bombardier Service Bulletin 700–32–6020, Revision 02, dated March 2, 2023.

(vi) Bombardier Service Bulletin 700–32–6506, Revision 02, dated March 2, 2023.

(vii) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Featuring Global Vision Flight Deck Time Limits/Maintenance Checks (TLMC), Publication No. GL 5000 GVFD TLMC, Revision 16, dated December 19, 2023.

Note 1 to paragraph (m)(2)(vii): For obtaining the tasks for Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, use Document Identification No. GL 5000 GVFD TLMC.

(viii) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Time Limits/Maintenance Checks, Publication No. BD–700 TLMC, Revision 26, dated December 19, 2023.

Note 2 to paragraph (m)(2)(viii): For obtaining the tasks for Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 5000 TLMC.

(ix) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6000 Time Limits/Maintenance Checks, Publication No. GL 6000 TLMC, Revision 16, dated December 19, 2023.

Note 3 to paragraph (m)(2)(ix): For obtaining the tasks for Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, use Document Identification No. GL 6000 TLMC.

(x) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express Time Limits/Maintenance Checks, Publication No. BD–700 TLMC, Revision 35, dated December 19, 2023.

Note 4 to paragraph (m)(2)(x): For obtaining the tasks for Bombardier Global Express TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 700 TLMC.

(xi) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express XRS Time Limits/Maintenance Checks, Publication No. BD–700 XRS TLMC, Revision 22, dated December 19, 2023.

Note 5 to paragraph (m)(2)(xi): For obtaining the tasks for Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, use Document Identification No. GL XRS TLMC.

(xii) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5500 Time Limits/Maintenance Checks, Publication No. GL 5500 TLMC, Revision 5, dated December 19, 2023.

Note 6 to paragraph (m)(2)(xii): For obtaining the task for Bombardier Global 5500 TLMC, Publication No. GL 5500 TLMC, use Document Identification No. GL 5500 TLMC.

(xiii) Section 5–10–11, ''Life Limits (Systems),'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6500 Time Limits/Maintenance Checks, Publication No. GL 6500 TLMC, Revision 5, dated December 19, 2023.

Note 7 to paragraph (m)(2)(xiii): For obtaining the task for Bombardier Global 6500 TLMC, Publication No. GL 6500 TLMC, use Document Identification No. GL 6500 TLMC.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*

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

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

Issued on February 8, 2024.

Victor Wicklund,

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

[FR Doc. 2024–03008 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117631–23]

RIN 1545–BQ97

Section 45V Credit for Production of Clean Hydrogen; Section 48(a)(15) Election To Treat Clean Hydrogen Production Facilities as Energy Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document corrects a notice of proposed rulemaking (REG–117631–23) published in the **Federal Register** on December 26, 2023, containing proposed regulations relating to the credit for production of clean hydrogen (clean hydrogen production credit) and the energy credit, as established and amended respectively by the Inflation Reduction Act of 2022.

DATES: The public hearing on these proposed regulations is scheduled to be held on March 25, 2024, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 4, 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–117631–23). Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket. Send paper submissions to: CC:PA:01:PR (REG–117631–23), 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 or the public hearing, 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–117631–23) that is the subject of these corrections is under sections 45V and 48(a)(15) of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–117631–23) contains errors that need to be corrected.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–117631–23), which was the subject of FR Doc. 2023–28359, published on December 26, 2023, at 88 FR 89220 is corrected:

1. On page 89221, the third column, the eighth line from the bottom of paragraph ''b. Qualified Clean Hydrogen'', is corrected to read, ''a U.S. territory (having the''.

2. On page 89222, the third column, the seventh line from the bottom of the first partial paragraph is corrected to read, ''energy, beginning of construction, or prevailing wage and''.

3. On page 89223, the third column, the fifth line of the first partial paragraph is corrected to read, ''addition to the production of qualified clean''.

4. On page 89223, the third column, in the sixth line of footnote 6. the language ''$H_{2.}$''is corrected to read, ''H2.''.

5. On page 89223, the third column, the second line from the bottom of footnote 6. is corrected to read, ''for 45VH2–GREET will be provided in IRS forms''.

6. On page 89224, the first column, under the heading ''E. Qualified Clean Hydrogen'', the first full paragraph, the seventh line from the bottom of the paragraph is corrected to read, ''1(a)(9)(i) would provide that, to''.

7. On page 89225, the last line of the first column is corrected to read, ''Credit, or any successor form(s).''

8. On page 89226, the second column, paragraph ''1. Process for Filing a Provisional Emissions Rate Petition'', the second line from the bottom of the paragraph is corrected to read, ''*Clean Hydrogen Production Credit,* or any successor form(s), to''.

9. On page 89226, the third column, under the heading ''3. Department of Energy Emissions Value Request Process'' in the second paragraph, the language ''§ 1.45V–5'' in corrected to read, ''§ 1.45V–4(c)(5)'', wherever it appears.

10. On page 89227, the second column, under the heading ''C. Use of Energy Attribute Certificates'' in the second line from the bottom of the first full paragraph the language, ''GREET Model'' is corrected to read ''GREET model''.

11. On page 89227, the second column, footnote 9 is corrected to read, ''[9] *EPA Letter, available at https://home.treasury.gov/system/files/136/45V-NPRM-EPAletter.pdf;* DOE, ''Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,'' Washington, DC (2023), available at *www.energy.gov/45vresources.*''.

12. On page 89227, the third column, the third line of the first partial paragraph is corrected to read, ''generating facility rather than''.

13. On page 89228, the second column, the last two lines of the first partial paragraph are corrected to read, ''(PJM–GATS); and Western Renewable Energy Generation Information System (WREGIS).''.

14. On page 89228, the second column, the seventh line from the bottom of the first full paragraph is corrected to read, ''linked to a single region. The Midcontinent Independent System Operator, Inc. (MISO)''.

15. On page 89228, the second column, the fourth line from the bottom of the first full paragraph is corrected to read, ''as shown in the map located in the GREET''.

16. On page 89228, the second column, the heading ''2. Eligible Energy Attribute Certificate Requirements'' is corrected to read, ''2. Qualifying Energy Attribute Certificate Requirements''.

17. On page 89228, the third column, the sixteenth and seventeenth lines from the top of the column are corrected to read, ''require that qualifying EACs represent electricity produced in''.

18. On page 89228, the third column, footnote 12 is corrected to read, ''[12] EPA Letter, available at *https://home.treasury.gov/system/files/136/45V-NPRM-EPA-letter.pdf;* DOE, ''Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,'' Washington, DC (2023), available at *www.energy.gov/45vresources.*''.

19. On page 89229, the third column, the third line from the top of the column is corrected to read, ''lifecycle GHG emissions rate as determined''.

20. On page 89230, the first column, footnote 13 is corrected to read, ''[13] DOE, ''Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,'' Washington, DC (2023), available at *www.energy.gov/45vresources.*''.

21. On page 89231, the first column, in the second line from the bottom of the first full paragraph the language ''state'' is corrected to read, ''State''.

22. On page 89231, the second column, in the third line from the bottom of the first full paragraph the language ''state'' is corrected to read ''State''.

23. On page 89231, the third column, footnote 17 is corrected to read, ''[17] DOE, ''Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,'' Washington, DC (2023), available at *www.energy.gov/45vresources.*''.

24. On page 89232, the first column, footnote 20 is corrected to read, ''[20] For example, *see* New York State Energy Research and Development Authority (NYSERDA), ''Projected Emission Factors for New York State Grid Electricity,'' NYSERDA Report Number 22–18 (2022), available at *https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Energy-Analysis/22-18-Projected-Emission-Factors-for-New-York-Grid-Electricity.pdf.*''.

25. On page 89232, the first column, the second line from the bottom of footnote 21 is corrected to read, ''marginal emissions rates at or near zero are defined as''.

26. On page 89232, the third column, in the seventh line from the top of the column the language ''state'' is corrected to read ''State''.

27. On page 89233, the first column, the second partial paragraph the language ''state'' is corrected to read ''State'' wherever it appears.

28. On page 89233, the first column, in the eleventh line from the bottom of the second partial paragraph the language ''federal'' is corrected to read ''Federal''.

29. On page 89233, the first column, footnote 22 is corrected to read, ''[22] DOE, ''Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,'' Washington, DC (2023), available at *www.energy.gov/45vresources.*''.

30. On page 89233, the second column, footnote 25. is corrected to read, ''[25] DOE, ''Assessing Lifecycle Greenhouse Gas Emissions Associated with Electricity Use for the Section 45V Clean Hydrogen Production Tax Credit,'' Washington, DC (2023), available at *www.energy.gov/45vresources.*''.

31. On page 89234, the first column, the twentieth line from the bottom of the first paragraph is corrected to read, ''claimed on the Form 7210, *Clean Hydrogen Production Credit,* or any successor form(s), or the data''.

32. On page 89234, the second column, the tenth and eleventh lines from the top of the second paragraph are corrected to read, ''(as defined in section 638(1) or a U.S. territory (having the meaning of''.

33. On page 89235, the first column, the second line from the bottom of paragraph ''F. General Information Required To Be Included in Verification Report'' is corrected to read, ''and calibration of the device(s) has been''.

34. On page 89235, the third column, the seventh line from the bottom of the first full paragraph is corrected to read, ''kilogram of hydrogen but for the''.

35. On page 89236, the first column, under the heading ''A. Overview'' the sixth line from the top of the third paragraph is corrected to read, ''45V(c)(3) and proposed § 1.45V–''.

36. On page 89236, the third column, under the paragraph ''2. Special Rule for Partnerships and S Corporations'', in the fourteenth line from the top of the paragraph the language ''forms(s)'' is corrected to read ''form(s)''.

37. On page 89236, the third column, the third line from the bottom of the column is corrected to read, ''claimant's section 48 credit must be based on''.

38. On page 89237, the first column, the third line from the top of the column is corrected to read, ''*Credit,* or any successor form(s), and''.

39. On page 89237, the first column, the second line from the bottom of the first partial paragraph the language ''forms(s)'' is corrected to read ''form(s)''.

40. On page 89237, the first column, the third line from the bottom of the column is corrected to read, ''5(d) through 1.45V–5(h); (ii) a''.

41. On page 89239, the first column, the fourth line from the top of the column is corrected to read, ''generate electricity, or upgrade to''.

42. On page 89239, the first column, the thirteenth line from the bottom of the first partial paragraph is corrected to read, ''prior to the taxable year in which the''.

43. On page 89239, the first column, the tenth line from the bottom of the first partial paragraph is corrected to read, ''an emissions value consistent with''.

44. On page 89239, the second column, the third line of paragraph ''(3)'' is corrected to read, ''for RNG certificates in book-and-claim''.

45. On page 89240, the second column, the fourth line from the top of the column is corrected to read, ''The Treasury Department and the IRS are''.

46. On page 89240, the second column, the twenty-second line from the top of the first full paragraph is corrected to read, ''Department and the IRS are considering''.

47. On page 89240, the second column, the fourteenth line from the bottom of the first full paragraph is corrected to read, ''The Treasury Department and the IRS''.

48. On page 89241, the first column, the fourth line from the top of the column is corrected to read, ''to the IRS will be performed by attaching''.

49. On page 89241, the first column, the sixth line from the top of the column is corrected to read, ''DOE to the filing of Form 7210, *Clean Hydrogen Production Credit,* or any successor form(s). The''.

50. On page 89241, the first column, the ninth line from the top of the column is corrected to read, ''Instructions for Form 7210. Form 7210 will be''.

51. On page 89241, the first column, the ninth line of the second full paragraph is corrected to read, ''§ 1.45V–5. The proposed regulations also''.

52. On page 89241, the second column, the third line from the top of the column is corrected to read, ''recordkeeping requirements for''.

53. On page 89241, the second column, the sixteenth line from the top of the column is corrected to read, ''an unrelated third party. The annual''.

54. On page 89241, the second column, the sixth line from the bottom of the column is corrected to read, ''Instructions for Form 3468. The revisions to''.

55. On page 89242, the third column, the fourth line from the bottom of the first full paragraph is corrected to read, ''their Federal income tax return or''.

56. On page 89243, the second column, the second line from the top of the column is corrected to read, ''entrance. In addition, all visitors must''.

57. On page 89243, the second column, the seventh line of the third full paragraph is corrected to read, ''regulation number REG–117631–23 and''.

58. On page 89243, the second column, the sixth line from the bottom of the column is corrected to read, ''received by 5:00 p.m. ET on March 18,''.

§ 1.45V–0 [Corrected]

■ 59. On page 89244, the second column, the entry for § 1.45V–6(b) is corrected to read, ''Retrofit of an existing facility (80/20 Rule.)''.

■ 60. On page 89244, the second column, the entry for § 1.45V–6(c)(4) is corrected to read, ''Example 4: Retrofit of an existing facility (80/20 Rule).''.

■ 61. On page 89244, the third column, the entry for 1.45V–6(c)(5) is corrected to read, ''Example 5: Retrofit of an existing facility (80/20 Rule) and coordination with section 45Q credit previously allowed.''.

§ 1.45V–1 [Corrected]

■ 62. On page 89245, the second column, the third line of paragraph (a)(7)(iii) is corrected to read, ''addition to the production of qualified clean''.
■ 63. On page 89245, the third column, in the eleventh and twelfth lines of paragraph (a)(7)(iv) remove the language ''the regulations in this part under section 45V'' and add in its place the language ''the section 45V regulations''.
■ 64. On page 89246, the first column, the second and third lines of paragraph (9)(i)(A) are corrected to read, ''section 638(1) of the Code) or a U.S. territory, which, for purposes of''.
■ 65. On page 89246, first column, in the fourth and fifth lines of paragraph (a)(9)(i)(A) remove the language ''the regulations in this part under section 45V'' and add in its place the language ''the section 45V regulations''.

§ 1.45V–2 [Corrected]

■ 66. On page 89246, the third column, the sixth line from the bottom of paragraph (a) is corrected to read, ''Rule is satisfied will not be treated as''.
■ 67. On page 89246, the third column, the second sentence of paragraph (b)(1) is corrected to read, ''A purpose of section 45V and the regulations under section 45V (and so much of sections 6417 and 6418 and the regulations thereunder related to the section 45V credit) is to provide taxpayers an incentive to produce qualified clean hydrogen for a productive use.''.
■ 68. On page 89246, the third column, in the second and third lines from the bottom of paragraph (b)(1) remove the language ''regulations in this part under section 45V of the Code'' and add in its place the language ''section 45V regulations''.
■ 69. On page 89247, the first column, the fourth line from the bottom of paragraph (b)(2)(i) is corrected to read, ''of the section 45V credit by claiming''.
■ 70. On page 89247, the first column, the second line from the bottom of paragraph (b)(2)(i) is corrected to read, ''credit through an election under''.

§ 1.45V–4 [Corrected]

■ 71. On page 89248, the first column, the fifth line from the top of paragraph (c)(3) is corrected to read, ''the DOE's analytical assessment of the''.
■ 72. On page 89248, the first column, the second line from the bottom of paragraph (c)(3) is corrected to read, ''*Clean Hydrogen Production Credit,* or any successor form(s), to''.
■ 73. On page 89248, the first column, the sixth and seventh lines of paragraph (c)(4) are corrected to read, ''be deemed accepted. A taxpayer may rely upon an emissions value''.
■ 74. On page 89248, the first column, in the second and third lines from the bottom of paragraph (c)(5), remove the language ''regulations in this part under section 45V'' and add in its place the language ''section 45V regulations''.
■ 75. On page 89248, the second column, the heading of paragraph (d) is corrected to read, ''*Use of energy attribute certificates (EACs)*– ''.
■ 76. On page 89248, the second column, the seventh and eighth lines of paragraph (d)(1) are corrected to read, ''Secretary determines a PER for hydrogen produced at''.
■ 77. On page 89248, the third column, the twelfth line of paragraph (d)(1) is corrected to read, ''electricity used to produce hydrogen''.
■ 78. On page 89249, the second column, fifth line from the bottom of paragraph (d)(3)(i)(C) is corrected to read, ''megawatt hours (MWh) (2 MW''.
■ 79. On page 89249, the second column, the second line from the bottom of paragraph (d)(3)(i)(C) is corrected to read, ''hour of Power Plant's production''.

§ 1.45V–5 [Corrected]

■ 80. On page 89250, the second column, the first line of paragraph (e)(1)(ii) is corrected to read, ''The qualified verifier has not been a''.

§ 1.45V–6 [Corrected]

■ 81. On page 89251, the second column, the heading of paragraph (b) is corrected to read, ''*Retrofit of an existing facility (80/20 Rule).*
■ 82. On page 89252, the first column, the eighteenth and nineteenth lines of paragraph (c)(3)(i) are corrected to read, ''respect to the new CCE located at Facility Y.''.
■ 83. On page 89252, the first column, the heading of paragraph (c)(4) is corrected to read ''*Example 4: Retrofit of an existing facilit (80/20 Rule)*—''.
■ 84. On page 89252, the first column, the heading of paragraph (c)(5) is corrected to read, ''Example *5: Retrofit of an existing facility (80/20 Rule) and coordination with section 45Q credit previously allowed*—''.

§ 1.48–15 [Corrected]

■ 85. On page 89252, the third column, the fourth line from the bottom of paragraph (d)(2) is corrected to read, ''successor form(s), with its partnership''.
■ 86. On page 89254, the first and second columns, in paragraph (f)(5)(i) the language ''0.44kg/CO2e'' is corrected to read, ''0.44kg of CO2e'', wherever it appears.
■ 87. On page 89254, the first and second columns, in paragraph (f)(5)(i) the language ''1.4kg/CO2e'' is corrected to read, ''1.4kg of CO2e'', wherever it appears.
■ On page 89254, the second column, the fifth line of paragraph (f)(5)(ii) is corrected to read, ''0.44kg of CO2e per kilogram of hydrogen, which is the rate specified''.
■ 88. On page 89254, the third column, the sixth line from the bottom of paragraph (g) is corrected to read, ''definition of a specified clean''.

Oluwafunmilayo A. Taylor,

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

[FR Doc. 2024–04304 Filed 3–1–24; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2024–OSERS–0011]

Proposed Priority and Requirements—Technical Assistance on State Data Collection—National Technical Assistance Center To Improve State Capacity To Collect, Report, Analyze, and Use Accurate IDEA Part B Data

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

ACTION: Proposed priority and requirements.

SUMMARY: The Department of Education (Department) proposes a priority and requirements for a National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data (Center) under the Technical Assistance on State Data Collection program, Assistance Listing Number (ALN) 84.373Y. The Department may use this priority and these requirements for competitions in fiscal year (FY) 2024 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to improve the capacity of States to meet the data collection requirements under Part B of the Individuals with Disabilities Education Act (IDEA). This Center would support States in collecting, reporting, and determining how to best analyze and use their data and would customize its TA to meet each State's specific needs.

DATES: We must receive your comments on or before May 20, 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: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW, Room 4A10, Washington, DC 20202. Telephone: (202) 245–6391. Email: *Richelle.Davis@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 priority and requirements. To ensure that your comments have maximum effect in developing the final priority and requirements, we urge you to identify clearly the specific provision of the proposed priority or requirement that each comment addresses.

Directed Question: Given that Congress has not yet enacted an appropriation for FY 2024, the Department is still awaiting the finalization of its FY 2024 appropriations for IDEA, 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 the proposed priority 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 priority 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 the proposed priority 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 section 616 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 Priority

This document contains one proposed priority.

National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

Background:

We are proposing the same priority that we established through a notice of final priority published in the **Federal Register** on August 12, 2019 (84 FR 39736), with three changes. First, the proposed priority and requirements do not contain the requirement in paragraph (d)(5) that the applicant demonstrate how it will ensure that it will recover the lesser of: (a) Its actual indirect costs as determined by the grantee's negotiated indirect cost rate agreement with its cognizant Federal agency; and (b) 40 percent of its modified total direct cost base as defined in 2 CFR 200.1, effectively instituting an indirect cost cap. The Department proposes to remove and has not included this indirect cost cap in the proposed priority because we found that it led to a decrease in the number of applicants, which limited competition. Further, the purpose of the indirect cost cap was to maximize the amount of grant funds used to provide TA to States to improve their capacity to meet the IDEA data collection and reporting requirements. However, we found that was not the case, because the indirect cost cap did not result in a decrease in the amount of indirect costs charged, and was thus not needed. Second, expected outcome (e) in the proposed priority and requirements has been edited to include ''parents and families'' in the parenthetical providing examples of local consumers. The Department proposes to include this language in recognition that families

may also be local consumers of data. Third, paragraph (b)(5)(iv)(F) of the *application and administrative requirements* in the proposed priority and requirements has been edited to include a parenthetical providing examples of the Department-funded TA projects with whom this Center will be expected to coordinate and collaborate. The Department proposes to include this parenthetical in order to highlight the Department-funded TA centers which also provide TA on the IDEA data.

The Department reviewed the data collection and analysis capacity of States to ensure that IDEA data are being collected and accurately reported to the Department and the public. Specifically, the Office of Special Education Programs (OSEP) reviewed and analyzed information from multiple sources, including data quality reviews conducted by OSEP to evaluate the accuracy of section 618 data, Department-developed edit check reports, written and oral communication with States through the data quality process, and State-initiated requests for TA. The Department's assessment is that States have varying needs for TA to improve their IDEA data collection capacity and their ability to ensure IDEA data are accurate and can be reported to the Department and the public. States also need ongoing TA to help them improve their capacity to analyze and use IDEA data so they can provide more accurate information about their efforts to improve implementation of IDEA and more accurately target future improvement activities in their State Systemic Improvement Plans (SSIPs) submitted as part of their State Performance Plans/Annual Performance Reports (SPPs/APRs).

The ongoing need for TA to improve State data collection and analysis capacity is compounded by the increased turnover in State IDEA Part B Data Managers (data managers). Since 2019, half of the States and entities required to submit IDEA section 618 data have experienced the turnover of at least one data manager, with one State experiencing six new data managers during this time. In all, 50 new data managers have begun since 2019. This consistent turnover in data managers heightens the need for continued TA to support both new and experienced data managers as they work to collect, report, analyze, and use accurate IDEA data.

To meet the array of complex challenges regarding the collection, reporting, analysis, and use of IDEA data by States, OSEP proposes a priority to establish and operate the National Technical Assistance Center to Improve State Capacity to Collect, Report, Analyze, and Use Accurate IDEA Part B Data.

Proposed Priority:

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

The Data Center will provide TA to help States better meet current and future IDEA Part B data collection and reporting requirements, improve data quality, and analyze and use section 616, section 618, and other IDEA data (*e.g.,* State Supplemental Survey-IDEA) to identify and address programmatic strengths and areas for improvement. This Data Center will focus on providing TA on collecting, reporting, analyzing, and using Part B data on children with disabilities ages 3 through 21 required under sections 616 and 618 of IDEA. However, the Data Center will not provide TA on Part B data required under section 616 of IDEA for Indicators B7 (Preschool Outcomes) and B12 (Early Childhood Transition); TA on collecting, reporting, analyzing, and using Part B data associated with children with disabilities ages 3 through 5 for these indicators will be provided by the National IDEA Technical Assistance Center on Early Childhood Data Systems, ALN 84.373Z.

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

(a) Improved State data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices, including State educational agencies (SEAs), local educational agencies (LEAs), and schools to improve the quality of IDEA data required under sections 616 and 618 of IDEA;

(b) Increased capacity of States to submit accurate and timely data, to enhance current State validation procedures, and to prevent future errors in State-reported IDEA Part B data;

(c) Improved capacity of States to meet the data collection and reporting requirements under sections 616 and 618 of IDEA by addressing personnel training needs, developing effective tools (*e.g.,* training modules) and resources (*e.g.,* documentation of State data processes), and providing in-person and virtual opportunities for cross-State collaboration about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(d) Improved capacity of SEAs, and LEAs in collaboration with SEAs, to collect, report, analyze, and use both SEA and LEA IDEA data to identify programmatic strengths and areas for improvement, address root causes of poor performance towards outcomes, and evaluate progress towards outcomes;

(e) Improved IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools that can be used by States to lead to improvements in the validity and reliability of data required by IDEA and enable States to communicate accurate data to local consumers (*e.g.,* parents and families, school boards, the general public); and

(f) Increased capacity of States to collect, report, analyze, and use high-quality IDEA Part B data.

In addition to these programmatic requirements, to be considered for funding under this proposed priority, applicants must meet the application and administrative requirements in this proposed priority, which are:

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

(1) Address the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and to increase their capacity to analyze and use section 616 and section 618 data as both a means of improving data quality and identifying programmatic strengths and areas for improvement. To meet this requirement the applicant must—

(i) Demonstrate knowledge of current educational issues and policy initiatives about IDEA Part B data collection and reporting requirements and knowledge of State and local data collection systems, as appropriate;

(ii) Present applicable national, State, and local data to demonstrate the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement; and

(iii) Describe how SEAs and LEAs are currently meeting IDEA Part B data collection and reporting requirements and use section 616 and section 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement.

(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 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/Conceptual Framework_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).[1] To meet this requirement, the applicant must describe—

(i) The current research on the capacity of SEAs and LEAs to report and use data, specifically section 616 and section 618 data, as both a means of improving data quality and identifying strengths and areas for improvement; 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 the capacity needs of SEAs and LEAs to meet IDEA Part B data collection and reporting requirements and SEA and LEA analysis and use of sections 616 and 618 data as a means of both improving data quality and identifying programmatic strengths and areas for improvement;

(ii) Its proposed approach to universal, general TA,[2] which must identify the intended recipients, including the type and number of recipients, that will receive the products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,[3] which must identify—

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

(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 local level; and

(iv) Its proposed approach to intensive, sustained TA,[4] 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 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 SEA and LEA levels;

(C) 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;

(D) Its proposed plan for assisting SEAs (and LEAs, in conjunction with SEAs) to build or enhance training systems related to the IDEA Part B data collection and reporting requirements that include professional development based on adult learning principles and coaching;

(E) Its proposed plan for working with appropriate levels of the education system (*e.g.,* SEAs, regional TA providers, LEAs, schools, and families) to ensure that there is communication between each level and that there are systems in place to support the capacity needs of SEAs and LEAs to meet Part B data collection and reporting requirements under sections 616 and 618 of the IDEA; and

(F) Its proposed plan for collaborating and coordinating with Department-funded TA investments (*e.g.,* the Center funded under 84.373Z, the Center for IDEA Fiscal Reporting, the Center for the Integration of IDEA Data, the Data Center to Address Significant Disproportionality, and the Weiss Center) 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 priority; 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

[1] For purposes of these requirements,''evidence-based practices'' (EBPs) 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.

[2] ''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.

[3] ''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.

[4] ''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.

implemented by a third-party evaluator.[5] 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 for the review process; 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; 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:

(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 two and one-half day project directors' conference in Washington, DC, during each year of the project period; and

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

(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) 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;

(5) 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; and

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

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 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 Priority and Requirements

We will announce the final priority and requirements in a document in the **Federal Register**. We will determine the final priority and requirements after considering responses to this document and other information available to the

[5] 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.

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 this proposed priority 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 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.'' 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 priority 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 the proposed priority and requirements easier to understand, including answers to questions such as the following:

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

To send any comments about how the Department could make the proposed priority 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 the proposed priority 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 an applicant

by the proposed priority and requirements would be limited to paperwork burden related to preparing an application and that the benefits of the proposed priority and requirements would outweigh any costs incurred by the applicants.

Participation in the Technical Assistance on State Data Collection program is voluntary. For this reason, the proposed priority 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 the proposed priority 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

The proposed priority and requirements contain information collection requirements that are approved by OMB under OMB control number 1820–0028. The proposed priority 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 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.

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Glenna Wright-Gallo,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2024–04437 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 42

[Docket No. PTO–P–2020–0060]

RIN 0651–AD50

Motion To Amend Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board

AGENCY: Patent Trial and Appeal Board, United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to update its rules governing amendment practice in trial proceedings under the Leahy-Smith America Invents Act (AIA) to make permanent certain provisions of the Office's motion to amend pilot program (MTA pilot program) and to revise the rules that allocate burdens of persuasion in connection with motions to amend (MTAs). The Office proposes to revise its rules of practice to provide for issuance of preliminary guidance in response to an MTA and to provide a patent owner with the option for filing one additional revised MTA. Further, the Office proposes to revise the rules to clarify that a preponderance of evidence standard applies to any new ground of unpatentability raised by the Board and to clarify that when exercising the discretion to grant or deny an MTA or to raise a new ground of unpatentability, the Board may consider all evidence of record in the proceeding, including evidence identified through a prior art search conducted by the Office at the Board's request and added to the record. These rules better ensure the Office's role of issuing robust and reliable patents, and the predictability and certainty of post-grant trial proceedings before the Board. These changes would apply to the existing consolidated set of rules relating to the Office trial practice for *inter partes* review (IPR), post-grant review (PGR), and derivation proceedings that implemented provisions of the AIA providing for trials before the Office.

DATES: To ensure consideration, commenters must submit written comments on or before May 3, 2024.

ADDRESSES: For reasons of government efficiency, comments must be submitted through the Federal eRulemaking Portal at *https://www.regulations.gov.* To submit comments via the portal, enter docket number PTO–P–2020–0060 on the home page and select ''search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this proposed rulemaking and select the ''Comment'' icon, complete the required fields, and enter or attach your comments. Attachments to electronic comments will be accepted in ADOBE® portable document format or MICROSOFT WORD® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal (*https://www.regulations.gov*) for additional instructions on providing comments via the portal. If the electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions regarding how to submit comments by mail or by hand delivery, based upon the public's ability to obtain access to USPTO facilities at the time.

FOR FURTHER INFORMATION CONTACT: Miriam L. Quinn, Acting Senior Lead Administrative Patent Judge; or Melissa Haapala, Vice Chief Administrative Patent Judge, at 571–272–9797, *Miriam.Quinn@uspto.gov* or *Melissa.Haapala@uspto.gov,* respectively.

SUPPLEMENTARY INFORMATION:

Background

Development of the Proposed Rule

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and in 2012, the Office implemented rules to govern Office trial practice for AIA trials, including IPR, PGR, covered business method (CBM), and derivation proceedings pursuant to 35 U.S.C. 135, 316, and 326 and AIA 18(d)(2). See 37 CFR part 42; Rules of Practice for Trials before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (August. 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (August 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (August. 14, 2012). Additionally, the Office published a Patent Trial Practice Guide (Practice Guide) for the rules to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. See 84 FR 64280 (November 21, 2019); *https://www.uspto.gov/TrialPracticeGuideConsolidated.* The Practice Guide provides a helpful overview of the Patent Trial and Appeal Board (PTAB or Board) process. See, *e.g.,* Practice Guide at 5–8 (AIA trial process), 66–72 (motions to amend).

In 2018, the Office published a Request for Comments (RFC) on a proposed procedure for motions to amend filed in AIA proceedings before the PTAB. See RFC on MTA Practice and Procedures in Trial Proceedings under the America Invents Act before the Patent Trial and Appeal Board, 83 FR 54319 (October 29, 2018) (seeking public comments on a previously proposed procedure for MTAs, the Board's MTA practice generally, and the allocation of burdens of persuasion after *Aqua Products, Inc.* v. *Matal,* 872 F.3d 1290 (Fed. Cir. 2017) (en banc) (*Aqua Products*)) (2018 RFC). After considering the comments received in response, the Office implemented the MTA pilot program. See Notice Regarding a New Pilot Program Concerning MTA Practice and Procedures in Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 84 FR 9497 (March 15, 2019) (MTA pilot program notice). The MTA pilot program was extended through September 16, 2024. Extension of the Patent Trial and Appeal Board Motion to Amend Pilot Program, 87 FR 60134 (October 4, 2022).

Preliminary Guidance and Revised Motions To Amend Under the MTA Pilot Program

The MTA pilot program provides a patent owner with two independent options when proposing substitute claims for challenged patent claims during an AIA trial proceeding. Under the first option in the MTA pilot program, if requested by a patent owner in its original MTA, the Board will issue preliminary, non-binding guidance. Under the second option, a patent owner may file, without needing Board authorization, a revised MTA as discussed further below.

The Board's preliminary guidance typically will come in the form of a short paper issued after a petitioner files its opposition to the MTA (or after the due date for a petitioner's opposition, if none is filed). The preliminary guidance provides, at a minimum, an initial discussion about whether there is a reasonable likelihood that the original MTA meets statutory and regulatory requirements for an MTA and whether the petitioner (or the record then before the Office, including any opposition to the MTA and accompanying evidence) establishes a reasonable likelihood that the substitute claims are unpatentable. See MTA pilot program notice, 84 FR 9500.

Further, a patent owner may choose to file a revised MTA after receiving a petitioner's opposition to the original MTA or after receiving the Board's preliminary guidance (if requested). A revised MTA replaces the original MTA. If a patent owner chooses to file a revised MTA, the revised MTA must include one or more new proposed substitute claims in place of previously presented substitute claims, where each new proposed substitute claim presents a new claim amendment. The new claim amendments, as well as arguments and evidence, must be responsive to issues raised in the preliminary guidance (if requested) or in petitioner's opposition. Instead of filing a revised MTA, a patent owner may choose to file a reply to a petitioner's opposition to the MTA and/or the preliminary guidance (if requested). If preliminary guidance was issued at a patent owner's request, the patent owner may choose to take no action and wait for the petitioner's reply to the preliminary guidance and then file a sur-reply.

The MTA pilot program notice set forth typical timelines and due dates for the filing or issuance of MTA-related papers, depending on whether a patent owner takes advantage of neither, one, or both options under the program. See MTA pilot program notice, 84 FR 9506–9507, Appendices 1A (Patent Owner Reply Timeline) and 1B (Revised MTA Timeline). Where a revised MTA is filed, the Office issues a scheduling order that adjusts the deadline for oral hearing to accommodate the additional briefing on the MTA.

As described in the MTA pilot program notice and implemented by the Board, the preliminary guidance provides the Board's initial, preliminary views on the original MTA. With that in mind, the preliminary guidance will provide an initial discussion about whether the parties have shown a reasonable likelihood of meeting their respective burdens. See Rules of Practice To Allocate the Burden of Persuasion on Motions To Amend in Trial Proceedings Before the Patent Trial and Appeal Board. 85 FR 82923 (December 21, 2020); 37 CFR 42.121(d), 42.221(d). In particular, the preliminary guidance will address whether there is a reasonable likelihood that the patent owner has shown that the MTA meets the statutory and regulatory requirements for an MTA. See 37 CFR 42.121(d)(1), 42.221(d)(1); see also 35 U.S.C. 316(d), 326(d); *Lectrosonics, Inc.* v. *Zaxcom, Inc.,* IPR2018–01129, 2020 WL 407145, at *1 (precedential). The preliminary guidance will also provide an initial discussion about whether the petitioner (or the record then before the Office, including any opposition to the MTA and accompanying evidence) has established a reasonable likelihood that the proposed substitute claims are unpatentable. See 37 CFR 42.121(d)(2), 42.221(d)(2). The preliminary guidance may also address new grounds of unpatentability discretionarily raised by the Board, together with citations to the evidence of record supporting those new grounds. See 37 CFR 42.121(d)(3) and (4), 42.221(d)(3) and (4). In general, the Board's preliminary guidance will address the proposed substitute claims, in light of the amendments presented in those claims, in a patent owner's original MTA and will not address the patentability of the originally challenged claims.

Similar to an institution decision, preliminary guidance on an MTA during an AIA trial will not be binding on the Board. See *Medytox, Inc.* v. *Galderma S.A.,* 71 F.4th 990, 1000 (Fed. Cir. 2023) (holding that the Board's decision to change its claim construction between its Preliminary Guidance and the final written decision (FWD) was not arbitrary and capricious

and did not violate the Administrative Procedure Act). The Board's preliminary guidance is not a ''decision'' under 37 CFR 42.71(d), and thus parties may not file a request for rehearing or Director Review of the preliminary guidance. The parties will have the opportunity to respond to the preliminary guidance. For example, a patent owner may file a reply to a petitioner's opposition to the MTA or a revised MTA. The patent owner's reply may respond to the Board's preliminary guidance and/or to the petitioner's opposition to the MTA. If an opposition is not filed, but a preliminary guidance was requested, a patent owner's reply may respond only to the preliminary guidance. New evidence (including declarations) may be submitted with every paper in the MTA process, except with a sur-reply or in the special circumstance discussed below. Thus, a patent owner may file new evidence, including declarations, with its revised MTA or reply. See 84 FR 9500 (stating further that when filing new declarations, parties are expected to make their declarants available for depositions promptly and to make their attorneys available to take and defend such depositions; any unavailability will not be a reason to adjust the schedule for briefing on an MTA or revised MTA absent extraordinary circumstances). The sur-reply also may respond to the preliminary guidance and is limited to responding to arguments made in the patent owner's reply brief, to commenting on reply declaration testimony, or pointing to cross-examination testimony.

In the special circumstance of a patent owner not filing either a reply or a revised MTA after receiving preliminary guidance from the Board, a petitioner may file a reply to the preliminary guidance, but such a reply may respond only to the preliminary guidance and may not be accompanied by new evidence. If a petitioner files a reply in this context, a patent owner may file a sur-reply, but that sur-reply may respond only to the petitioner's reply and may not be accompanied by new evidence.

If a patent owner files an MTA, the patent owner may, without prior authorization from the Board, file one revised MTA after receiving a petitioner's opposition or the Board's preliminary guidance (if requested). If the patent owner did not elect to receive preliminary guidance, the patent owner can still choose to file a revised MTA to address the petitioner's opposition to the original MTA.

Further, a revised MTA replaces the original MTA filed earlier in the proceeding. A patent owner may not incorporate by reference substitute claims or arguments presented in the original MTA into the revised MTA; all proposed substitute claims a patent owner wishes the Board to consider must be presented in the revised MTA.

A revised MTA is an additional MTA that is automatically authorized under 35 U.S.C. 316(d)(2) and 326(d)(2). The proposed revisions therefore distinguish between additional MTAs under 37 CFR 42.121(c) and 42.221(c), which require pre-authorization upon a showing of ''good cause,'' and a revised MTA, which may be filed without prior authorization. Where the term ''any motion to amend'' is used, the proposed rule refers to an original, additional, or revised MTA.

A patent owner is not required to exercise either option under the MTA pilot program. Specifically, if a patent owner does not elect either to receive preliminary guidance on its original MTA or to file a revised MTA, the rules governing amendment of the patent are essentially unchanged from the practice prior to the MTA pilot program. See *Lectrosonics, Inc.* v. *Zaxcom, Inc.,* IPR2018–01129, 2020 WL 407145, at *1 (PTAB January 24, 2020) (precedential).

The Office has tracked engagement with the MTA pilot program and published an updated study of the MTA pilot program, providing such data through March 31, 2023. See Patent Trial and Appeal Board Motion to Amend Study Installment 8, *https://www.uspto.gov/patents/ptab/motions-amend-study* (last visited August 23, 2023) (''Study''). The Study shows that, of 2,832 trials that were instituted during the MTA pilot program, 9% (264) of instituted trials included a MTA (very close to the rate of MTAs filed before the MTA pilot program, 10% of all trials). Further, of the 264 instituted trials with an MTA, 88% (232) included a request for preliminary guidance, *i.e.,* the first of two MTA pilot program options. Still further, of those 232 trials with an MTA requesting preliminary guidance, 72% (168) filed either a Patent Owner Reply (41) or a Revised MTA (127), *i.e.,* the second of two MTA pilot program options. Additionally, during the MTA pilot program study period, 24% of final determinations had at least one proposed substitute claim granted entry, as opposed to 14% of final determinations prior to the MTA pilot program. To-date, no final determination for an instituted proceeding has been extended beyond the one-year deadline based solely on the involvement of the MTA pilot program.

Allocation of Burdens of Persuasion and Scope of the Record in Motions To Amend

The Office, through notice and comment rulemaking, published a final rule that allocated burdens of persuasion in relation to motions to amend and the patentability of substitute claims. See 37 CFR 42.121(d), 42.221(d); Rules of Practice to Allocate the Burden of Persuasion on Motions to Amend in Trial Proceedings before the Patent Trial and Appeal Board, 85 FR 82936 (December 21, 2020) (''the burden-allocation rules'').

These burden-allocation rules assign the burden of persuasion to the patent owner to show, by a preponderance of the evidence, that an MTA complies with certain statutory and regulatory requirements. 37 CFR 42.121(d)(1), 42.221(d)(1). These rules also assign the burden of persuasion to the petitioner to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable. 37 CFR 42.121(d)(2), 42.221(d)(2). Finally, these rules further specify that irrespective of those burdens, the Board may, in the ''interests of justice'' exercise its discretion to grant or deny an MTA, but ''only for reasons supported by readily identifiable and persuasive evidence of record.'' 37 CFR 42.121(d)(3), 42.221(d)(3); *Hunting Titan, Inc.* v. *DynaEnergetics Europe GmbH,* IPR2018–00600 (PTAB July 6, 2020) (Paper 67) (*Hunting Titan*).

Situations meeting the interests of justice standard may include, for example, those in which ''the petitioner has ceased to participate in the proceeding or chooses not to oppose the motion to amend, or those in which certain evidence regarding unpatentability has not been raised by either party but is so readily identifiable and persuasive that the Board should take it up in the interest of supporting the integrity of the patent system, notwithstanding the adversarial nature of the proceedings.'' 85 FR 82924, 82927 (citing *Hunting Titan,* Paper 67 at 12–13, 25–26). The rules further provide that in instances where the Board exercises its discretion in the interests of justice, the Board will provide the parties with an opportunity to respond before rendering a final decision on the MTA. *Id.* at 82927; see also 37 CFR 42.121(d)(3), 42.221(d)(3).

As noted in the final rule that allocated burdens of persuasion, ''[i]n the vast majority of cases, the Board will consider only evidence a party introduces into the record of the proceeding.'' 85 FR 82927. Thus, ''[i]n most instances, in cases where the

petitioner has participated fully and opposed the motion to amend, the Office expects that there will be no need for the Board to independently justify a determination of unpatentability.'' *Id.* at 82927–28. That said, the Board may consider, for example ''readily identifiable and persuasive evidence already before the Office in a related proceeding (*i.e.,* in the prosecution history of the challenged patent or a related patent or application, or in the record of another proceeding before the Office challenging the same patent or a related patent).'' *Id.* at 82927. Likewise, ''the Board may consider evidence that a district court can judicially notice under Federal Rule of Evidence 201.'' *Id.;* see also 37 CFR 42.121(d)(3), 42.221(d)(3) (''[T]he Board may make of record only readily identifiable and persuasive evidence in a related proceeding before the Office or evidence that a district court can judicially notice.'').

Subsequent to the issuance of the burden-allocation rules, the United States Court of Appeals for the Federal Circuit issued a precedential decision in *Hunting Titan, Inc.,* v. *DynaEnergetics Europe GmbH,* 28 F.4th 1371 (Fed. Cir. 2022). The court confirmed that no court precedent has ''established that the Board maintains an affirmative duty, without limitation or exception, to sua sponte raise patentability challenges to a proposed substitute claim.'' *Id.* at 1381 (citations omitted). The court also stated that ''confining the circumstances in which the Board should sua sponte raise patentability issues was not itself erroneous.'' *Id.* The court, however, found it ''problematic'' that the USPTO confined the Board's discretion to only rare circumstances. *Id.* It also noted that the USPTO's ''substantial reliance on the adversarial system . . . overlooks the basic purpose of [inter partes review] proceedings: to reexamine an earlier agency decision and ensure that patent monopolies are kept within their legitimate scope.'' *Id.* (citations omitted); see *id.* at 1385 (concurrence expressing concern that the burden-allocation rule's requirement for ''readily identifiable and persuasive evidence'' may prevent the Board from raising grounds ''even when no one is around to oppose a new patent monopoly grant.'').

Under the rules as currently written and under Federal Circuit case law, the Board retains discretion to raise, or to not raise, grounds of unpatentability with respect to proposed substitute claims. See *Nike, Inc.* v. *Adidas AG,* 955 F.3d 45, 53 (2020); *Hunting Titan,* 28 F.4th at 1381.

Consistent with the Board's discretion to raise grounds of unpatentability, the MTA pilot program noted the Board's discretion to solicit patent examiner assistance regarding the MTA when ''petitioner cease[d] to participate altogether in an AIA trial in which the patent owner file[d] an MTA, and the Board nevertheless exercise[d] its discretion to proceed with the trial.'' 84 FR 9502. If solicited by the Board, the assistance could include the preparation of an advisory report that provides an initial discussion about whether an MTA meets certain statutory and regulatory requirements (*i.e.,* whether the amendment enlarges the scope of the claims of the patent or introduces new matter) and about the patentability of proposed substitute claims, for example, in light of prior art that was provided by the patent owner and/or obtained in prior art searches by the examiner. *Id.* As of issuance of this notice, the Board has not solicited examination assistance of this nature in exercising the Board's discretion to raise or not to raise grounds of unpatentability. This proposed rule clarifies that the examination assistance to the Board may be effectuated by requesting that the Office conduct a prior art search. The proposed rule also clarifies that the Board's request for the prior art search and the result of such a search by the Office will be made of record.

2023 RFC on MTA Pilot Program and Burden-Allocation Rules

After four years of experience with the MTA pilot program and development of Federal Circuit case law concerning burden allocation in the MTA context, the Office issued another Request for Comments to seeking feedback on the public's experience with the program and the burden-allocation rules that apply to MTAs. See RFC Regarding MTA Pilot Program and Rules of Practice to Allocate Burdens of Persuasion on motions to Amend in Trial Proceedings Before the Patent Trial and Appeal Board, 88 FR 33063 (May 23, 2023) (2023 RFC). The Office also sought feedback on when reexamination or reissue proceedings, also referred to as post-grant options, are better alternatives for patent owners seeking to amend claims. *Id.* at 33065–66. Further, the Office sought comments on whether the MTA pilot program should be modified and what barriers the Office could address to increase the effectiveness of MTA procedures. *Id.* at 33066.

The 2023 RFC also sought comments on the burden-allocation rules. In light of the Federal Circuit court's commentary on the current rules, as well as the Board's *Hunting Titan* decision, and given the Office's desire to support the integrity of the patent system and to issue robust and reliable patent rights, the Office sought public comments on whether the Board should more broadly use its discretion to raise sua sponte grounds in the MTA process. *Id.* Additionally, the Office sought public comments on whether, and under what circumstances, the Office should solicit patent examiner assistance regarding an MTA or conduct a prior art search in relation to proposed substitute claims. *Id.*

Furthermore, the Office recognized that if the Board exercises its discretion and raises its own grounds of unpatentability under the current rule, 37 CFR 42.121(d)(3), the burden-allocation rules do not specifically state where the burden of persuasion lies for Board-raised grounds. The Office sought public comments on whether the burden-allocation rules should be revised to clarify who bears the burden of persuasion for grounds of unpatentability raised by the Board under 37 CFR 42.121(d)(3) or 42.221(d)(3). See 88 FR 33066; see also *Nike, Inc.* v. *Adidas AG,* No. 2021–1903, 2022 WL 4002668, at *4–10 (Fed. Cir. September 1, 2022) (leaving open the question ''whether, in an *inter partes* review, the petitioner or Board bears the burden of persuasion for an unpatentability ground raised sua sponte by the Board against proposed substitute claims''). The comments, and the rules proposed to address these comments and to enhance the Motions to Amend practice, are discussed below.

Revisions in This Proposed Rule

Response to Comments and Proposed Provisions on Preliminary Guidance and Revised Motions To Amend

The MTA pilot program has been generally well-received, and one or both pilot program options are exercised in the vast majority of MTAs. Commenters to the 2023 RFC noted specifically that the option to request preliminary guidance has been popular among those participating in MTAs and has been effective, guiding patent owners to revise their MTAs in many cases. Although some commenters noted that motions to amend in general may not be as useful as other alternatives for claim amendments, none of the commenters stated that the Office should discontinue the options of issuing preliminary guidance and allowing the filing of a revised MTA as currently implemented. Some commenters, however, indicated that the Office

should consider providing more time for the MTA process. Commenters noted that parties may not have sufficient time after the preliminary guidance issues to address the preliminary guidance, secure expert testimony, and search for additional prior art. Proposals included having the Board hold a conference call to give parties an opportunity to offer a modified schedule.

The Office appreciates the comments about the popularity and increased effectiveness of the MTA pilot program options, which are consistent with the Office's experience as supported by utilization data. In proceedings with MTAs filed under the pilot, at least 88% of patent owners have elected one or both pilot options (*i.e.,* a request for preliminary guidance, a revised MTA, or both). Based on its experience with the pilot program for the four-year period from its effective date in 2019, consideration of the formal feedback received in response to the 2023 RFC, as well as additional feedback received from a variety of stakeholders during the operation of the MTA pilot program itself, the Office proposes to formalize the options available to patent owners under the MTA pilot program. Accordingly, the Office now issues this proposed rule to implement the two options in the MTA pilot program: (1) requesting preliminary guidance and (2) filing, without pre-authorization, a revised MTA.

To address the concerns raised as to the ability of parties to have sufficient time to fully take advantage of the MTA procedure, the Office proposes rule language clarifying the Board may extend deadlines in the MTA timeline. Such extensions are not anticipated to be needed in most cases, because the Board's experience is that the default timelines have been sufficient to permit full and fair briefing in cases under the MTA pilot program. Thus, the Office will continue to apply the existing timelines by default as currently implemented under the MTA pilot program unless an extension is granted as discussed further below. See 84 FR 9506–9507 (setting forth MTA pilot program timelines).

The AIA provides the Director the discretion to extend the deadlines for issuing a final written decision for good cause and by not more than 6 months. 35 U.S.C. 316 (a)(11), 326 (a)(11). The Director's authority to extend the deadline of the final written decision has been delegated to the Chief Administrative Patent Judge. 37 CFR 42.100(c), 42.200(c). Thus, pursuant to 37 CFR 42.100(c) and 42.200(c), upon a showing of good cause, the Chief Administrative Patent Judge may extend the final written decision beyond the statutory deadline (one year from the date a trial is instituted) by up to six months, particularly, for example, if one or more circumstances are present in a proceeding, such as: (1) complex issues; (2) unavailability of the panel; or (3) need to accommodate additional papers (such as additional briefing or evaluate a requested examination search report). See *e.g., Eden Park Illumination, Inc.,* v. *S. Edward Neister,* IPR2022–00381, Paper 51 (August 4, 2023 PTAB) (determining as good cause the involvement of a revised MTA with new prior art, resulting in substantially compressed schedule, multiple postponements of the oral hearing due to scheduling conflicts, and additional briefing); *Hope Medical Enterprises, Inc.* v. *Fennec Pharmaceuticals Inc.,* IPR2022–00125, Paper 35 (April 18, 2023 PTAB) (determining as good cause the involvement of a revised MTA, resulting in a compressed schedule, with the revised claims subject to asserted grounds of unpatentability based on combination of at least four references); *Snap, Inc.,* v. *Palo Alto Research Center Inc.,* IPR2021–00986, Paper 46 (November 7, 2022) (determining as good cause the substantial coordination of proceedings required by the Board due to multiple pending motions to amend).

As for deadlines that are not of a final written decision, typically, a panel of the Board determines whether to grant a good-cause extension under 37 CFR 42.5(c)(2) after request from and conference with the parties. In the context of the MTA timelines, the Board will continue to consider whether to grant extensions of those timelines as required by the Board's rules discussed above. In particular, the Board may determine at any time during the pendency of the case, but more specifically upon issuing the preliminary guidance or receiving a revised MTA, whether for good cause the particular circumstances raised by the parties to the proceeding warrant an extension of deadlines, including whether to extend the deadline for the final written decision, which can only be granted by the Chief Administrative Patent Judge under 37 CFR 42.100(c) and 42.200(c). When an extension is granted, the parties will be notified of the change in the due dates for the remainder of the deadlines and events in the proceeding.

Response to Comments on the Reissue and Reexamination Options

The 2023 RFC sought comments regarding whether reexamination and/or reissue proceedings are better options for patent owners seeking to amend claims in AIA proceedings as compared to the MTA pilot program. 88 FR 33065–66. Although the majority of the comments supported use of the MTA pilot program, in response to this question some comments stated a preference to avoid the MTA process altogether. As to the desirability of pursuing reissue or reexamination in connection with an AIA trial proceeding, a summary of the alternatives for seeking claim amendments before, during, and after a post-grant proceeding has been provided in a prior notice. Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding (April 2019), 84 FR 16654 (April 22, 2019) (reissue and reexamination notice). The reissue and reexamination notice provides a summary of various pertinent practices regarding existing Office procedures that apply to reissue and reexamination, including after a petitioner files an AIA petition challenging claims of the same patent, after the Board institutes a trial, and after the Board issues a final written decision in an AIA trial proceeding. *Id.* at 16655–58. The notice also provides summary information about factors the Office currently considers when determining whether to stay or suspend a reissue proceeding, or stay a reexamination, that involves a patent involved in an AIA proceeding and when and whether to lift such a stay or suspension. *Id.* at 16656–58.

Some commenters stated that the usefulness of a reissue and reexamination is reduced given the likelihood of their stay during the post-grant proceeding, including through appeals of the final written decision at the Federal Circuit. In the event a party is considering the impact of a possible stay of the reissue and reexamination proceedings, the reissue and reexamination notice states that a stay of an ex parte reexamination may be lifted ''notwithstanding a Federal Circuit appeal of a final written decision on the same patent.'' *Id.* at 16658. The proposed rules do not change our current guidance in the reissue and reexamination notice.

Response to Comments and Proposed Provisions on Allocation of Burden and Evidence of Record for Proposed Amended Claims

Regarding the burden-allocation rules, commenters favored continuing the exercise of discretion by the Board to raise new grounds of unpatentability. Some favored the exercise of discretion more broadly, *i.e.,* for the Board to

consider all prior art of record and conduct a prior art search in each case where an MTA is filed. Other commenters favored the Board considering the entirety of the record, but did not favor the Board conducting a prior art search, primarily because of the compressed case timelines.

In recognition of these comments, and in view of Office experience, the Office proposes changes to the rules to address comments in favor of the Board's authority to consider the entirety of the art of record and to request examination assistance in an appropriate manner when justified by circumstances. The Office agrees that the burden-allocation rule should give the Board the ability to more broadly use its discretion to raise grounds of unpatentability and to consider all the prior art of record in the proceeding without limitation.

Further, consistent with current practice reflected in the MTA pilot program, the Office proposes rules clarifying that the Board may seek examination assistance in certain circumstances. 84 FR 9502. For example, the Board has discretion to solicit examination assistance if the petitioner ceases to participate altogether in an AIA trial in which the patent owner files an MTA and the Board nevertheless exercises its discretion to proceed with the trial thereafter. *Id.* The Board may also solicit examination assistance when a petitioner continues to participate in the AIA trial but either does not oppose or has ceased to oppose an MTA. Examination assistance could include the preparation of an advisory report that provides an initial discussion of whether an MTA meets certain statutory and regulatory requirements (*i.e.,* whether the amendment enlarges the scope of the claims of the patent or introduces new matter), as well as the patentability of proposed substitute claims in light of prior art that was provided by the patent owner and/or obtained in prior art searches by the examiner. *Id.* The proposed rule confirms the Board's discretion to seek examination assistance by clarifying that the Office may conduct a prior art search at the Board's request when no petitioner opposes or all petitioners cease to oppose an MTA. The proposed rule is intended to capture situations where no opposition is filed or an opposition is filed but other situations constitute a lack of opposition, such as the filing of an illusory opposition to the MTA or a petitioner filing that raises no prior art challenge. The proposed rule also clarifies that the Board may make of record any evidence identified through a prior art search undertaken at the Board's request. Additionally, the proposed rule provides that the Board's request and the prior art search report prepared by the Office at the request of the Board will be made of record.

The 2023 RFC also resulted in comments concerning the burden of persuasion on Board-raised grounds. One commenter proposed that the post-grant proceeding scheme should remain strictly adversarial, with the burden of persuasion on unpatentability issues remaining with petitioner at all times. Another commenter proposed that on Board-raised grounds, the Board has the ''burden.'' Other commenters noted that the statute is silent on this issue and that a patent owner must not bear this burden.

The Board is a neutral tribunal and the notion of burden allocation to the Board in determining whether to grant or deny an MTA is incongruent with the discharge of its adjudicatory functions. Notwithstanding this incongruity, the Office recognizes the need for clarity and consistency in the application of the Board's exercise of discretion in connection with raising new grounds of unpatentability for proposed claims presented in an MTA. The proposed rule clarifies that the Board determines unpatentability on the new ground by reference to the evidence of record or made of record and based on a preponderance of the evidence. Support for the Board's responsibility in this regard has been established in current precedent of the Board. *Lectrosonics, Inc.* v. *Zaxcom, Inc.,* IPR2018–01129, 2020 WL 407145, at *1 (''The Board itself also may justify any finding of unpatentability by reference to evidence of record in the proceeding, for example, when a petitioner ceases to participate. . . . Thus, the Board determines whether substitute claims are unpatentable by a preponderance of the evidence based on the entirety of the record, including any opposition made by the petitioner.'').

Furthermore, the Office proposes to broaden the body of evidence that the Board may consider and make of record, to now include the entire evidence of record in the proceeding, without limitation, in accordance with *Nike, Inc.* v. *Adidas AG,* 955 F.3d at 54 (''[T]he Board may rely on prior art of record in considering the patentability of amended claims.''). By removing limitations of the ''interests of justice'' and of considering ''only readily identifiable and persuasive'' evidence and no longer relying solely on the adversarial system, the proposed rule alleviates the Federal Circuit's concern that the Board confined its discretion to only rare circumstances. See *Hunting Titan,* 28 F.4th at 1381 (noting that the USPTO's ''substantial reliance on the adversarial system . . . overlooks the basic purpose of [inter partes review] proceedings: to reexamine an earlier agency decision and ensure 'that patent monopolies are kept within their legitimate scope.' ''); see also *id.* at 1385 (concurrence expressing concern that the burden-allocation rule's requirement for ''readily identifiable and persuasive evidence'' may prevent the Board from raising grounds ''even when no one is around to oppose a new patent monopoly grant'').

The proposed rule moves away from the Board's precedential *Hunting Titan* decision. *Hunting Titan, Inc.* v. *DynaEnergetics Europe GmbH,* IPR2018–00600 (PTAB July 6, 2020) (Paper 67). That decision, criticized by the Federal Circuit, is at odds with the proposed broader authority of the Board to raise grounds sua sponte. Accordingly, the *Hunting Titan* decision shall be de-designated from precedential status upon the effective date of the final rule.

Discussion of Specific Rules

Sections 42.121 and 42.221

Sections 42.121(a) and 42.221(a) are proposed to be amended to refer to original motions to amend and to allow for requests for preliminary guidance on an original motion to amend.

Sections 42.121(b) and 42.221(b) are proposed to be amended to clarify that the regulation applies to any motion to amend and that support in the original disclosure must be included for each proposed substitute claim.

Sections 42.121(d) and 42.221(d) are proposed to be amended to provide that the Board may consider all evidence of record in the proceeding when exercising its discretion to grant or deny a motion to amend or raise a new ground of unpatentability in connection with a proposed substitute claim. The proposed amendment to each regulation further provides that the Board may consider, and may make of record, any evidence in a related proceeding before the Office and evidence that a district court can judicially notice. Each is also proposed to be amended to provide that the Board may, when no petitioner opposes or all petitioners cease to oppose the motion to amend, consider, and make of record, evidence identified through a prior art search conducted by the Office at the Board's request. The proposed provisions further require that when the Board exercises its discretion in connection with a motion to amend, the Board determine unpatentability on the new ground by reference to the

evidence of record or made of record and based on a preponderance of the evidence. The proposed revisions also require that the Board's request for and the result of a prior art search conducted by the Office at the Board's request will be made of record.

Sections 42.121(e) and 42.221(e) are proposed to be added to provide for an opportunity to request preliminary guidance, consistent with the MTA pilot program. Such guidance will not be binding on the Board, is not a ''decision'' under 37 CFR 42.71(d) and is not a final agency action. The proposed provision provides that a patent owner will be permitted to file a reply to the petitioner's opposition to the motion to amend, preliminary guidance (if requested and no opposition is filed), or a revised MTA as discussed in §§ 42.121(f) and 42.221(f). The reply or revised MTA may be accompanied by new evidence. Moreover, the proposed provision provides that, if a patent owner does not file either a reply or a revised MTA after receiving preliminary guidance from the Board, the petitioner may file a reply to the preliminary guidance, but such a reply may only respond to the preliminary guidance and may not be accompanied by new evidence. If the petitioner files a reply in this context, a patent owner may file a sur-reply, but that sur-reply may only respond to the petitioner's reply and may not be accompanied by new evidence.

Further, the proposed provision provides that the Board may, upon issuing the preliminary guidance, for good cause and on a case-by-case basis, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with §§ 42.100(c) and 42.200(c) and whether to extend any remaining deadlines under § 42.5(c).

The proposed rule adds §§ 42.121(f) and 42.221(f) to provide for an opportunity for a patent owner to file one revised motion to amend, consistent with the MTA pilot program. Such a revised motion to amend must be responsive to issues raised in the preliminary guidance, or the petitioner's opposition to the motion to amend and include one or more new proposed substitute claims in place of previously presented substitute claims, where each new proposed substitute claim presents a new claim amendment. Any revised motion to amend replaces the original motion to amend in the proceeding.

Further, the Board may, upon receiving the revised motion to amend, for good cause and on a case-by-case basis, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with §§ 42.100(c) and 42.200(c) and whether to extend any remaining deadlines under § 42.5(c).

Rulemaking Considerations

A. Administrative Procedure Act (APA)

This rulemaking proposes changes to the consolidated set of rules relating to Office trial practice for IPR, PGR, CBM, and derivation proceedings. The changes proposed in this rulemaking do not alter the substantive criteria of patentability. These changes involve rules of agency practice. See, *e.g.,* 35 U.S.C. 316(a)(5), as amended. The changes proposed by this rulemaking involve rules of agency practice and procedure, and/or interpretive rules, and do not require notice-and-comment rulemaking. See *Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97, 101 (2015) (explaining that interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'' and do not require notice and comment when issued or amended); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice''); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits.'').

Nevertheless, the USPTO is publishing this proposed rule for comment to seek the benefit of the public's views on the Office's proposed regulatory changes.

B. Regulatory Flexibility Act

For the reasons set forth herein, the Senior Counsel for Legislative and Regulatory Affairs of the Office of General Law at the USPTO has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this rulemaking will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 605(b).

The changes proposed in this rulemaking would revise certain trial practice procedures before the Board. Specifically, the Office proposes to amend the rules of practice before the Board to reflect current Board practice, as set forth in various precedential and informative Board decisions, as well as the Office's Trial Practice Guide. Specifically, the Office proposes to amend the rules of practice to make permanent certain provisions of the Office's MTA pilot program. These changes are procedural in nature, and any requirements resulting from the proposed changes are of minimal or no additional burden to those practicing before the Board.

For the foregoing reasons, the changes proposed in this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993), as amended by Executive Order 14094 (April 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking pertains strictly to Federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal

governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (November 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this proposed rule are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the paperwork and other information collection burdens discussed in this proposed rulemaking have already been approved under Office of Management and Budget (OMB) Control Number 0651–0069 (Patent Review and Derivations).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has valid OMB control number.

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, the Office proposes to amend 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 2. Revise § 42.121 to read as follows:

§ Amendment of the patent.

(a) *Motion to amend*—(1) *Original motion to amend.* A patent owner may file one original motion to amend a patent, but only after conferring with the Board.

(i) *Due date.* Unless a due date is provided in a Board order, an original motion to amend must be filed no later than the filing of a patent owner response.

(ii) *Request for preliminary guidance.* If a patent owner wishes to receive preliminary guidance from the Board as discussed in paragraph (e) of this section, the original motion to amend must include the patent owner's request for that preliminary guidance.

(2) *Scope.* Any motion to amend may be denied where:

(i) The amendment does not respond to a ground of unpatentability involved in the trial; or

(ii) The amendment seeks to enlarge the scope of the claims of the patent or introduce new subject matter.

(3) *A reasonable number of substitute claims.* Any motion to amend may cancel a challenged claim or propose a reasonable number of substitute claims. The presumption is that only one substitute claim will be needed to replace each challenged claim, and it may be rebutted by a demonstration of need.

(b) *Content.* Any motion to amend claims must include a claim listing, which claim listing may be contained in an appendix to the motion, show the changes clearly, and set forth:

(1) The support in the original disclosure of the patent for each proposed substitute claim; and

(2) The support in an earlier-filed disclosure for each claim for which the benefit of the filing date of the earlier-filed disclosure is sought.

(c) *Additional motion to amend.* Except as provided in paragraph (f) of this section, any additional motion to amend may not be filed without Board authorization. An additional motion to amend may be authorized when there is

a good cause showing or a joint request of the petitioner and the patent owner to materially advance a settlement. In determining whether to authorize such an additional motion to amend, the Board will consider whether a petitioner has submitted supplemental information after the time period set for filing a motion to amend in paragraph (a)(1)(i) of this section.

(d) *Burden of persuasion.* On any motion to amend:

(1) *Patent owner's burden.* A patent owner bears the burden of persuasion to show, by a preponderance of the evidence, that the motion to amend complies with the requirements of paragraphs (1) and (3) of 35 U.S.C. 316(d), as well as paragraphs (a)(2) and (3) and (b)(1) and (2) of this section;

(2) *Petitioner's burden.* A petitioner bears the burden of persuasion to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable; and

(3) *Exercise of Board discretion.* Irrespective of paragraphs (d)(1) and (2) of this section, the Board may exercise its discretion to grant or deny a motion to amend or raise a new ground of unpatentability in connection with a proposed substitute claim. Where the Board exercises its discretion to raise a new ground of unpatentability in connection with a proposed substitute claim, the parties will have notice and an opportunity to respond. In the exercise of this discretion under this paragraph (d)(3) the Board may consider all evidence of record in the proceeding. The Board also may consider and make of record:

(i) Any evidence in a related proceeding before the Office and evidence that a district court can judicially notice; and

(ii) When no petitioner opposes or all petitioners cease to oppose a motion to amend, prior art identified through a prior art search conducted by the Office at the Board's request. The request for and the results of a prior art search conducted by the Office at the Board's request will be made of record.

(4) *Determination of unpatentability.* Where the Board exercises its discretion under paragraph (d)(3) of this section, the Board must determine unpatentability based on a preponderance of the evidence of record or made of record.

(e) *Preliminary guidance.* (1) In its original motion to amend, a patent owner may request that the Board provide preliminary guidance setting forth the Board's initial, preliminary views on the original motion to amend, including whether the parties have shown a reasonable likelihood of meeting their respective burdens of persuasion as set forth under paragraphs (d)(1) and (2) of this section and notice of any new ground of unpatentability discretionarily raised by the Board under paragraph (d)(3) of this section. The Board may, upon issuing the preliminary guidance, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with § 42.100(c) and whether to extend any remaining deadlines under § 42.5(c)(2).

(2) Any preliminary guidance provided by the Board on an original motion to amend will not be binding on the Board in any subsequent decision in the proceeding, is not a ''decision'' under § 42.71(d) that may be the subject of a request for rehearing and is not a final agency action.

(3) In response to the Board's preliminary guidance, a patent owner may file a reply to the petitioner's opposition to the motion to amend, the preliminary guidance (if no opposition is filed), or a revised motion to amend as discussed in paragraph (f) of this section. The reply or revised motion to amend may be accompanied by new evidence. If a patent owner does not file either a reply or a revised motion to amend after receiving preliminary guidance from the Board, the petitioner may file a reply to the preliminary guidance, but such a reply may only respond to the preliminary guidance and may not be accompanied by new evidence. If the petitioner files a reply in this context, a patent owner may file a sur-reply, but that sur-reply may only respond to the petitioner's reply and may not be accompanied by new evidence.

(f) *Revised motion to amend.* (1) Irrespective of paragraph (c) of this section, a patent owner may, without prior authorization from the Board, file one revised motion to amend after receiving an opposition to the original motion to amend or after receiving the Board's preliminary guidance. The Board may, upon receiving the revised motion to amend, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with § 42.100(c) and whether to extend any remaining deadlines under § 42.5(c)(2).

(2) A revised motion to amend must be responsive to issues raised in the preliminary guidance or in the petitioner's opposition to the motion to amend and must include one or more new proposed substitute claims in place of the previously presented substitute claims, where each new proposed substitute claim presents a new claim amendment.

(3) If a patent owner files a revised motion to amend, that revised motion to amend replaces the original motion to amend in the proceeding.

■ 3. Revise § 42.221 to read as follows:

§ 42.221 Amendment of the patent.

(a) *Motion to amend*—(1) *Original motion to amend.* A patent owner may file one original motion to amend a patent, but only after conferring with the Board.

(i) *Due date.* Unless a due date is provided in a Board order, an original motion to amend must be filed no later than the filing of a patent owner response.

(ii) *Request for preliminary guidance.* If a patent owner wishes to receive preliminary guidance from the Board as discussed in paragraph (e) of this section, the original motion to amend must include the patent owner's request for that preliminary guidance.

(2) *Scope.* Any motion to amend may be denied where:

(i) The amendment does not respond to a ground of unpatentability involved in the trial; or

(ii) The amendment seeks to enlarge the scope of the claims of the patent or introduce new subject matter.

(3) *A reasonable number of substitute claims.* Any motion to amend may cancel a challenged claim or propose a reasonable number of substitute claims. The presumption is that only one substitute claim will be needed to replace each challenged claim, and it may be rebutted by a demonstration of need.

(b) *Content.* Any motion to amend claims must include a claim listing, which claim listing may be contained in an appendix to the motion, show the changes clearly, and set forth:

(1) The support in the original disclosure of the patent for each proposed substitute claim; and

(2) The support in an earlier-filed disclosure for each claim for which the benefit of the filing date of the earlier-filed disclosure is sought.

(c) *Additional motion to amend.* Except as provided by paragraph (f) of this section, any additional motion to amend may not be filed without Board authorization. An additional motion to amend may be authorized when there is a good cause showing or a joint request of the petitioner and the patent owner to materially advance a settlement. In determining whether to authorize such an additional motion to amend, the Board will consider whether a petitioner has submitted supplemental information after the time period set for

filing a motion to amend in paragraph (a)(1)(i) of this section.

(d) *Burden of persuasion.* On any motion to amend:

(1) *Patent owner's burden.* A patent owner bears the burden of persuasion to show, by a preponderance of the evidence, that the motion to amend complies with the requirements of paragraphs (1) and (3) of 35 U.S.C. 326(d), as well as paragraphs (a)(2) and (3) and (b)(1) and (2) of this section;

(2) *Petitioner's burden.* A petitioner bears the burden of persuasion to show, by a preponderance of the evidence, that any proposed substitute claims are unpatentable; and

(3) *Exercise of Board discretion.* Irrespective of paragraphs (d)(1) and (2) of this section, the Board may exercise its discretion to grant or deny a motion to amend or raise a new ground of unpatentability in connection with a proposed substitute claim. Where the Board exercises its discretion to raise a new ground of unpatentability in connection with a proposed substitute claim, the parties will have notice and an opportunity to respond. In the exercise of discretion under this paragraph (d)(3), the Board may consider all evidence of record in the proceeding. The Board also may consider and may make of record:

(i) Any evidence in a related proceeding before the Office and evidence that a district court can judicially notice; and

(ii) When no petitioner opposes or all petitioners cease to oppose a motion to amend, prior art identified through a prior art search conducted by the Office at the Board's request. A request for and result of a prior art search conducted by the Office at the Board's request will be made of record.

(4) *Determination of unpatentability.* Where the Board exercises its discretion under paragraph (d)(3) of this section, the Board must determine unpatentability based on a preponderance of the evidence of record or made of record.

(e) *Preliminary guidance.* (1) In its original motion to amend, a patent owner may request that the Board provide preliminary guidance setting forth the Board's initial, preliminary views on the original motion to amend, including whether the parties have shown a reasonable likelihood of meeting their respective burdens of persuasion as set forth under paragraphs (d)(1) and (2) of this section and notice of any new ground of unpatentability discretionarily raised by the Board under paragraph (d)(3) of this section. The Board may, upon issuing the preliminary guidance, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with § 42.200(c) and whether to extend any remaining deadlines under § 42.5(c)(2).

(2) Any preliminary guidance provided by the Board on an original motion to amend will not be binding on the Board in any subsequent decision in the proceeding, is not a ''decision'' under § 42.71(d) that may be the subject of a request for rehearing, and is not a final agency action.

(3) In response to the Board's preliminary guidance, a patent owner may file a reply to the petitioner's opposition to the motion to amend, preliminary guidance (no opposition is filed), or a revised motion to amend as discussed in paragraph (f) of this section. The reply or revised motion to amend may be accompanied by new evidence. If a patent owner does not file either a reply or a revised motion to amend after receiving preliminary guidance from the Board, the petitioner may file a reply to the preliminary guidance, but such a reply may only respond to the preliminary guidance and may not be accompanied by new evidence. If the petitioner files a reply in this context, a patent owner may file a sur-reply, but that sur-reply may only respond to the petitioner's reply and may not be accompanied by new evidence.

(f) *Revised motion to amend.* (1) Irrespective of paragraph (c) of this section, a patent owner may, without prior authorization from the Board, file one revised motion to amend after receiving an opposition to the original motion to amend or after receiving the Board's preliminary guidance. The Board may, upon receiving the revised motion to amend, determine whether to extend the final written decision more than one year from the date a trial is instituted in accordance with § 42.200(c) and whether to extend any remaining deadlines under § 42.5(c)(2).

(2) A revised motion to amend must be responsive to issues raised in the preliminary guidance, if requested, or in the petitioner's opposition to the motion to amend, and must include one or more new proposed substitute claims in place of the previously presented substitute claims, where each new proposed substitute claim presents a new claim amendment.

(3) If a patent owner files a revised motion to amend, that revised motion to amend replaces the original motion to amend in the proceeding.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–04127 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–16–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 18–295 and GN Docket No. 17–183; FCC 23–86; FR ID 192755]

Unlicensed Use of the 6 GHz Band; and Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission is correcting the docket numbers for commenters under the preamble section titled, **ADDRESSES**, of the proposed rule that appeared in the **Federal Register** on February 26, 2024.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros of the Office of Engineering and Technology, at *Nicholas.Oros@fcc.gov* or 202–418–0636.

SUPPLEMENTARY INFORMATION:

Correction

In FR Doc. 2023–28620 in the **Federal Register** of February 26, 2024, the following correction is made: On page 14016 in the first column and first sentence in **ADDRESSES** of the preamble, ''ET Docket No. 13–115 and RM–11341'' is corrected to read ''ET Docket No. 18–295 and GN Docket No. 17–183''.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–04494 Filed 3–1–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 43
Monday, March 4, 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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2024–0007]

General Conference Committee of the National Poultry Improvement Plan; Solicitation for Membership

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of solicitation for membership.

SUMMARY: We are giving notice that the Secretary of Agriculture is soliciting nominations for the election of a member at-large and regional members and their alternates for the General Conference Committee of the National Poultry Improvement Plan.

DATES: Consideration will be given to nominations received on or before July 15, 2024.

ADDRESSES: Please submit completed nomination forms to the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 301, Conyers, GA 30094; phone (770) 922–3496; email: *elena.behnke@usda.gov.*

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP) is the Secretary's Advisory Committee on poultry health. The Committee serves as a forum for the study of problems relating to poultry health and, as necessary, makes specific recommendations to the Secretary concerning ways the U.S. Department of Agriculture (USDA) may assist the industry in addressing these problems. The Committee assists the Department in planning, organizing, and conducting the Biennial Conference of the NPIP. The Committee recommends whether new proposals should be considered by the delegates to the Biennial Conference and serves as a direct liaison between the NPIP and the United States Animal Health Association.

The Committee consists of an elected member-at-large who is an NPIP participant and an elected member (and alternate) from each of the six U.S. regions represented on the Committee. Terms will expire for three current regional members and the member-at-large of the Committee in August 2024. We are soliciting nominations from interested organizations and individuals to replace the member-at-large as well as the members and alternates from the North Atlantic (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont), East North Central (Illinois, Indiana, Michigan, Ohio, and Wisconsin), and Western (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming).

Member selection is determined by a majority vote of the NPIP delegates from the respective regions. There must be at least two nominees for each position. Persons interested in serving on the Committee or nominating another individual to serve must submit a nomination with information and a complete Form AD–755, which is available on the internet at *https://www.usda.gov/sites/default/files/documents/ad-755.pdf* or may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

To ensure the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership should include, to the extent practicable, individuals with demonstrated ability to represent underrepresented groups (minorities, women, and persons with disabilities). At least one nominee from each of the three regions must have demonstrated the ability to represent an underrepresented group. The voting will be by secret ballot of official delegates from their respective region, and the results will be recorded.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities.

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

Dated: February 27, 2024.

Egypt Simon,

Acting USDA Committee Management Officer.

[FR Doc. 2024–04519 Filed 3–1–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2024–0008]

General Conference Committee of the National Poultry Improvement Plan and 46th Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee (GCC or the Committee) of the National Poultry Improvement Plan (NPIP) and the NPIP's 46th Biennial Conference.

DATES: The General Conference Committee meeting will be held on August 27, 2024, from 1:30 p.m. to 6 p.m. The General Session of the Biennial Conference will begin on August 28, 2024, at 7:30 a.m. and end no later than August 30, 2024, at 2:30 p.m.

ADDRESSES: The meeting and conference will be held at the Omni Providence Hotel, One West Exchange Street, Providence, RI.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 301, Conyers, GA 30094; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health.

Topics for discussion at the upcoming meeting include:

1. New diagnostic tests seeking NPIP approval.
2. Salmonella update.
3. National Veterinary Services Laboratories avian influenza and Newcastle disease virus update.
4. Mycoplasma update.

The meeting will be open to the public; however, public participation in discussions during the sessions will only be allowed if time permits. Written statements may be filed at the meeting or filed with the Committee before or after the meeting by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to Docket No. APHIS–2024–0008 when submitting your statements.

Reasonable Accommodations

If needed, please request reasonable accommodations no later than July 29, 2024, by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Requests made after that date may be considered, but it may not be possible to fulfill them.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. 10).

U.S. Department of Agriculture (USDA) programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: February 27, 2024.

Egypt Simon,

Acting USDA Committee Management Officer.

[FR Doc. 2024–04515 Filed 3–1–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0113]

Bayer U.S.-Crop Science: Availability of a Petition for a Determination of Nonregulated Status for Lepidopteran-Protected Maize

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Bayer U.S.-Crop Science seeking a determination of nonregulated status for maize (corn) event MON 95379 that has been developed using genetic engineering to produce two insecticidal proteins to protect against feeding damage caused by target lepidopteran pests. We are making the petition available for review and comment to help us identify potential issues and impacts that we may determine should be considered in our evaluation of the petition.

DATES: We will consider all comments that we receive on or before May 3, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and enter APHIS–2020–0113 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0113, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

The petition and any comments we receive on this docket may be viewed at *www.regulations.gov* by entering APHIS–2020–0113 in the Search field, or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

The petition is also available on the APHIS website at: *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/regulatory-processes/petitions/petition-status/petitions-table.* Search for APHIS petition 20–205–01p.

FOR FURTHER INFORMATION CONTACT: Mr. Subray Hegde, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1238; (301) 851–3901; email: *subray.hegde@usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The petition for nonregulated status described in this notice is being evaluated under the version of the regulations effective at the time that it was received. The Animal and Plant Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–

2018–0034),[1] revising 7 CFR part 340; however, the final rule was implemented in phases. The new Regulatory Status Review (RSR) process, which replaces the petition for determination of nonregulated status process, became effective on April 5, 2021, for corn, soybean, cotton, potato, tomato, and alfalfa. The RSR process was effective for all crops as of October 1, 2021. However, ''[u]ntil RSR is available for a particular crop . . . APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the [legacy] regulations at 7 CFR 340.6.'' (85 FR 29815). This petition for a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was originally received by APHIS on July 23, 2020.

Bayer U.S.-Crop Science (Bayer) has submitted a petition (APHIS Petition Number 20–205–01p) to APHIS seeking a determination of nonregulated status of maize (corn) designated as MON 95379, which has been developed using genetic engineering for resistance to feeding damage caused by target lepidopteran pests, including fall armyworm (*Spodoptera frugiperda*), sugarcane borer (*Diatraea saccharalis*), and corn earworm (*Helicoverpa zea*). We are making the Bayer petition available for public comment and requesting public input regarding potential issues and impacts that APHIS should be considering in our evaluation of the petition. The Bayer petition states that information collected during field trials and laboratory analyses indicates that MON 95379 corn is unlikely to pose a plant pest risk and therefore should not be regulated under APHIS' regulations in 7 CFR part 340.

As described in the Bayer petition, MON 95379 corn was developed to produce two insecticidal proteins, Cry1B.868 and Cry1Da_7, which protect against feeding damage caused by targeted lepidopteran insect pests. Cry1B.868 is a chimeric protein comprised of domains I and II from Cry1Be (Bacillus thuringiensis, Bt), domain III from Cry1Ca (Bt subsp. aizawai) and C-terminal protoxin domain from Cry1Ab (Bt subsp. kurstaki). Cry1Da_7 is a modified Cry1Da protein derived from Bt subsp. aizawai.

MON 95379 corn was developed to provide growers in South America an additional tool for controlling target lepidopteran corn pests, including fall armyworm resistant to current Bt technologies. MON 95379 corn will be combined through traditional breeding with other deregulated traits to provide protection against both above-ground and below-ground corn pests, as well as herbicide tolerance. These next-generation, combined-trait corn products will offer broader grower choice, improved production efficiency, increased pest control durability, and enhanced grower profit potential. MON 95379 corn will not be commercialized in the United States but is intended to only be cultivated in small-scale breeding, testing, and seed increase nurseries to develop seed of products that will be sold in other countries, primarily in South America.

Field tests conducted under APHIS oversight allowed for evaluation of MON 95379 corn in a natural agricultural setting while imposing measures to minimize the likelihood of persistence in the environment after completion of the tests. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

On March 6, 2012, we published in the **Federal Register** (77 FR 13258–13260, Docket No.APHIS–2011–0129) a notice [2] describing our process for soliciting public comment when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering. In that notice, we indicated that APHIS would accept written comments regarding a petition once APHIS deemed it complete.

In accordance with our process for soliciting public input when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. The petition is available for public review and comment, and copies are available as indicated under **ADDRESSES** and from the individual listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. We are interested in receiving comments regarding potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. We are particularly interested in receiving comments regarding biological, cultural, or ecological issues, and we encourage the submission of scientific data, studies, or research to support your comments.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. Any substantive issues identified by APHIS based on our review of the petition and our evaluation and analysis of comments will be considered in the development of our decision-making documents. As part of our decision-making process regarding the regulatory status of an organism developed using genetic engineering, APHIS prepares a plant pest risk assessment to assess its plant pest risk and the appropriate environmental documentation—either an environmental assessment (EA) or an environmental impact statement (EIS)—in accordance with the National Environmental Policy Act (NEPA), to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request. For petitions for which APHIS prepares an EA, APHIS will follow our published process for soliciting public comment (see footnote 2) and publish a separate notice in the **Federal Register** announcing the availability of APHIS' EA and plant pest risk assessment. Should APHIS determine that an EIS is necessary, APHIS will complete the NEPA EIS process in accordance with Council on Environmental Quality regulations (40 CFR part 1500–1508) and APHIS' NEPA implementing regulations (7 CFR part 372).

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of February 2024.

Michael Watson,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–04395 Filed 3–1–24; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering. To view the notice, go to *www.regulations.gov* and enter APHIS–2011–0129 in the Search field.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Scratch Cooking Assessment & Learning Evaluation (SCALE) and Partnerships for Local Agriculture and Nutrition Transformation in Schools (PLANTS) Data Request for School Food Authorities

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: The Chef Ann Foundation (CAF) is a cooperative agreement recipient from the United States Department of Agriculture's (USDA's) Food and Nutrition Service (FNS). CAF plans to collect additional information from sub-grantees, based on an assessment and data report, which is beyond the information already approved under OMB Control Number: 0584–0512 (Expiration Date: July 31, 2025). FNS already has OMB approval for collection of information associated with these grants under the Uniform Grant Application for Non-Entitlement Discretionary Grants, as approved under OMB Control Number: 0584–0512. This notice solicits public comment on the additional information proposed for collection.

DATES (if applicable): Written comments must be received on or before April 3, 2024.

ADDRESSES: Comments may be sent to: Brittany Gorman, Food and Nutrition Service, U.S. Department of Agriculture, via email to *brittany.gorman@usda.gov*. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Brittany Gorman at 703–305–2621 or *Brittany.gorman@usda.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Background

In 2023, CAF was selected as one of four cooperative agreement holders for the USDA FNS Healthy Meals Incentives Initiative School Food System Transformation Challenge. As part of this initiative, CAF created the sub-grant program, Partnerships for Local Agriculture and Nutrition Transformation in Schools (PLANTS), and will award eight proposals for projects working to build more resilient local food supply chains and expand scratch cooking in schools. PLANTS is already approved under Uniform Grant Application for Non-Entitlement Discretionary Grants, OMB Control Number 0584–0512 with an expiration of July 31, 2025. Eligible applications must be collaboratively administered by at least three Partners and no more than five Partners. An eligible application must include at least one School Food Authority (SFA) and is permitted to include up to four SFAs. SFAs that are awarded a PLANTS grant will be required to complete the SCALE assessment and the PLANTS Data Request annually, for a total of three times, throughout the grant period (April 2024–June 2027).

Scratch Cooking in School Meal Programs

Every day 31 million children rely on school meals to meet their nutritional needs so they are well nourished and ready to learn. CAF is dedicated to promoting whole-ingredient, scratch cooking in schools by providing school nutrition professionals with the funding and support they need to transition their meal programs to include more scratch cooking.

Scratch cooking uses real food with real ingredients and has the potential to catalyze multiple benefits across the school food system—environmental, economic, social. In the context of USDA's Healthy Meals Incentives Initiative and the PLANTS grant, scratch cooking also enables SFAs to play a critical role in building more resilient regional food systems. By leveraging their food purchases, SFAs have the potential to become meaningful markets for local producers (*e.g.,* farmers, ranchers, fisherfolk), food hubs, and other food businesses. These dollars have powerful ripple effects on local economies that build greater prosperity and food system resilience while feeding children fresher, high-quality, and nutritious foods.

The benefits of scratch cooking are clear. However, many SFAs that want to improve their meal programs do not have the bandwidth to assess their current operations or determine where to start.

How does the scale assessement and plants data request support scratch cooking in schools?

After over 12 years of school food operational support, CAF built SCALE, an online database that offers the first comprehensive self-assessment focused on improving nutrition, enhancing school meal programs, and increasing scratch cooking. This assessment examines a district's food service operation practices in 6 Key Areas:

- Food—menu cycles, procurement, reporting
- Scratch Cooking—ingredients, processed elements
- Finances—budgets, revenue/deficit, labor cost
- Facilities—equipment, production, storage
- Human Resources—personnel, professional development
- Marketing—communication channels, lunchroom education activities

Once a district completes the assessment, the platform generates an individualized report with recommended practices designed to increase operational capacity and levels of scratch cooking. The PLANTS Data Request, which has been customized for the PLANTS program, supplements data collected from SFAs via the SCALE assessment and includes up to two years of data related to an SFA's meal counts, financial, procurement, menu, educational, and marketing practices. The SCALE assessment and PLANTS Data Request lay the foundation for all strategic planning, technical assistance, and evaluative support that CAF provides SFAs to transition to scratch cooking and achieve their PLANTS project goals.

Affected Public: Business or other for profit; and State, local, and Tribal government. Respondent groups identified include a representative from each subgrantee and any Partner that is a SFA or School District. Representatives may include the Food Service Director and/or a designated food service employee. A School Food Authority is defined as the administering body for the operation of

a school feeding program (such as the National School Lunch Program and School Breakfast Program). This may be a school district, several school districts, or individual schools. Schools can be public, public charter, or private schools.

Estimated Number of Respondents: The total estimated number of respondents is 32. PLANTS will award eight grants to projects that are collaboratively administered by at least three partners and no more than five partners. An eligible application *must* include at least one SFA and is permitted to include up to four SFAs. Therefore, a minimum of eight SFAs and a maximum of 32 SFAs will complete the SCALE assessment and PLANTS Data Request. It is expected that a majority of the Directors of the SFAs will complete the assessment (24), while larger organizations may require other food service personnel to complete the assessment (8).

Estimated Number of Responses per Respondent: The estimated number of responses per respondent is 1 per year. SFAs will be asked to complete the SCALE assessment and PLANTS Data Request three separate times during the grant implementation period between April 2024–June 2027.

Estimated Total Annual Responses: 32.

Estimated Time per Response: The estimated average time for this collection is 4.5 hours. FNS estimates that it will take each respondent 1.5 hours to complete the SCALE assessment and 3 hours to complete the PLANTS Data Request.

Estimated Total Annual Burden on Respondents: 144.00 hours. See the table below for estimated total annual burden for each type of respondent.

	Respondents	Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated avg. number of hours per response	Estimated total hours
	(A)	(B)	(C)	(B) × (C) = (D)	(E)	(D) × (E) = (F)
	Reporting Burden					
Local Government	Director of Food Services	23	1	23	4.5	103.5
	Food Service Employee	8	1	8	4.5	36
Sub-total		31		31		139.5
For-Profit Business	Food Service Director	1	1	1	4.5	4.5
Total		32.00	1	32.00	4.5	144.00

The supporting statement for approved Information Collection Request 0584–0512 explicitly states that if FNS decides to use the uniform grant application package, FNS will note in the grant solicitation that applicants must use the uniform grant application package, and that the information collection has already been approved by OMB. If FNS determines that it needs grant applicants to provide additional information not contained in the uniform package, then FNS will publish at least a 30-day notice soliciting comments on its proposal to collect different or additional information before issuing the grant solicitation. FNS is publishing this 30-day notice to solicit public comment and meet that requirement.

FNS will consider and utilize public comments to adjust the collection of additional information as appropriate and necessary.

Tameka Owens,

Assistant Administrator, Food and Nutrition Service.

[FR Doc. 2024–04492 Filed 3–1–24; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Business Cooperative Service

[DOCKET #: RBS–23–BUSINESS–0029]

Amended Notice of Funding Opportunity for Rural Energy for America Program Technical Assistance Grant Program for Fiscal Year 2024; Extension of Submission Deadline

AGENCY: Rural Business Cooperative Service, USDA.

ACTION: Notice, extension of submission deadline.

SUMMARY: The Rural Business Cooperative Service (RBCS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), announced its acceptance of applications under the Rural Energy for America (REAP) Technical Assistance Grant (TAG) Program for fiscal year (FY) 2024 in the **Federal Register** on February 20, 2024. This notice is extending the date by which applications can be submitted.

DATES: The deadline for submissions regarding the NOFO published February 20. 2024, at 89 FR 12815, is extended from March 15, 2024, to March 21, 2024.

ADDRESSES: Completed applications for grants must be submitted electronically via *https://www.Grants.gov* or to the USDA RD State Office (RDSO) State Energy Coordinator of the State where the project is located via email no later than 11:59 p.m. Eastern Time (ET) on March 21, 2024. The RDSO State Energy Coordinator for the applicable State can be found at: *https://www.rd.usda.gov/contact-us/state-energy-coordinators.*

FOR FURTHER INFORMATION CONTACT: Jonathan Burns at *jonathan.burns@usda.gov,* Business Loan and Grant Analyst, Direct Programs Branch, RBCS, USDA, (774) 678–7238.

SUPPLEMENTARY INFORMATION:

Background

The Agency is extending the deadline for submissions regarding the Notice of Funding Opportunity (NOFO) for the Rural Energy for America Program Technical Assistance Grant Program for Fiscal Year 2024 published February 20, 2024, at 89 FR 12815, from March 15, 2024, to March 21, 2024. This change is being made to allow Applicants a full 30 days from publication to prepare their complete applications.

Kathryn E. Dirksen Londrigan,

Administrator, Rural Business Cooperative Service, USDA Rural Development.

[FR Doc. 2024–04452 Filed 3–1–24; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission Public Briefing, *Civil Rights Implications of the Federal Use of Facial Recognition Technology,* Notice of Commission Business Meeting, and Call for Public Comments

DATES: Friday, March 8, 2024, 10 a.m. ET.

ADDRESSES: The briefing is open to the public and can be attended via live stream on the Commission's YouTube page at: *https://www.youtube.com/usccr.*

FOR FURTHER INFORMATION CONTACT: Angelia Rorison (202) 376–8359; *public affairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Commission on Civil Rights will hold a briefing on, Friday, March 8, 2024, on the civil rights implications of Facial Recognition Technology (FRT). This investigation will analyze how FRT is developed, how it is being utilized by federal agencies, emerging civil rights concerns, and safeguards the federal government is implementing to mitigate potential civil rights issues.

This briefing is open to the public and is accessible via live stream at *https://www.youtube.com/usccr.* (*Streaming information subject to change.)

Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, March 8, 2024, is *https://www.streamtext.net/player?event=USCCR.* Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

To request additional accommodations, persons with disabilities should email *access@usccr.gov* by Monday, March 6, 2024, indicating ''accommodations'' in the subject line.

Briefing Agenda for Civil Rights Implications of the Federal Use of Facial Recognition Technology

10:00 a.m.–5:00 p.m.

All times Eastern Standard Time

I. Introductory Remarks: 10:00–10:10 a.m.
II. Panel 1: Understanding FRT and Civil Rights Implications: 10:10–11:25 a.m.
III. Break: 11:25–11:35 a.m.
IV. Panel 2: Federal Government Utilization and Safeguard Implementation of FRT: 11:35 a.m.–12:50 p.m.
V. Lunch: 12:50–1:50 p.m.
VI. Panel 3: Guidance for Meaningful Federal Oversight: 1:50 p.m.–3:05 p.m.
VII. Break: 3:05–3:15 p.m.
VIII. Panel 4: Actions for Strengthening Responsible Federal FRT Practices and Policies: 3:15–4:30 p.m.
IX. Closing Remarks: 4:30–4:40 p.m.
X. Adjourn Meeting.

**Public Comments will be accepted through written testimony

*Schedule is subject to change.

Call for Public Comments

In addition to the testimony collected on Friday, March 8, 2024, via public briefing, the Commission welcomes the submission of material for consideration as we prepare our report. Please submit such information to *frt@usccr.gov* no later than April 8, 2024, or by mail to OCRE/Public Comments, ATTN: Facial Recognition Technology, U.S. Commission on Civil Rights, 1331 Pennsylvania Ave. NW, Suite 1150, Washington, DC 20425.

Dated: February 29, 2024.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2024–04581 Filed 2–29–24; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–89–2023]

Foreign-Trade Zone 244—Riverside County, CA; Withdrawal of Application for Expansion of Subzone 244A

Notice is hereby given of the withdrawal of the application submitted by the March Joint Powers Authority, grantee of FTZ 244, requesting authority to expand Subzone 244A on behalf of Skechers USA, Inc. in Banning, California. The application was docketed on May 16, 2023 (88 FR 32726, May 22, 2023). The withdrawal was requested by the grantee on February 26, 2024, following notification pursuant to 15 CFR 400.33(e)(1) of the examiner's preliminary recommendation not to approve the application.

Dated: February 28, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–04491 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–981]

Utility Scale Wind Towers From the People's Republic of China: 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 order on utility scale wind towers (wind towers) from the People's Republic of China (China) for the period of review (POR) February 1, 2022, through January 31, 2023.

DATES: Applicable March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Zachary Shaykin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2638.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2023, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on wind towers from China.[1] On February 28, 2023, the Wind Tower Trade Coalition (the petitioner) submitted a timely request that Commerce conduct an administrative review.[2]

On April 11, 2023, Commerce published in the **Federal Register** a notice of initiation of an administrative review with respect to imports of wind towers exported and/or produced by 48 exporters and/or producers of wind towers from China, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i).[3] On May 2, 2023, we placed on the record U.S. Customs and Border Protection (CBP) data for entries of wind towers from China during the POR, showing no reviewable POR entries and invited interested parties to comment.[4] On May 9, 2023, the

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation, Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 88 FR 7071 (February 2, 2023).

[2] *See* Petitioner's Letter, ''Request for Administrative Review,'' dated February 28, 2023.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 21609 (April 11, 2023).

[4] *See* Memorandum, ''Customs and Border Protection Data Query,'' dated May 2, 2023.

petitioner submitted comments requesting that Commerce review the CBP data and confirm that all wind towers potentially imported into the United States from China were properly reported to CBP.[5]

In response to the petitioner's comments, on June 15, 2023, we again placed on the record CBP data for wind towers from China during the POR, showing no reviewable POR entries and invited interested parties to comment.[6] On June 23, 2023, the petitioner submitted comments requesting that Commerce coordinate with CBP to confirm whether wind towers initially shipped into the United States from China were subsequently shipped to Canada, or whether such shipments were reexported into the United States.[7] On September 5, 2023, Commerce addressed the petitioner's comments and indicated that it would refer the information gathered in this review to CBP.[8]

On October 30, 2023, Commerce extended the deadline for the preliminary results of this review until February 28, 2024.[9] Additionally, on December 8, 2023, Commerce notified all interested parties of its intent to rescind the instant review in whole 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.[10] No interested party submitted comments to Commerce.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), it is Commerce's practice to rescind an administrative review of an antidumping duty order when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[11] Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.[12] 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 antidumping duty assessment rate calculated for the review period.[13] As noted above, there were no entries of subject merchandise for any of 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**.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an 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 27, 2024.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2024–04493 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Petitioner's Letter, ''Comments on CBP Data Query,'' dated May 9, 2023.

[6] *See* Memorandum, ''Second Customs and Border Protection Data Query,'' dated June 15, 2023.

[7] *See* Petitioner's Letter, ''Comments on Second CBP Data Query,'' dated June 23, 2023, at 3.

[8] *See* Memorandum, ''Comments on Customs & Border Protection Data Query,'' dated September 5, 2023. Commerce referred the petitioner's comments regarding CBP data on February 23, 2024.

[9] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated October 30, 2023.

[10] *See* Memorandum, ''Intent to Rescind Review,'' dated December 8, 2023.

[11] *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).

[12] *See* 19 CFR 351.212(b)(1).

[13] *See* 19 CFR 351.213(d)(3).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Open Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, March 20, 2024, from 10:00 a.m. until 4:00 p.m., Eastern Time, and Thursday, March 21, 2024, from 9:30 a.m. until 3:30 p.m., Eastern Time. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, March 20, 2024, from 10:00 a.m. until 4:00 p.m., Eastern Time, and Thursday, March 21, 2024, from 9:30 a.m. until 3:30 p.m., Eastern Time.

ADDRESSES: The meeting will be held at JW Marriott Washington, DC, the Dirksen Room (Meeting Rooms Level), 1331 Pennsylvania Ave. NW, Washington, DC 20004. Please note admittance instructions under the Admittance Instructions section of this notice.

FOR FURTHER INFORMATION CONTACT: Jeff Brewer, Information Technology Laboratory, NIST, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, Telephone: (301) 975–2489, Email address: *jeffrey.brewer@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. 1001 *et seq.,* notice is hereby given that the ISPAB will meet Wednesday, March 20, 2024, from 10:00 a.m. until 4:00 p.m., Eastern Time, and Thursday, March 21, 2024, from 9:30 a.m. until 3:30 p.m., Eastern Time. All sessions will be open to the public. The ISPAB is authorized by 15 U.S.C. 278g–4, as amended, and advises the National Institute of Standards and Technology (NIST), the Secretary of Homeland Security, and the Director of the Office of Management and Budget (OMB) on information security and privacy issues pertaining to Federal government information systems, including through review of proposed standards and guidelines developed by NIST. Details regarding the ISPAB's activities are available at *https://csrc.nist.gov/projects/ispab.*

The agenda is expected to include the following items:

—Board Introductions and Member Activities,

—Update on NIST's Information Technology Laboratory (ITL) Activities,

—Briefing from CISA on Secure Software Attestation Requirements,
—Briefing from NIST on Software Memory Safety Implementations,
—Briefing from and discussion with the Director of the Office of the National Cybersecurity on the Open Source Software Security Report,
—An invited talk from the Office of Management and Budget on Agency Zero Trust Implementation Progress,
—Discussion on Adversarial Machine Learning Taxonomies and Machine Learning Threat Models,
—Board discussions and deliberations on security for software and the U.S. Government use of software,
—Public comments,
—Board Discussions and Recommendations.

Note that agenda items may change without notice. The final agenda will be posted on the ISPAB event page: *https://csrc.nist.gov/events/2024/ispab-march-2024-meeting.* Seating will be available for the public and media.

Public Participation: Written questions or comments from the public are invited and may be submitted electronically by email to Jeff Brewer at the contact information indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5:00 p.m., Eastern Time, on Tuesday, March 19, 2024.

The ISPAB agenda will include a period, not to exceed thirty minutes, for submitted questions or comments from the public between 3:00 p.m. and 3:30 p.m. on Wednesday, March 20, 2024. Submitted questions or comments from the public will be selected on a first-come, first-served basis and limited to five minutes per person.

Members of the public who wish to expand upon their submitted statements, those who had wished to submit a question or comment but could not be accommodated on the agenda, and those who were unable to attend the meeting are invited to submit written statements. In addition, written statements are invited and may be submitted to the ISPAB at any time. All written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory by email to: *jeffrey.brewer@nist.gov.*

Admittance Instructions: No registration is required for this in-person only meeting.

Tamiko Ford,

NIST Executive Secretariat.

[FR Doc. 2024–04422 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID: 0648–XD697]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Alaska Modernization Program Phase 2: Cargo Docks Replacement Project in Anchorage, Alaska

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Port of Alaska (POA) for authorization to take small numbers of marine mammals incidental to construction activities related to the Port of Alaska Modernization Program (PAMP) Phase 2B: Cargo Docks Replacement Project, including impact and vibratory pile driving at the POA in Anchorage, Alaska, over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the POA's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the POA's application and request.

DATES: Comments and information must be received no later than April 3, 2024.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Hotchkin@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/node/23111* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the POA's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to,

migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On January 3, 2023, NMFS received an application from the POA requesting authorization for take of marine mammals incidental to construction activities related to the PAMP Phase 2B: Cargo Terminals Reconstruction at the POA in Anchorage, Alaska. NMFS provided comments on the application on March 3, 2023, April 20, 2023, and May 18, 2023. After the applicant submitted a revised application on October 13, 2023, and responded to additional questions sent on December 20, 2023, we determined the application was adequate and complete on February 12, 2024. The requested regulations would be valid for 5 years, from April 1, 2026 through March 31, 2031. The POA plans to conduct necessary work, including impact and vibratory pile driving, to demolish the existing cargo terminals 1 and 2 and partially demolish terminal 3, and to construct new terminals 1 and 2. The proposed action may incidentally expose marine mammals occurring in the vicinity to elevated levels of underwater sound, thereby resulting in incidental take, by Level A and Level B harassment. Therefore, the POA requests authorization to incidentally take marine mammals.

Specified Activities

The POA was constructed primarily in the 1960s, and is currently in poor condition and substantially past its initial design life. The existing cargo terminals T1, T2, and T3 are deteriorating and in poor structural condition, and present safety and security concerns for human health and the economic stability of the state of Alaska. The PAMP is designed to replace the existing facilities with new infrastructure incorporating modern seismic codes over a 75-year design life. PAMP Phase 2B includes the demolition and replacement of terminals T1 and T2, and the partial demolition of T3. This phase is expected to take approximately 6 years to complete; this request is for the first 5 years of construction. Activities proposed for year 6 will be covered in an additional IHA request submitted prior to the end of the 5-year period of effectiveness for the requested incidental take regulations. Pile installation will include both temporary (36-inch (in)) and permanent (72-in) steel pipe piles by impact and vibratory hammers. Removal of temporary piles and existing structures (16-in to 42-in steel pipe piles) will be primarily by cutting; dead-pull and vibratory extraction methods may also be used. Existing piles may also be left standing in their current positions. Approximately 261 permanent piles and 470 temporary piles will be installed and approximately 48 temporary piles will be extracted with a vibratory hammer over the 5-year period. The work is expected to require approximately 337 days between the months of April and November over the 5 year period. The POA requests take of marine mammals by Level B harassment for seven species (including Cook Inlet beluga whales (*Delphinapterus leucas*)), and take by Level A harassment of five species.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the POA's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the POA, if appropriate.

Dated: February 28, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–04487 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD736]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California

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

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the California Department of Transportation (Caltrans) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California. Caltrans' activities will not be completed prior to the IHA's expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than March 19, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.cockrell@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word, Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael.* In case of problems accessing these documents, please contact the analyst listed below.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain

exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, an IHA is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and the NMFS's implementing regulations (see 16 U.S.C. 1362 *et seq.;* 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal of an IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned; or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA);

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further National Environmental Policy Act review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On July 31, 2024, NMFS issued an IHA to Caltrans to take marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California (88 FR 51778, August 4, 2023), effective from August 1, 2023 through March, 30 2024. On February 7, 2024, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

In the initial IHA Caltrans proposed to conduct construction activities to restore a portion of the Richmond-San Rafael Bridge. Prior to restoration work Caltrans would install a debris containment system to ensure contaminants from construction are not deposited into San Francisco Bay. Caltrans and NMFS concluded that during the deployment and retrieval of the containment system disturbance (*i.e.,* Level B harassment) may occur to harbor seals hauled out at Castro Rocks. Castro Rocks is an important haulout location for harbor seals that is close to the portion of the Richmond-San Rafael Bridge where construction work is occurring.

Under the initial IHA Caltrans took 19 days to deploy the debris containment system and during this time protected species observers (PSOs) did not observe any disturbance of harbor seals

hauled out at Castro Rocks. Caltrans will be unable to remove the debris containment system before the expiration of the initial IHA. Therefore, this renewal would allow for the removal of the debris containment system and completion of the restoration project. NMFS authorized 9,000 takes of harbor seals by Level B harassment under the initial IHA, for the installation and removal of the debris containment system. This renewal would authorize a portion of the number of takes authorized in the initial IHA based on the days remaining to complete the work.

All documents related to the initial IHA and the applicants request for renewal are available on our website at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael*

Detailed Description of the Activity

A detailed description of the demolition and construction activities for which take is proposed here may be found in the **Federal Register** notices of the Proposed IHA (88 FR 41920, June 28, 2023) and Final IHA (88 FR 51778, August 4, 2023) for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. Under the initial IHA the removal of the debris containment system will not be completed before the IHA expires. This renewal would allow for the removal of the containment system and completion of the restoration work on the Richmond-San Rafael Bridge. The proposed renewal would be effective for a period not exceeding 1 year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, 2023 draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat may be found in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

The initial IHA assumed a daily occurrence rate of 300 harbor seals per day on Castro Rocks. Caltrans expected the installation and removal of the debris containment system to take approximately 30 days. Therefore, the initial IHA authorized a total of 9,000 takes by Level B harassment to complete the installation and removal of the debris containment system. Under the initial IHA Caltrans installed the debris containment system over a 19 day period and no takes by Level B harassment of harbor seals occurred during that time. The removal of the debris containment system will not be completed before the initial IHA expires.

This IHA renewal would authorize take by Level B harassment of harbor seals during the removal of the debris containment system. It is expected to take a total of 10 days to remove the debris containment system once the construction activities are completed. NMFS assumes a similar daily occurrence rate of 300 harbor seals per day on Castro Rocks which over the 10 days of remaining work would equate to a total of 3,000 takes by Level B harassment of harbor seals under this renewal IHA. A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of the Proposed IHA (88 FR 41920, June 28, 2023) and Final IHA (88 FR 51778, August 4, 2023) for the initial authorization.

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) remains accurate. The following mitigation measures are proposed for this renewal:

- Seasonal Work Restrictions: installation or removal of the debris containment system must not occur between Piers 52–57 from April 1-July 31 due to the pupping and molting period of harbor seals;
- Work must not take place outside of the containment system on the bridge between Piers 52–57 from April 1 to July 31;
- A non-disturbance buffer will be established within 400 feet (121 meters) of Castro Rocks on the south side of bridge;
- Staging of barges will not be allowed in the project area;
- Routes for watercraft to reach work locations will be predetermined in consultation with the project biologist to avoid harassment or take of marine mammals hauled out at Castro Rocks; and
- No piles may be driven or vibrated to create staging locations for any watercraft. Barges and vessels will be tethered to the existing concrete bridge piers. The following monitoring and reporting measures are proposed for this renewal:
- Caltrans will monitor to collect data on marine mammal behavior, counts of the individuals observed, and the frequency of the observations. Caltrans will collect sighting data and observations on behavioral responses to construction for marine mammal species observed in the region of activity during the period of construction. All observers will be trained in the identification of marine mammals and marine mammal behaviors;
- PSOs must be independent observers (*i.e.,* not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of marine mammals and their behaviors. Caltrans must submit their resumes to NMFS for approval;
- Biological monitoring must occur 5 days prior to the Project's start date, to establish baseline observations;
- Observation periods will encompass different tide levels and hours of the day. Monitoring of marine mammals around the construction site will be conducted using binoculars as necessary; and
- The location of the PSOs will be at a monitoring platform positioned on

Pier 55 of the Richmond-San Rafael Bridge, at the closest pier of the Richmond-San Rafael Bridge to Castro Rocks. Pier 55 is approximately 21 meters from the nearest rock at Castro Rocks harbor seal colony.

Caltrans shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period including: (a) what type of restoration work is being completed, and (b) the total duration of work completed;
- PSO locations during monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), and PSO confidence in identification;
- Distance and location of each observed marine mammal relative to the bridge restoration work;
- Estimated number of animals by species (min/max/best estimate);
- Estimated number of animals by cohort (adults, pups, and group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such flushing or head posturing); and
- Detailed information about implementation of any mitigation measures, a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (88 FR 41920, June 28, 2023) and solicited public comments on both our proposal to issue the initial IHA for the installation and removal of the debris containment system and on the potential for a renewal IHA, should certain requirements be met. All public comments were addressed in the notice announcing the issuance of the initial IHA (88 FR 51778, August 4, 2023) and none of the comments specifically pertained to the renewal of the 2023 IHA.

Preliminary Determinations

The activities conducted under this potential renewal would be a subset of the activities authorized under the initial IHA. Specifically, this renewal would authorize the removal of the debris containment system. Removal of the debris containment system is expected to take 10 days. This activity was originally authorized under the initial IHA but Caltrans could not complete the removal of the debris containment system before the initial IHA expired. In analyzing the effects of the activities for the initial IHA, NMFS determined that the Caltrans' activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). There is no new information that affects NMFS' determinations supporting issuance initial IHA or this renewal. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Caltrans' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of Endangered Species Act (ESA)-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Caltrans for the removal of the debris containment system for Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California from the April 1, 2024, through March 30, 2025, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: February 27, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–04400 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD755]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Wednesday, March 20, at 9 a.m.

ADDRESSES:

Meeting address: This meeting will be held at Hampton Hotel, 20 Hotel Drive, South Kingstown, RI 02879; telephone: (401) 788–3500.

Webinar registration URL information: https://zoom.us/webinar/register/WN_-EbmHRCiR2ymGtC40zwOoA.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Committee will meet to receive recommendations from the Recreational Advisory Panel, Groundfish Advisory Panel, and Groundfish Plan Development Team. They will receive an update on a preliminary analysis of fishery data, draft 'roadmap' for changes to the fishery management plan, and overview of regional workshops; provide feedback on next steps. The Committee will also receive an update on a preliminary analysis to review the yellowtail flounder (Southern New England/Mid-Atlantic and Georges Bank) and windowpane flounder (northern and southern) sub-ACLs and AM triggers applied to the scallop fishery. They will review the current list of Council research priorities and suggest changes or additions to the list. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 28, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–04504 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD754]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public hybrid meeting of its Joint Groundfish Advisory and Recreational Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This hybrid meeting will be held on Tuesday, March 19, 2024, at 12:30 p.m.

ADDRESSES:

Meeting address: This meeting will be held at the Hampton Inn, 20 Hotel Drive, South Kingstown, RI; telephone: (401) 788–3500.

Webinar registration URL information: https://zoom.us/webinar/register/WN_g9LabwXzQFmDG4tZnd1Usg.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Groundfish Advisory Panel and Recreational Advisory Panel will meet jointly to receive an update on a preliminary analysis of fishery data, draft 'roadmap' for changes to the fishery management plan, and overview of regional workshops; provide feedback on next steps. They will receive an update on a preliminary analysis to review the yellowtail flounder (Southern New England/Mid-Atlantic and Georges Bank) and windowpane flounder (northern and southern) sub-ACLs and AM triggers applied to the scallop fishery. The panels will also review the current list of Council research priorities and suggest changes or additions to the list as well as make recommendations to the Groundfish Committee, as appropriate. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O'Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 28, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–04507 Filed 3–1–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0036]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT)

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 3, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT).

OMB Control Number: 1850–0928.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and households.*Total Estimated Number of Annual Responses:* 61,360.

Total Estimated Number of Annual Burden Hours: 21,536.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s. In addition to the operational assessments, NAEP uses two other kinds of assessment activities: pilot assessments and special studies. Pilot assessments test items and procedures for future administrations of NAEP, while special studies (including the National Indian Education Study (NIES), the Middle School Transcript Study (MSTS), and the High School Transcript Study (HSTS)) are opportunities for NAEP to investigate particular aspects of the assessment without impacting the reporting of the NAEP results. The initial request for clearance of NAEP 2024 received OMB approval in April 2023 (OMB# 1850–0928 v.28). Amendment #1 to the NAEP 2024 clearance package received OMB approval in June 2023 (OMB#1850–0928 v.29). Since that packages submission for public comment and OMB approval, changes have occurred to the scope of the 2024 NAEP administration, including the addition of: (1) Addition of Reading Router Pilot for grades 4 and 8, increasing costs, (2) Addition of School and District Technology Coordinator roles and SBE survey completion, increasing burden hours, (3) Addition of protocols for the health and safety of field staff, increasing costs, (4) Reduction in SQ burden time for students, teachers and schools since COVID–19 learning recovery items are no longer adding additional time to the SQs; rather, other items were dropped to accommodate these items, reducing burden hours; and (5) Addition of Field Trial for grades, 4, 8 and 12, increasing burden hours and costs. This revision updates Part A and Part B detailing the changes to scope and references to the communication materials and the amendment schedule, Appendix A, Appendix B, Appendix C, Appendix D (added communication materials), Appendix G, Appendix I, and Appendices J1, J2, J3, and J–S to include the operational survey questionnaires (SQs), COVID–19 Learning Recovery SQs, NIES SQs, and Pilot SQs.

Dated: February 27, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04448 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0041]

Agency Information Collection Activities; Comment Request; National Blue Ribbon Schools Program

AGENCY: Office of Communication Outreach (OCO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 3, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0041. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Aba Kumi, 202–401–1767.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Blue Ribbon Schools Program.

OMB Control Number: 1860–0506.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 420.

Total Estimated Number of Annual Burden Hours: 16,695.

Abstract: Each year since 1982, the U. S. Department of Education's National Blue Ribbon Schools Program has sought out and celebrated great American schools; schools that are demonstrating that all students can achieve to high levels. The purpose of the Program is to honor public and private elementary, middle and high schools based on their overall academic excellence or their progress in closing achievement gaps among different groups of students. The Program is part of a larger U.S. Department of Education effort to identify and disseminate knowledge about best school leadership and teaching practices.

Dated: February 28, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04511 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0212]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; U.S. Department of Education Grant Performance Report Form (ED 524B)

AGENCY: Office of Finance and Operations (OFO), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 3, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Cleveland Knight, (202) 987–0064.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: U.S. Department of Education Grant Performance Report Form (ED 524B).

OMB Control Number: 1894–0003.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 13,300.

Total Estimated Number of Annual Burden Hours: 297,800.

Abstract: The ED 524B form and instructions are used by many ED discretionary grant programs to enable grantees to meet ED deadline dates for submission of performance reports to the Department.

As an interim (usually annual) performance report, ED uses the information submitted by grantees in the ED 524B to evaluate grantee performance and progress and to determine whether non-competing continuation funds should be awarded in multi-year grants. Only grantees that can demonstrate that they are making substantial progress (or, if not, have

submitted an acceptable plan for meeting their objectives in subsequent budget periods) are eligible for continuation funding.

ED uses the information submitted on the ED 524B as a final performance report to determine whether grantees whose projects have ended have achieved project objectives and met or exceeded the Government Performance and Results Act and/or other program performance measures and grant requirements. This determination enables ED to assure that grants can be closed out in compliance.

Dated: February 28, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04477 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0037]

Agency Information Collection Activities; Comment Request; Campus Safety and Security Survey

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 3, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0037. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *https://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Wilson, (202) 987–1318.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Campus Safety and Security Survey.

OMB Control Number: 1840–0833.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 5,784.

Total Estimated Number of Annual Burden Hours: 2,410.

Abstract: The collection of information through the Campus Safety and Security Survey (CSS) is necessary under section 485 of the Higher Education Act of 1965, as amended, with the goal of increasing transparency surrounding college safety and security information for students, prospective students, parents, employees and the general public. The survey is a collection tool to compile the annual data on campus crime and fire safety. The data collected from the individual institutions by the Department of Education (ED) is made available to the public through the Campus Safety and Security Data Analysis and Cutting Tool as well as the College Navigator.

Dated: February 27, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04439 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0036]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT)

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 3, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT).

OMB Control Number: 1850–0928.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 61,360.

Total Estimated Number of Annual Burden Hours: 21,536.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s. In addition to the operational assessments, NAEP uses two other kinds of assessment activities: pilot assessments and special studies. Pilot assessments test items and procedures for future administrations of NAEP, while special studies (including the National Indian Education Study (NIES), the Middle School Transcript Study (MSTS), and the High School Transcript Study (HSTS)) are opportunities for NAEP to investigate particular aspects of the assessment without impacting the reporting of the NAEP results. The initial request for clearance of NAEP 2024 received OMB approval in April 2023 (OMB #1850–0928 v.28). Amendment #1 to the NAEP 2024 clearance package received OMB approval in June 2023 (OMB #1850–0928 v.29). Since that packages submission for public comment and OMB approval, changes have occurred to the scope of the 2024 NAEP administration, including the addition of: (1) Addition of Reading Router Pilot for grades 4 and 8, increasing costs, (2) Addition of School and District Technology Coordinator roles and SBE survey completion, increasing burden hours, (3) Addition of protocols for the health and safety of field staff, increasing costs, (4) Reduction in SQ burden time for students, teachers and schools since COVID–19 learning recovery items are no longer adding additional time to the SQs; rather, other items were dropped to accommodate these items, reducing burden hours; and (5) Addition of Field Trial for grades, 4, 8 and 12, increasing burden hours and costs. This revision updates Part A and Part B detailing the changes to scope and references to the communication materials and the amendment schedule, Appendix A, Appendix B, Appendix C, Appendix D (added communication materials), Appendix G, Appendix I, and Appendices J1, J2, J3, and J–S to include the operational survey questionnaires (SQs), COVID–19 Learning Recovery SQs, NIES SQs, and Pilot SQs.

Dated: February 27, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04408 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0038]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; School Pulse Panel 2023–24 Quarter 4 Revision

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 3, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate;

(4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Pulse Panel 2023–24 Quarter 4 Revision.

OMB Control Number: 1850–0975.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments.

Total Estimated Number of Annual Responses: 53,955.

Total Estimated Number of Annual Burden Hours: 10,175.

Abstract: The School Pulse Panel is conducted by the National Center for Education Statistics (NCES), part of the Institute of Education Sciences (IES), within the United States Department of Education. Initially, the purpose of the study was to collect extensive real-time data on issues brought to light by the COVID–19 pandemic on students and staff, as well as other important education-related issues that could inform data-driven policy decisions, in U.S. public primary, middle, high, and combined-grade schools and districts. Specifically, this was accomplished by collecting data on, among other things, the percentage of the student body starting the school year behind grade level, the types of learning recovery strategies being implemented and the perceived effectiveness of those strategies, classroom behavioral concerns, mental health services provided, and staffing issues. NCES was able to capture each of these pieces in an expedited fashion and report out findings in a matter of weeks, providing rich information to help tell the full story of what students, staff, and administrators were battling on a daily basis. The success of the quick-turnaround nature of the SPP was a clear indication of the immense value of having a real-time data collection vehicle readily available to capture content on prominent events occurring in the school environment. Therefore, stakeholders and ED leadership have asked NCES to continue this type of data collection methodology for the 2023–24 school year and beyond with content extending beyond COVID–19 pandemic impacts on the education environment.

The preliminary activities package was formally cleared in February 2023 (OMB# 1850–0975 v.1) and the SPP monthly data collection package was formally cleared in June 2023 (OMB# 1850–0975 v.2). A change request (v.3) was cleared in July 2023 to make changes to the September and October instruments and August 2023–January 2024 communication materials. A second quarterly package was formally cleared in October 2023 (OMB# 1850–0975 v.4), which contained the November 2023–January 2024 questionnaires and the February 2024–June 2024 communication materials. A change request (v.5) was cleared in October 2023 to make changes to the December 2023 and January 2024 instruments; content on these surveys was undergoing cognitive testing during the 30-day public comment period. A third quarterly package was formally cleared in January 2024 (OMB# 1850–0975 v.6), which contained the February–April 2024 questionnaires. Content on all three questionnaires was undergoing cognitive testing during the 30-day public comment period. One change request (v.7) was cleared in January 2024 to make changes to the February 2024 questionnaire. A second change request (v.8) was cleared in February 2024 to make changes to the March 2024 and April 2024 questionnaires. This revision introduces new items for May and June 2024 (within the scope of the research domains previously established), included here in Appendix C4. These items are considered very close to final and will go through minimal testing with school personnel to examine any comprehension concerns with item wording. Feedback from this testing, as well as additional input from SPP stakeholders, will result in modifications and additions that will be reflected in future change requests.

This package will undergo a 30-day public comment period before being sent to OMB for approval. There are no changes to burden or cost to the federal government associated with this revision.

Dated: February 27, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04449 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0040]

Agency Information Collection Activities; Comment Request; Integrated Postsecondary Education Data System (IPEDS) 2024–25 Through 2026–27

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 3, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *https://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 4C210, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden.

It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Integrated Postsecondary Education Data System (IPEDS) 2024–25 through 2026–27.

OMB Control Number: 1850–0582.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 65,536.

Total Estimated Number of Annual Burden Hours: 636,660.

Abstract: The National Center for Education Statistics (NCES) seeks authorization from OMB to make a change to the Integrated Postsecondary Education Data System (IPEDS) data collection. IPEDS is a web-based data collection system designed to collect basic data from all postsecondary institutions in the United States and the other jurisdictions. The IPEDS data collection enables the National Center for Education Statistics (NCES) to report on key dimensions of postsecondary education such as enrollments, degrees and other awards earned, tuition and fees, average net price, student financial aid, graduation rates, student outcomes, revenues and expenditures, faculty salaries, and staff employed.

The IPEDS web-based data collection system was implemented in 2000–01. In 2022–23, IPEDS collected data from 5,983 Title IV postsecondary institutions in the United States and the other jurisdictions. All Title IV institutions are required to respond to IPEDS (Section 490 of the Higher Education Amendments of 1992 [Pub. L. 102–325]). IPEDS allows other (non-Title IV) institutions to participate on a voluntary basis; approximately 200 non-Title IV institutions elect to respond each year. Institution closures and mergers have led to a decrease in the number of institutions in the IPEDS universe over the past few years. Due to these fluctuations, combined with the addition of new institutions, NCES uses rounded estimates for the number of institutions in the respondent burden calculations for the upcoming years (estimated 6,000 Title IV institutions plus 200 non-title IV institutions for a total of 6,200 institutions estimated to submit IPEDS data during the 2024–25 through 2026–27 IPEDS data collections). IPEDS data are available to the public through the College Navigator and IPEDS Use the Data websites.

The current clearance covers the 2022–23 through 2024–25 collections and is due to expire on August 31, 2025. We are requesting to make changes to multiple survey components and other updates to the identification, cross-cutting terminology, and the glossary. The largest changes in this package are (1) the addition of a new Cost (CST) survey component, which combines components taken from the Student Financial Aid (SFA) and Institutional Characteristics (IC) components and combines them with added questions to determine how and make publicly available more information about how postsecondary institutions ask for information above and beyond the FAFSA; and (2) the planned elimination of the Academic Libraries (AL) survey beginning in the 2025–26 administration.

As part of the public comment period review, NCES requests that IPEDS data submitters and other stakeholders respond to the directed questions found in Appendix D of this submission.

Dated: February 28, 2024.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04509 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0039]

Agency Information Collection Activities; Comment Request; US Department of Education Pre-Authorized Debit Account Brochure and Application

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before APRIL 29, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0039. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: US Department of Education Pre-Authorized Debit Account Brochure and Application.

OMB Control Number: 1845–0025.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 631.

Total Estimated Number of Annual Burden Hours: 51.

Abstract: The Pre-authorized Debit Account Brochure and Application (PDA Application) serves as the means by which an individual with a defaulted federal education debt (student loan or grant overpayment) that is held by the U.S. Department of Education (ED) requests and authorizes the automatic debiting of payments toward satisfaction of the debt from the borrower's checking or savings account. The PDA Application explains the automatic debiting process and collects the individual's authorization for the automatic debiting and the bank account information needed by ED to debit the individual's account.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–04450 Filed 3–1–24; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Agency Information Collection Activities: 2024 Election Administration and Voting Survey

AGENCY: Election Assistance Commission.

ACTION: Notice; request for comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the EAC announces an information collection and seeks public comment on the provisions thereof. The EAC intends to submit this proposed information collection (2024 Election Administration and Voting Survey, or EAVS) to the Director of the Office of Management and Budget for approval. The 2024 EAVS asks election officials questions concerning voting and election administration, including the following topics: Voter registration; overseas and military voting; voting by mail; early in-person voting; polling operations; provisional voting; voter participation; election technology; election policy; and other related issues.

DATES: Written comments must be submitted on or before April 3, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent electronically via *https://www.regulations.gov* (docket ID: EAC–2024–0001). Written comments on the proposed information collection can also be sent to the U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: EAVS.

Obtaining a Copy of the Survey: To obtain a free copy of the draft survey instrument: (1) Download a copy at *https://www.regulations.gov* (docket ID: EAC–2024–0001); or (2) write to the EAC (including your address and phone number) at U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001, Attn: EAVS.

FOR FURTHER INFORMATION CONTACT: Raymond Williams at 202–924–0794, or email *research@eac.gov;* U.S. Election Assistance Commission, 633 3rd Street NW, Suite 200, Washington, DC 20001.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: 2024 Election Administration and Voting Survey; OMB Number Pending.

Needs and Uses

The EAC issues the EAVS to meet its obligations under the Help America Vote Act of 2002 (HAVA) to serve as a national clearinghouse and resource for the compilation of information with respect to the administration of Federal elections; to fulfill both the EAC and the Department of Defense Federal Voting Assistance Program's (FVAP) data collection requirements under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); and meet its National Voter Registration Act (NVRA) mandate to collect information from states concerning the impact of that statute on the administration of Federal elections. In addition, under the NVRA, the EAC is responsible for collecting information and reporting, biennially, to Congress on the impact of that statute. The information the states are required to submit to the EAC for purposes of the NVRA report is found under *Title 11 of the Code of Federal Regulations.* States that respond to questions in this survey concerning voter registration-related matters will meet their NVRA reporting requirements under 52 U.S.C. 20508 and EAC regulations. Finally, UOCAVA mandates that FVAP work with the EAC and chief state election officials to develop standards for reporting UOCAVA voting information (52 U.S.C. 20302) and that FVAP will store the reported data and present the findings within the congressionally-mandated report to the President and Congress. Additionally, UOCAVA requires that ''not later than 90 days after the date of each regularly scheduled general election for Federal office, each state and unit of local government which administered the election shall (through the state, in the case of a unit of local government) submit a report to the EAC on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public.'' States that complete and timely submit the UOCAVA section of the survey to the EAC will fulfill their UOCAVA reporting requirement under 52 U.S.C. 20302. In order to fulfill the above requirements, the EAC is seeking information relating to the period from the Federal general election day 2022 +1 through the November 2024 Federal general election. The EAC will provide the data regarding UOCAVA voting to FVAP after data collection is completed. This data sharing reduces the burden on local election offices because FVAP does not have to conduct its own data collection to meet its reporting requirements.

Affected Public (Respondents): State or local governments, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

Affected Public: State or local government.

Number of Respondents: 56.

Responses per Respondent: 1.

Estimated Burden per Response: 90 hours per collection, 45 hours annualized.

Estimated Total Annual Burden Hours: 5,040 hours per collection, 2,520 hours annualized.

Frequency: Biennially.

Comments: Public comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Camden Kelliher,

Acting General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2024–04401 Filed 3–1–24; 8:45 am]

BILLING CODE 4810–71–P

DEPARTMENT OF ENERGY

Industrial Technology Innovation Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the first meeting of the Industrial Technology Innovation Advisory Committee (ITIAC). The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, March 21, 2024: 9 a.m.–5 p.m. EDT; Friday, March 22, 2024: 9 a.m.–1 p.m. EDT

ADDRESSES: The first meeting of ITIAC will be held in person at U.S. Department of Energy headquarters in Washington, DC: 1000 Independence Ave. SW, Washington, DC 20024, with the option of virtual attendance. Members of the public are encouraged to participate virtually, as physical space to attend onsite is limited to members. The ITIAC website will contain announcements about the meeting, including instructions for registering to attend virtually: *https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Dr. Zachary Pritchard, Industrial Efficiency and Decarbonization Office, U.S. Department of Energy, Washington, DC 20585; Telephone: (202) 246–4145 or Email: *ITIAC@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Industrial Technology Innovation Advisory Committee (Committee) was established pursuant to the Energy Independence and Security Act (EISA) of 2007 as amended by Public Law 116–260, and in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10. The Committee is established to advise the Secretary of Energy (Secretary) with respect to the Industrial Emissions Reductions Technology Development Program (the program) by identifying and evaluating any technologies being developed by the private sector relating to the focus areas described in section 454(c) of the EISA; identifying technology gaps in the private sector or other Federal agencies in those focus areas, and making recommendations on how to address those gaps; surveying and analyzing factors that prevent the adoption of emissions reduction technologies by the private sector; and recommending technology screening criteria for technology developed under the program to encourage adoption of the technology by the private sector.

Purpose of Meeting: ITIAC will hold a meeting on March 21–22, 2024 to initiate its work to develop a strategic plan on how to achieve the goals of the Industrial Emissions Reductions Technology Development Program and, in consultation with the Secretary and the Director of the Office of Science Technology and Policy (Director), propose missions and goals for the program consistent with the purposes of the program described in section 454(b)(1) of the EISA.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- DOE Industrial Decarbonization Activities Overview
- Discussion on Next Steps
- Public Comment Period and Closing Remarks
- Adjourn

All attendees are requested to register in advance. The ITIAC website will be updated with instructions and links to register for the meeting: *https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee.*

Public Participation: The ITIAC welcomes the attendance of the public at its meetings. Individuals who wish to offer public comments at the ITIAC meeting may do so on March 22, 2024, but must register in advance by 5 p.m. Eastern time on March 20, 2024, by sending a written request identified by ''ITIAC March 2024 Meeting,'' to Dr. Zachary Pritchard at *ITIAC@ee.doe.gov.* Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but is not expected to exceed three minutes. Anyone who is not able to attend the meeting, or for whom the allotted public comments time is insufficient to address pertinent issues with the ITIAC, is invited to send a written statement identified by ''ITIAC March 2024 Meeting—Written Statement,'' to Dr. Zachary Pritchard at *ITIAC@ee.doe.gov.*

Minutes: Minutes will be posted on the ITIAC website: *https://www.energy.gov/eere/iedo/industrial-technology-innovation-advisory-committee.* They can also be obtained by contacting *ITIAC@ee.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on February 28, 2024, by David Borak, Deputy Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 28, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–04482 Filed 3–1–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; System of Records

AGENCY: U.S. Department of Energy.

ACTION: Notice of a modified system of records.

SUMMARY: As required by the Privacy Act of 1974 and the Office of Management and Budget (OMB) Circulars A–108 and A–130, the Department of Energy (DOE or the Department) is publishing notice of a modification to an existing Privacy Act System of Records. DOE proposes to amend System of Records DOE–13 Payroll and Leave Records. This System of Records Notice (SORN) is being modified to align with new formatting requirements, published by OMB, and to ensure appropriate Privacy Act coverage of business processes and Privacy Act information. While there are no substantive changes to the ''Categories of Individuals'' or ''Categories of Records'' sections covered by this SORN, substantive changes have been made to the ''System Locations,'' ''Routine Uses,'' and

''Administrative, Technical and Physical Safeguards'' sections to provide greater transparency. Changes to ''Routine Uses'' include new provisions related to responding to breaches of information held under a Privacy Act SORN as required by OMB's Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017). Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

DATES: This modified SORN will become applicable following the end of the public comment period on April 3, 2024 unless comments are received that result in a contrary determination.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW, Washington, DC 20503 and to Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H–085, Washington, DC 20585 or by facsimile at (202) 586–8151 or by email at *privacy@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ken Hunt, Chief Privacy Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Rm. 8H–085, Washington, DC 20585 or by facsimile at (202) 586–8151, by email at *privacy@hq.doe.gov,* or by telephone at (240) 686–9485.

SUPPLEMENTARY INFORMATION: On January 9, 2009, DOE published a Compilation of its Privacy Act Systems of Records, which included System of Records DOE–13 Payroll and Leave Records. This notice proposes amendments to the system locations section of that System of Records by removing system locations where DOE–13 is no longer applicable. These locations are as follows: NNSA Service Center Albuquerque, Atlanta Regional Support Office, Office of Energy Efficiency and Renewable Energy (Boston), National Energy Technology Laboratory (Pittsburgh and Morgantown locations), Naval Petroleum and Oil Shale Reserves, Naval Petroleum Reserves in California, the Office of Scientific and Technical Information, the Philadelphia Regional Support Office, the Seattle Regional Support Office, the Golden Field Office, the Western Area Power Administration, Office of Science (Chicago and Oak Ridge Offices), and the Schenectady Naval Reactors Office. Similarly, this notice updates the addresses for the Office of River Protection, the Richland Operations Office, and the Southwestern Power Administration. In the ''Routine Uses'' section, this modified notice deletes a previous routine use concerning efforts responding to a suspected or confirmed loss of confidentiality of information as it appears in DOE's compilation of its Privacy Act systems of records (January 9, 2009) and replaces it with one to assist DOE with responding to a suspected or confirmed breach of its records of Personally Identifiable Information (PII), modeled with language from OMB's Memorandum M–17–12, ''Preparing for and Responding to a Breach of Personally Identifiable Information'' (January 3, 2017). Further, this notice adds one new routine use to ensure that DOE may assist another agency or entity in responding to the other agency's or entity's confirmed or suspected breach of PII, as appropriate, as aligned with OMB's Memorandum M–17–12. Additionally, minor changes have been made to routine uses fifteen through eighteen. ''Child support'' and ''401k enforcement records'' have been added to the ''Categories of Records in the System'' section. An administrative change required by the FOIA Improvement Act of 2016 extends the length of time a requestor is permitted to file an appeal under the Privacy Act from 30 to 90 days. Both the ''System Locations'' and ''Administrative, Technical and Physical Safeguards'' sections have been modified to reflect the Department's usage of cloud-based services for records storage. Language throughout the SORN has been updated to align with applicable Federal privacy laws, policies, procedures, and best practices.

SYSTEM NAME AND NUMBER:

DOE–13 Payroll and Leave Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Systems leveraging this SORN may exist in multiple locations. All systems storing records in a cloud-based server are required to use government-approved cloud services and follow National Institute of Standards and Technology (NIST) security and privacy standards for access and data retention. Records maintained in a government-approved cloud server are accessed through secure data centers in the continental United States.

U.S. Department of Energy, Headquarters, 1000 Independence Avenue SW, Washington, DC 20585.

U.S. Department of Energy, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208.

U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3090, Carlsbad, NM 88221.

U.S. Department of Energy, Environmental Management Consolidated Business Center (EMCBC), 550 Main Street, Rm. 7–010, Cincinnati, OH 45202.

U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, ID 83415.

U.S. Department of Energy, NNSA Naval Reactors Field Office, Pittsburgh Naval Reactors, P.O. Box 109, West Mifflin, PA 15122–0109.

U.S. Department of Energy, Office of River Protection, P.O. Box 450, Richland, WA 99352.

U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352.

U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29801.

U.S. Department of Energy, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635–6711.

U.S. Department of Energy, Southwestern Power Administration, One West Third Street, Suite 1500, Tulsa, OK 74103.

U.S. Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, LA 70123.

SYSTEM MANAGER(S):

Headquarters: Director, Office of Financial Accounting, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Field Offices: The Directors, Office of Financial Accounting of the DOE offices of the ''System Locations'' listed above are the system managers for their respective portions of this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* General Accounting Office Policy and Procedures Manual; Personal Responsibility and Work Opportunity Reconciliation Act, Public Law 104–193.

PURPOSE(S) OF THE SYSTEM:

Records in this system are maintained and used by DOE to document information on employee wages, deductions, retirement benefits, and leave.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOE employees and contractor personnel, including National Nuclear Security Administration (NNSA) personnel and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain paper and electronic files contained payroll-related information for DOE employees, such as time and attendance records, earning records, payroll actions, deduction information requests, authorizations for overtime and night differential, 401k records, child support enforcement records, leave requests, and Office of Personnel Management (OPM) retirement records.

RECORD SOURCE CATEGORIES:

The subject individual, supervisors, timekeepers, official personnel records, and the Internal Revenue Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. A record from this system may be disclosed as a routine use to the Department of Treasury to collect withheld taxes, process payroll payments, and issue savings bonds.

2. A record from this system may be disclosed as a routine use to the Internal Revenue Service to process Federal income tax payments and tax levies.

3. A record from this system may be disclosed as a routine use to State, local, or Tribal governments to process State and local income tax deductions and court ordered child support or alimony payments.

4. A record from this system may be disclosed as a routine use to OPM to establish and maintain retirement records and benefits.

5. A record from this system may be disclosed as a routine use to the Federal Retirement Thrift Investment Board to update section 401K type records and benefits.

6. A record from this system may be disclosed as a routine use to the Social Security Administration to establish Social Security records and benefits.

7. A record from this system may be disclosed as a routine use to the Department of Labor to process worker's compensation claims.

8. A record from this system may be disclosed as a routine use to the Department of Defense to adjust military retirement.

9. A record from this system may be disclosed as a routine use to financial institutions to credit net check deposits, savings allotments, and discretionary allotments.

10. A record from this system may be disclosed as a routine use to the employee unions to credit accounts for employees with union dues deductions.

11. A record from this system may be disclosed as a routine use to health insurance carriers to process insurance claims.

12. A record from this system may be disclosed as a routine use to the General Accounting Office to verify accuracy and legality of disbursement.

13. A record from this system may be disclosed as a routine use to the Department of Veterans Affairs to evaluate veteran's benefits to which the individual may be entitled.

14. A record from this system may be disclosed as a routine use to States' departments of employment security to determine entitlement to unemployment compensation or other State benefits.

15. A record from this system may be disclosed as a routine use to the personnel, contractors, grantees, advisory boards and cooperative agreement holders of the Department of Labor, the Department of Health and Human Services, the Department of Justice, and other Federal agencies and their components, designated by the President to implement the Federal compensation program established by the Energy Employees Occupational Illness Compensation Program Act, for the purpose of outreach, to estimate radiation doses and other workplace exposures, and assisting in the adjudication or processing of a claim under that Act. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

16. A record from this system may be disclosed as a routine use to the appropriate local, Tribal, State, or Federal agency when records, alone or in conjunction with other information, indicate a violation or potential violation of law whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto.

17. A record from this system may be disclosed as a routine use to a Federal, State, Tribal, or local agency to facilitate the requesting agency's decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. The Department must deem such disclosure to be compatible with the purpose for which the Department collected the information.

18. A record from this system may be disclosed as a routine use to DOE contractors in performance of their contracts, and their officers and employees who have a need for the record in the performance of their duties. Those provided information under this routine use are subject to the same limitations applicable to Department officers and employees under the Privacy Act.

19. A record from this system may be disclosed as a routine use to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member concerning the subject matter of the record. The member of Congress must provide a copy of the constituent's signed request for assistance.

20. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, Federal Parent Locator System (FPLS) and Federal Tax Offset System to locate individuals and identify their income sources to establish paternity, establish and modify orders of support, and for enforcement action.

21. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, FPLS and Federal Tax Offset System, for release to the Social Security Administration to verify social security numbers in connection with the operation of the FPLS by the Office of Child Support Enforcement.

22. A record from this system may be disclosed as a routine use to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, FPLS and Federal Tax Offset System, for release to the Department of Treasury to administer the Earned Income Tax Credit Program (section 32, Internal Revenue Code of 1986) and verify a claim with respect to employment in a tax return.

23. A record from this system may be disclosed as a routine use to the Defense Finance and Accounting Service (DFAS) so that DFAS may perform payroll processing services for DOE. These services may include the issuance of salary payments to employees and distribution of wages; and the distribution of allotments and deductions to financial and other institutions, many of which are through electronic funds transfer.

24. A record from this system may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the System of Records; (2) the Department has determined that as a

result of the suspected or confirmed breach there is a risk of harm to individuals, DOE (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

25. A record from this system may be disclosed as a routine use to another Federal agency or Federal entity, when the Department determines that information from this System of Records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored as paper records or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name, Social Security number, or payroll number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Retention and disposition of these records is in accordance with the National Archives and Records Administration-approved records disposition schedule with a retention of 10 years or 250 years based on if records contain work locations.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Electronic records may be secured and maintained on a cloud-based software server and operating system that resides in Federal Risk and Authorization Management Program (FedRAMP) and Federal Information Security Modernization Act (FISMA) hosting environment. Data located in the cloud-based server is firewalled and encrypted at rest and in transit. The security mechanisms for handling data at rest and in transit are in accordance with DOE encryption standards. Records are protected from unauthorized access through the following appropriate safeguards:

- *Administrative:* Access to all records is limited to lawful government purposes only, with access to electronic records based on role and either two-factor authentication or password protection. The system requires passwords to be complex and to be changed frequently. Users accessing system records undergo frequent training in Privacy Act and information security requirements. Security and privacy controls are reviewed on an ongoing basis.
- *Technical:* Computerized records systems are safeguarded on Departmental networks configured for role-based access based on job responsibilities and organizational affiliation. Privacy and security controls are in place for this system and are updated in accordance with applicable requirements as determined by NIST and DOE directives and guidance.
- *Physical:* Computer servers on which electronic records are stored are located in secured Department facilities, which are protected by security guards, identification badges, and cameras. Paper copies of all records are locked in file cabinets, file rooms, or offices and are under the control of authorized personnel. Access to these facilities is granted only to authorized personnel and each person granted access to the system must be an individual authorized to use and/or administer the system.

RECORD ACCESS PROCEDURES:

The Department follows the procedures outlined in 10 CFR 1008.4. Valid identification of the individual making the request is required before information will be processed, given, access granted, or a correction considered, to ensure that information is processed, given, corrected, or records disclosed or corrected only at the request of the proper person.

CONTESTING RECORD PROCEDURES:

Any individual may submit a request to the System Manager and request a copy of any records relating to them. In accordance with 10 CFR 1008.11, any individual may appeal the denial of a request made by him or her for information about or for access to or correction or amendment of records. An appeal shall be filed within 90 calendar days after receipt of the denial. When an appeal is filed by mail, the postmark is conclusive as to timeliness. The appeal shall be in writing and must be signed by the individual. The words ''PRIVACY ACT APPEAL'' should appear in capital letters on the envelope and the letter. Appeals of denials relating to records maintained in government-wide System of Records reported by Office of Personnel Management (OPM), shall be filed, as appropriate, with the Assistant Director for Agency Compliance and Evaluation, OPM, 1900 E Street NW, Washington, DC 20415. All other appeals relating to DOE records shall be directed to the Director, Office of Hearings and Appeals (OHA), 1000 Independence Ave. SW, Washington, DC 20585.

NOTIFICATION PROCEDURES:

In accordance with the DOE regulation implementing the Privacy Act, 10 CFR part 1008, a request by an individual to determine if a System of Records contains information about themselves should be directed to the U.S. Department of Energy, Headquarters, Privacy Act Officer. The request should include the requester's complete name and the time period for which records are sought.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This SORN was last published in the **Federal Register** (FR), 74 FR 1012–1014, on January 9, 2009.

Signing Authority

This document of the Department of Energy was signed on February 1, 2024, by Ann Dunkin, Senior Agency Official for Privacy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 28, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–04472 Filed 3–1–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Request for Information Regarding the Manufacturing Capital Connector; Extension of Comment Period

AGENCY: Office of Manufacturing and Energy Supply Chains, Department of Energy.

ACTION: Request for information; extension of comment period.

SUMMARY: On February 9, 2024, the U.S. Department of Energy (DOE) published a request for information (RFI) seeking comment on a notional Manufacturing Capital Connector (MCC) to support applicants seeking clean energy manufacturing funding opportunities and/or tax credits. The RFI established a March 4, 2024, deadline for the submission of written comments. DOE is extending the comment period to March 15, 2024.

DATES: The comment period for the RFI published on February 9, 2024 (89 FR 9132) is extended. DOE will accept comments responding to this RFI submitted on or before March 15, 2024.

ADDRESSES: Interested parties may submit comments electronically to *CapitalConnector-RFI@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Rachel Gould, *CapitalConnector-RFI@hq.doe.gov* or (202) 586–6116.

SUPPLEMENTARY INFORMATION: On February 9, 2024, the U.S. Department of Energy (DOE) published a request for information (RFI) in the **Federal Register** (89 FR 9132). DOE issued this RFI to gauge interest in, and invite input on the design of, a notional Manufacturing Capital Connector (MCC) that would support applicants seeking clean energy manufacturing funding opportunities and/or tax credits. To help inform the interest in and design of the MCC for clean energy manufacturing programs, DOE is seeking public input on the potential structure, benefits, and risks of the proposed MCC from potential capital providers and clean energy manufacturing program applicants or selectees. The RFI specifically welcomes comment in response to a series of questions aimed at applicants or selectees and at potential capital providers.

Signing Authority

This document of the Department of Energy was signed on February 28, 2024, by Giulia Siccardo, Director, Office of Manufacturing and Energy Supply Chains, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 28, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–04508 Filed 3–1–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Record of Decision for Adoption of Nuclear Regulatory Commission's (NRC) Environmental Impact Statement Related to the Operating License for the SHINE Medical Isotope Production Facility

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy's National Nuclear Security Administration (DOE/NNSA) intends to issue a modification to its cooperative agreement with SHINE Technologies, DE–NA0004010, to revise the scope of the agreement to include cost-shared funding for facility construction. Issuance of the modification is subject to satisfactory completion of pricing and other technical reviews. The environmental impacts of this proposed action have been addressed in the U.S. Nuclear Regulatory Commission's (NRC) Environmental Impact Statement (EIS) NUREG–2183 and NUREG–2183, Supplement 1.

FOR FURTHER INFORMATION CONTACT: For information on NNSA's National Environmental Policy Act (NEPA) process, please contact Mr. James Sanderson, NEPA Compliance Officer, National Nuclear Security Administration, Office of General Counsel, at *jim.sanderson@nnsa.doe.gov* or (202) 586–1402. This Record of Decision is available at *https://energy.gov/nepa.* The NRC EIS and supplement are available at: *https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr2183/index.html* (titles: NUREG–2183—Environmental Impact Statement for the Construction Permit for the SHINE Medical Radioisotope Production Facility Final Report and NUREG–2183, Supplement 1, ''Environmental Impact Statement Related to the Operating License for the SHINE Medical Isotope Production Facility'' Final Report).

SUPPLEMENTARY INFORMATION: The U.S. medical community depends on a reliable supply of the radioisotope molybdenum-99 (Mo–99) for nuclear medical diagnostic procedures. Mo–99's decay product, technetium–99m (Tc–99m), is used in over 40,000 medical procedures in the United States each day to diagnose heart disease and cancer, to study organ structure and function, and to perform other important medical applications. In 2012, Congress passed the American Medical Isotopes Production Act, which directed NNSA to establish a technology-neutral program to support the establishment of domestic supplies of Mo–99 without the use of highly enriched uranium (HEU). NNSA has implemented this by competitively awarding 50/50 percent cost-shared cooperative agreements to commercial entities and providing funds to DOE's National Laboratories to support development of non-HEU Mo–99 production technologies. Currently, the scope of NNSA's cooperative agreement with SHINE Technologies includes activities such as equipment procurement but does not include facility construction.

In 2015, the NRC and NNSA issued NUREG–2183, ''Environmental Impact Statement for the Construction Permit for the SHINE Medical Radioisotope Production Facility'' (NRC 2015), which discussed the environmental impacts of constructing, operating, and decommissioning the SHINE Medical Isotope Production Facility (SHINE facility) in Janesville, Wisconsin. In 2016, at the conclusion of its safety and environmental reviews, the NRC issued a construction permit for the SHINE facility (NRC 2016). In July 2019, SHINE Medical Technologies, LLC (SHINE) submitted to the NRC an application for an operating license for the SHINE facility. When a final environmental impact statement (FEIS) has been prepared in connection with the issuance of a construction permit for a facility, the NRC is required to prepare a supplement to the FEIS in connection with any issuance of an operating license for that facility in accordance with 10 Code of Federal Regulations (CFR) 51.95(b). This supplement updates the prior environmental review and only covers matters that differ from those or that reflect significant new information relative to that discussed in the FEIS. Accordingly, in response to SHINE's operating license application, NRC and NNSA staff issued NUREG–2183, Supplement 1, which considered

whether there is any new information with respect to the environment or the environmental impacts of the SHINE facility, including information that is different from that considered in NUREG–2183. NRC staff did not identify any information that presented a considerably different picture of the environmental consequences of constructing, operating, and decommissioning the SHINE facility. After weighing the environmental, economic, technical, and other benefits against environmental and other costs, NRC staff's recommendation, unless safety issues mandate otherwise, was that the operating license be issued as proposed. NRC staff based its recommendation on the following: the application, including SHINE's supplemental environmental report; consultation with Federal, State, Tribal, and local agencies; the staff's independent review; and the consideration of public comments.

Decision

NNSA intends to issue a modification to its cooperative agreement with SHINE Technologies, DE–NA0004010, to revise the scope of the agreement to include cost-share funding for facility construction to support deployment of this non-HEU Mo–99 production technology. Issuance of the modification is subject to satisfactory completion of pricing and other technical reviews. This modification reflects a reallocation of funding previously awarded to DE–NA0004010 and does not increase the agreement's total funding level.

Basis for Decision

The environmental impacts of this proposed action have been previously addressed in NUREG–2183, ''Environmental Impact Statement for the Construction Permit for the SHINE Medical Radioisotope Production Facility,'' and NUREG–2183, Supplement 1, ''Environmental Impact Statement Related to the Operating License for the SHINE Medical Isotope Production Facility.'' NNSA was a cooperating agency for both the EIS and supplement and after an independent review and determined that its comments and suggestions were satisfied per 40 CFR 1506.3(b)(2). NNSA's proposed action is substantially the same as the proposed action analyzed in NRC's EIS and supplement.

Signing Authority

This document of the Department of Energy was signed on January 31, 2024 by Jill Hruby, Under Secretary for Nuclear Security and Administrator, NNSA, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 27, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–04397 Filed 3–1–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP23–1032–001.

Applicants: Osaka Gas Trading & Export LLC.

Description: Osaka Gas Trading & Export LLC submits Annual Report of Purchased Capacity pursuant to the October 20, 2023 Order.

Filed Date: 2/26/24.

Accession Number: 20240226–5102.

Comment Date: 5 p.m. ET 3/11/24.

Docket Numbers: RP24–412–001.

Applicants: Guardian Pipeline, L.L.C.

Description: Tariff Amendment: Amendment to Electric Power Cost Recovery Surcharge Adjustment to be effective 4/1/2024.

Filed Date: 2/23/24.

Accession Number: 20240223–5205.

Comment Date: 5 p.m. ET 3/6/24.

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.

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 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04417 Filed 3–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–27–000]

Kern River Gas Transmission Company; Notice of Staff Protest to Proposed Blanket Certificate Activity

Federal Energy Regulatory Commission (FERC or Commission) staff (Protestor) hereby protests the prior notice request filed under the provisions of the Commission's regulations at part 157, subpart F, by Kern River Gas Transmission Company (Kern River) on December 15, 2023, in the above-referenced docket. Pursuant to its Part 157, subpart F, blanket certificate authority, Kern River proposes to construct and operate the Lanes Crossing Meter Station (Project), within Kern River's existing Victorville Meter Station at the High Desert Power Plant, San Bernardino County, California. Protestor seeks to have this prior notice request processed as a case-specific application filed under section 7(c) of the Natural Gas Act (NGA) and Part 157, subpart A, of the Commission's regulations.[1]

Protestor notes that Kern River did not provide a copy of a finding by the California State Historic Preservation

[1] Section 157.205(f) provides that a protested prior notice filing shall be treated as though it had filed a case-specific application under NGA section 7, unless, pursuant to section 157.205(g), the protestor withdraws its protest within 30 days after protests were due.

Office of ''no historic properties'' or ''no historic properties effected.'' This documentation is necessary to demonstrate the Project's compliance with the National Historic Preservation Act, as required under the Commission's regulations at section 157.208(c)(9) and Appendix II of subpart F. Without this documentation, the environmental concerns cannot be adequately addressed before the protest period expires on February 26, 2024.

Dated: February 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04416 Filed 3–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1287–000]

Wadley Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Wadley Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 18, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission'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 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04414 Filed 3–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–75–000]

Viridon California, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On February 26, 2024, the Commission issued an order in Docket No. EL24–75–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Viridon California, LLC's tariff filing is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Viridon California, LLC,* 186 FERC ¶ 61,143 (2024).

The refund effective date in Docket No. EL24–75–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–75–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

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 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04415 Filed 3–1–24; 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: EC24–41–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Supplement to January 16, 2024, Application for Authorization Under Section 203 of the Federal Power Act of Tri-State Generation and Transmission Association, Inc.

Filed Date: 2/23/24.

Accession Number: 20240223–5239.

Comment Date: 5 p.m. ET 3/4/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–117–000.

Applicants: FL Solar 7, LLC.

Description: FL Solar 7, LLC submits Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 2/26/24.

Accession Number: 20240226–5084.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: EG24–118–000.

Applicants: White Wing Ranch North, LLC.

Description: White Wing Ranch North, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 2/26/24.

Accession Number: 20240226–5106.

Comment Date: 5 p.m. ET 3/18/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–480–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Minkar Energy Project (Minkar Solar) LGIA Deficiency Response to be effective 11/10/2023.

Filed Date: 2/26/24.

Accession Number: 20240226–5166.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–503–001.

Applicants: Greenleaf Energy Unit 2 LLC.

Description: Tariff Amendment: Deficiency Letter Response; Request Shortened Comment Period/Expedited Order to be effective 9/1/2023.

Filed Date: 2/26/24.

Accession Number: 20240226–5194.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1318–000.

Applicants: Pelican Power LLC.

Description: Baseline eTariff Filing: Baseline new to be effective 12/31/9998.

Filed Date: 2/26/24.

Accession Number: 20240226–5142.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1319–000.

Applicants: Southern California Edison Company.

Description: Tariff Amendment: Termination of GIA & DSA, Avatar Enterprises America SCE PPA (WDT1364/SA907–908) to be effective 4/27/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5149.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1320–000.

Applicants: Orlando CoGen Limited, L.P.

Description: Tariff Amendment: Cancellation of Market Based Rate Tariff to be effective 2/27/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5164.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1321–000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits one Facilities Agreement re: ILDSA, No. 4234 to be effective 5/1/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5171.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1322–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Transmission Company of Illinois.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–02–26_SA 3936 ATXI-Sikeston 1st Revised Construction Agreement to be effective 2/27/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5177.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1323–000.

Applicants: San Juan Solar 1, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/27/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5180.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1324–000.

Applicants: SJS 1 Storage, LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/27/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5181.

Comment Date: 5 p.m. ET 3/18/24.

Docket Numbers: ER24–1326–000.

Applicants: Tucson Electric Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 541, Large Generator Interconnection Agreement to be effective 1/26/2024.

Filed Date: 2/26/24.

Accession Number: 20240226–5223.

Comment Date: 5 p.m. ET 3/18/24.

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.

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interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: February 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04418 Filed 3–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER24–1306–000]

Windy Flats Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Windy Flats Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 18, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission'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 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04413 Filed 3–1–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–11–000]

Commission Information Collection Activities (FERC–576); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–576 (Report of Service Interruptions or Damage to Facilities) (OMB Control Number 1902–0004).

DATES: Comments on the collections of information are due May 3, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24–11–000 and the specific FERC collection number (FERC–576)) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by other delivery services:
  - *Mail via U.S. Postal Service Only:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *All other delivery services:* Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–576, Report of Service Interruptions or Damage to Facilities.

OMB Control No.: 1902–0004.

Type of Request: Three-year extension of the FERC–576 information collection requirements with no changes to the current reporting requirements.

Abstract: Per 18 CFR 260.9, natural gas pipeline companies must report (i) damage to any jurisdictional natural gas facilities other than liquefied natural gas facilities caused by a hurricane, earthquake or other natural disaster or terrorist activity that results in a loss of or reduction in pipeline throughput or storage deliverability; and (ii) serious interruptions of service to any shipper involving jurisdictional natural gas facilities other than liquefied natural gas facilities.

The notifications, made to the Director, Division of Pipeline

Certificates via email or fax as soon as feasibly possible, must state: (1) The location of the service interruption or damage to natural gas pipeline or storage facilities; (2) The nature of any damage to pipeline or storage facilities; (3) Specific identification of the facilities damaged; (4) The time the service interruption or damage to the facilities occurred; (5) The customers affected by the service interruption or damage to the facilities; (6) Emergency actions taken to maintain service; and (7) Company contact and telephone number. The information provided by these notifications are kept by the Commission and are not made part of the public record.

In addition, if the Department of Transportation requires an incident report [1] under the Natural Gas Pipeline Safety Act (49 U.S.C. 60101 through 60143), a copy of such report shall be submitted to the Director of the Commission's Division of Pipeline Certificates, within 30 days of the reportable incident. Natural gas companies must also send a copy of submitted incident reports to each state commission for the state(s) in which the reported service interruption occurred.[2] If the Commission did not collect this information, it would lose a data point that assists in the monitoring of transactions, operations, and reliability of interstate pipelines.

Type of Respondents: Natural gas companies experiencing service interruptions or damage to facilities.

Estimate of Annual Burden: The Commission estimates the average annual burden and cost [3] for this information collection as follows.

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hours and cost ($) per response	Total annual burden hours and total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Notification of Incident—Service Interruption.	50	1	50	1 hr.; $100.00	50 hrs.; $5,000.00	$100.00
Notification of Incident—Damage	22	1	22	0.25 hrs.; $25.00	5.5 hrs.; $550.00	25.00
Submittal of DOT Incident Report	10	1	10	0.25 hrs.; $25.00	2.5 hrs.; $250.00	25.00
Total	82				58 hrs.; $5,800	

Comments: Comments are invited on: (1) whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden [4] and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 26, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–04412 Filed 3–1–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 11779–01–R3]

Clean Air Act Operating Permit Program; Order on Petition for Objection to State Operating Permit for United States Steel Corporation, Mon Valley Works Edgar Thompson Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an order dated February 7, 2024, granting a petition dated September 26, 2023 from the Environmental Integrity Project, the Clean Air Council, and PennFuture. The petition requested that the EPA object to a Clean Air Act (CAA) title V operating permit issued by the Allegheny County Health Department (ACHD) to the U.S. Steel Mon Valley Works Edgar Thompson Plant (U.S. Steel, Edgar Thompson) for its steel production facility located in Braddock, Allegheny County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mr. David Talley, EPA Region 3, (215) 814–2117, *talley.david@epa.gov.* The final order and petition are available electronically at: *www.epa.gov/title-v-operating-permits/title-v-petition-database.*

SUPPLEMENTARY INFORMATION: The EPA received a petition from the Environmental Integrity Project, the Clean Air Council, and PennFuture dated September 26, 2023, requesting that the EPA object to the issuance of operating permit no. 0051–OP23, issued by ACHD to U.S. Steel, Edgar Thompson in Braddock, Allegheny County, Pennsylvania.

On February 7, 2024, the EPA Administrator issued an order granting the petition.

The order itself explains the basis for the EPA's decision.

Cristina Fernández,

Director, Air and Radiation Division, Region III.

[FR Doc. 2024–04428 Filed 3–1–24; 8:45 am]

BILLING CODE 6560–50–P

[1] The Department of Transportation defines ''incident'' at 49 CFR 191.3. The regulatory thresholds for an ''incident report'' include (1) A death, or personal injury necessitating in-patient hospitalization; (2) Estimated property damage of $122,000 or more; (3) Unintentional estimated gas loss of three million cubic feet or more; (4) Emergency shutdown of a facility; or (5) An event that is significant in the judgment of the operator.

[2] *See* 18 CFR 260.9(d) and 260.9(e).

[3] The Commission staff estimates that the average respondent for FERC–576 is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's current annual average of $207,786 (for salary plus benefits), the average hourly cost is $100/hour.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collections burden, reference 5 Code of Federal Regulations 1320.3.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0075; FRL–11782–01–OCSPP]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in table 1 of unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a July 26, 2023, **Federal Register** Notice of Receipt of Requests from the registrant listed in table 2 of unit II, to voluntarily cancel these product registrations. In the July 26, 2023, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrant withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective March 4, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0075, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrant, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
10163–171	10163	Imidan 1–E Insecticide	Phosmet (059201/732–11–6)—(11.7%).
10163–215	10163	Imidan 2.5–EC	Phosmet (059201/732–11–6)—(27.5%).
10163–313	10163	Imidan 60 WDG	Phosmet (059201/732–11–6)—(60%).

Table 2 of this unit includes the names and addresses of record for all registrants of the products in table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
10163	Gowan Company, LLC, 370 S Main St., Yuma, AZ 85366.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the July 26, 2023, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of the products listed in table 1 of unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in table 1 of unit II. Accordingly, the Agency hereby orders that the product registrations identified in table 1 of unit II, are canceled. The effective date of the cancellations that are the subject of this notice is March 4, 2024. Any distribution, sale, or use of existing stocks of the products identified in table 1 of unit II, in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in unit VI, will be a violation of FIFRA.

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

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on

the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of July 26, 2023 (88 FR 48248) (FRL–11149–01). The comment period closed on January 22, 2024.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows:

The registrant may continue to sell and distribute existing stocks of the products listed in table 1 of unit II, until March 5, 2025, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrant is prohibited from selling or distributing the products listed in table 1 of unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal. Persons other than the registrant may sell, distribute, or use existing stocks of products listed in table 1 of unit II, until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: February 28, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024–04495 Filed 3–1–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11770–01–OA]

Request for Nominations to the EPA Clean Air Scientific Advisory Committee (CASAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations of scientific experts to be considered for appointment to the Clean Air Scientific Advisory Committee (CASAC). Appointments will be made by the Administrator.

DATES: Nominations should be submitted in time to arrive no later than April 3, 2024.

FOR FURTHER INFORMATION CONTACT: For further information about the CASAC membership, appointment process, and schedule, please contact Mr. Aaron Yeow, DFO, by telephone at 202–564–2050, or by email at *yeow.aaron@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The CASAC is a chartered Federal Advisory Committee, established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409(d)(2), to review air quality criteria and National Ambient Air Quality Standards (NAAQS) and recommend to the EPA Administrator any new NAAQS and revisions of existing criteria and standards as may be appropriate. The CASAC shall also: advise the EPA Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS; describe the research efforts necessary to provide the required information; advise the EPA Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and advise the EPA Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such NAAQS. Members of the CASAC constitute a distinguished body of non-EPA scientists and engineers who are nationally and internationally recognized experts in their respective fields. Members are appointed by the EPA Administrator and serve for a two to three-year term as Special Government Employees who provide independent expert advice to the agency. Additional information is available at *https://casac.epa.gov.*

Expertise Sought for the CASAC: As required under the CAA section 109(d), the CASAC is composed of seven members, with at least one member of the National Academy of Sciences, one physician, and one person representing state air pollution control agencies. The SAB Staff Office is seeking nominations of experts to serve on the CASAC with expertise in one or more of the following disciplines: air quality, biostatistics, ecology, environmental engineering, epidemiology, exposure assessment, medicine, risk assessment, and toxicology. The SAB Staff Office is especially interested in scientists with expertise described above who have knowledge and experience *relating to criteria pollutants (carbon monoxide, lead, nitrogen oxides, ozone, particulate matter, and sulfur oxides).*

Selection Criteria for the CASAC: Nominees are selected based on their individual qualifications. Curriculum vitae should reflect the following:

—Demonstrated scientific credentials and disciplinary expertise in relevant fields;
—Willingness to commit time to the committee and demonstrated ability to work constructively and effectively on committees;
—Background and experiences that would help members contribute to the diversity of perspectives on the committee, *e.g.,* geographical, economic, social, cultural, educational backgrounds, professional affiliations, and other considerations;
—For the committee as a whole, consideration of the collective breadth and depth of scientific expertise; and a balance of scientific perspectives is important.

As the committee undertakes specific advisory activities, the SAB Staff Office will consider two additional criteria for each new activity: absence of financial conflicts of interest and absence of an appearance of a loss of impartiality.

How to Submit Nominations: Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form under the ''Nomination of Experts'' category at the bottom of the CASAC home page at *https://casac.epa.gov.* To be considered, all nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability or ethnicity.

The following information should be provided on the nomination form: contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted and asked to provide additional information, including a *curriculum vitae* and biographical sketch (indicating current position, educational background, research activities, sources of research funding for the last two years, and recent service on other national advisory committees or national professional organizations). To help the agency evaluate the effectiveness of its outreach efforts,

please indicate how you learned of this nomination opportunity. Persons having questions about the nomination process or the public comment process described below, or who are unable to submit nominations through the CASAC website, should contact the DFO, as identified above. The DFO will acknowledge receipt of nominations and will invite the nominee to provide any additional information that the nominee feels would be useful in considering the nomination, such as availability to participate as a member of the committee; how the nominee's background, skills and experience would contribute to the diversity of the committee; and any questions the nominee has regarding membership. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates on the CASAC website at *https://casac.epa.gov.* Public comments on each List of Candidates will be accepted for 21 days from the date the list is posted. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

Candidates may be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form is required for Special Government Employees (SGEs) and allows EPA to determine whether there is a statutory conflict between that person's public responsibilities as an SGE and private interests and activities, or the appearance of a loss of impartiality, as defined by Federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the CASAC home page at *https://casac.epa.gov.* This form should not be submitted as part of a nomination.

V. Khanna Johnston,

Deputy Director, EPA Science Advisory Staff Office.

[FR Doc. 2024–04497 Filed 3–1–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0546; FR ID 205759]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 3, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0546.

Title: Section 76.59 Definition of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 120 respondents and 130 responses.

Estimated Time per Response: 0.5 to 40 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Total Annual Burden: 958 hours.

Total Annual Cost: $640,150.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 154(i), 303(r), 338 and 534.

Needs and Uses: Market modification allows the Commission to modify the local television market of a particular commercial television broadcast station to enable commercial television stations, cable operators and satellite carriers to better serve the interests of local communities. Market modification provides a means to avoid rigid adherence to DMA designations and to promote consumer access to in-state and other relevant television programming. Section 338(l) of the Communications Act (the satellite market modification provision) and section 614(h)(1)(C) of the Communications Act (the corresponding cable provision) permit the Commission to add communities to or delete communities from a station's local television market following a written request. Furthermore, the Commission may determine that particular communities are part of more than one television market.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–04457 Filed 3–1–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–07]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of special closed meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) met for a Special Closed Meeting on this date.

Location: Virtual meeting via Webex.

Date: February 28, 2024.

Time: 11 a.m. ET.

Action and Discussion Item

Personnel Matter

The ASC convened a Special Closed Meeting to discuss a personnel matter. No action was taken by the ASC.

James R. Park,

Executive Director.

[FR Doc. 2024–04518 Filed 3–1–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS24–06]

Appraisal Subcommittee; Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with section 1104(b) of title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: This will be a virtual meeting via Webex. Please visit the agency's homepage (*www.asc.gov*) and access the provided registration link in the News and Events section. You MUST register in advance to attend this Meeting.

Date: March 13, 2024.

Time: 10 a.m. ET.

Status: Open.

Reports

Chair
Executive Director
Delegated State Compliance Reviews
Grants Director
Financial Manager
Notation Votes

Action and Discussion Items

Approval of Minutes
January 17, 2024 Special Open Meeting Minutes

How To Attend and Observe an ASC Meeting

The meeting will be open to the public via live webcast only. Visit the Agency's homepage (*www.asc.gov*) and access the provided registration link in the News and Events section. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

James R. Park,

Executive Director.

[FR Doc. 2024–04459 Filed 3–1–24; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments 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 19, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414, Comments can also be sent electronically to *Comments.applications@chi.frb.org:*

1. *The Jim and Peggy Scott Trust, James L. Scott and Peggy A. Scott, as co-trustees, and Brad A. Lydon and Jana F. Lydon, all of Fontanelle, Iowa; and Jessica C. Christensen and Joshua J. Christensen, both of Greenfield, Iowa;* as a group acting in concert, to retain voting shares of Greenfield Bancorporation, Ltd, and thereby indirectly retain voting shares of Union State Bank, both of Greenfield, Iowa.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–04513 Filed 3–1–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 19, 2024.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street,

Chicago, Illinois 60690–1414. Comments can also be sent electronically to *Comments.applications@chi.frb.org.*

1. *AmeriNational Community Services, LLC, Albert Lea, Minnesota;* to acquire Northwest Bancorporation of Illinois, Inc., Palentine, Illinois, a bank holding company, to engage in certain loan servicing, underwriting, compliance monitoring, asset management, consulting, and other nonbanking activities pursuant to section 225.28 of the Board's Regulation Y, including sections 225.28(b)(1)–(2), (b)(6), (b)(9), and (b)(12).

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–04514 Filed 3–1–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the Board's publication, on behalf of the agencies, for public comment of a proposal to extend, without revision, the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019), which is currently an approved collection of information. In determining whether to extend the proposed collection of information, the agencies will consider all comments received. As required by the PRA, the Board would then publish a second **Federal Register** notice for a 30-day comment period and submit the final FFIEC 019 clearance package to OMB for review and approval.

DATES: Comments must be submitted on or before May 3, 2024.

ADDRESSES: Interested parties are invited to submit written comments, identified by ''FFIEC 019,'' by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the reporting form number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available on the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed extension without revision of the FFIEC 019 discussed in this notice, please contact Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf users may call (202) 263–4869.

In addition, a copy of the FFIEC 019 form can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

SUPPLEMENTARY INFORMATION: The Board is proposing to extend for three years, without revision, the FFIEC 019.

Report Title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 019.

OMB Control Number: 7100–0213.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All branches and agencies of foreign banks domiciled in the United States with total direct claims on foreign residents in excess of $30 million.

Estimated Number of Respondents: Ongoing: 147; one-time: 20.

Estimated Average Burden per Response: Ongoing: 10 hours; one-time: 4 hours.

Estimated Total Annual Burden: Ongoing: 5,880 hours; one-time: 320 hours.

General Description of Report

This information collection is required pursuant to sections 7 and 13 of the International Banking Act (12 U.S.C. 3105 and 3108) for the Board, sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817 and 1820) for the FDIC, and the National Bank Act (12 U.S.C. 161) as applied through section 4 of the International Banking Act (12 U.S.C. 3102) for the OCC. The FFIEC 019 is given confidential treatment consistent with 5 U.S.C. 552(b)(4) and (b)(8).

The FFIEC 019 report must be filed by each U.S. branch or agency of a foreign bank that has total direct claims on foreign residents in excess of $30 million. The branch or agency reports its total exposure (1) to residents of its home country, and (2) to the other five foreign nations to which its exposure is largest and is at least $20 million. The home country exposure must be reported regardless of the size of the total claims for that nation.

Each respondent must report by country, as appropriate, the information on its direct claims (assets such as deposit balances with banks, loans, or securities), indirect claims (which include guarantees), and total adjusted claims on foreign residents, as well as information on commitments. The respondent also must report information on claims on related non-U.S. offices that are included in total adjusted claims on the home country, as well as a breakdown for the home country and each other reported country of adjusted claims on unrelated foreign residents by the sector of borrower or guarantor, and by maturity (in two categories: one year or less, and over one year). The Board

collects and processes this report on behalf of all three agencies.

Request for Comment

Public comment is requested on all aspects of this notice. Comment is also specifically invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted to the Board in response to this notice will be shared with the other agencies. All comments will become a matter of public record.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–04398 Filed 3–1–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0205; Docket No. 2023–0053; Sequence No. 11]

Submission for OMB Review; Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Marissa Ryba, Procurement Analyst, at telephone 314–586–1280, or *marissa.ryba@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0205, Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.

B. Need and Uses

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

a. FAR 52.204–29, Federal Acquisition Supply Chain Security Act Orders—Representation and Disclosures. This provision prohibits contractors from providing or using as part of the performance of the contract any covered article, or any products or services produced or provided by a source, if the covered article or the source is subject to an applicable FASCSA order identified in the clause at FAR 52.204–30(b)(1).

By submitting an offer, offerors are representing compliance with the prohibition. If an offeror cannot represent compliance with the prohibition, then the offeror must disclose the following information in accordance with 52.204–29(e):

(1) Name of the product or service provided to the Government;

(2) Name of the covered article or source subject to an FASCA order;

(3) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Offeror;

(4) Brand;

(5) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(6) Item description;

(7) Reason why the applicable covered article or the product or service is being provided;

b. FAR 52.204–30, Federal Acquisition Supply Chain Security Act Orders—Prohibition. This clause requires contractors to provide a report to the Government within 3 business days if the contractor identifies that the contractor or any-tier subcontractor, delivered or used a covered article or product or service subject to a FASCSA order. The report requires the following information:

(1) Contract number;

(2) Order number(s), if applicable;

(3) Name of the product or service provided to the Government;

(4) Name of the covered article or source subject to a FASCSA order;

(5) If applicable, name of the vendor, including the Commercial and Government Entity code and unique entity identifier (if known), that supplied the covered article or the product or service to the Contractor;

(6) Brand;

(7) Model number (original equipment manufacturer number, manufacturer part number, or wholesaler number);

(8) Item description; and

(9) Any readily available information about mitigation actions undertaken or recommended.

The contractor must also submit additional information within 10 days of submitting the first report identifying any further available information about mitigation actions undertaken or recommended. Additionally, the contractor shall describe the efforts it undertook to prevent submission and any additional efforts to prevent future submission of the covered article or the product or service produced or provided by a source subject to an applicable FASCSA order.

FAR provision 52.204–29. Information collected under will be by the government to determine whether to seek a waiver from a FASCSA order issued under the authority of the Federal Acquisition Supply Chain Security Act of 2018.

FAR clause 52.204–30 will Information collected will be used by the contracting officer working with the requirement activity to determine whether it is necessary to take further action and modify the contract.

C. Annual Burden

Respondents: 6,113.
Total Annual Responses: 1.
Total Burden Hours: 12,226.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 88 FR 88923, on

December 26, 2023. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0205, Implementation of Federal Acquisition Supply Chain Security Act (FASCSA) Orders.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–04505 Filed 3–1–24; 8:45 am]

BILLING CODE 6820–EP–P

UNITED STATES AGENCY FOR GLOBAL MEDIA

Fiscal Year (FY) 2022 Service Contract Inventory Report & FY 2023 Planned Analysis

AGENCY: United States Agency for Global Media.

ACTION: Notice.

SUMMARY: The United States Agency for Global Media (USAGM) announces the members of its FY 2022 Service Contract Inventory Report and FY 2023 Planned Analysis.

ADDRESSES: USAGM Office of Contracts, 330 Independence Ave. SW, Washington, DC 20237.

FOR FURTHER INFORMATION CONTACT: Khilena Adhin, Acquisition Policy Branch Chief, at *conpolicy@usagm.gov,* 202–920–2302.

SUPPLEMENTARY INFORMATION: In accordance with section 743 of division C of the Consolidated Appropriations Act of 2010, the U.S. Agency for Global Media (USAGM) is publishing this notice to advise the public of the availability of its FY 2022 Service Contract Inventory Report and FY 2023 Planned Analysis. They are available on the USAGM website, through the following link: *https://www.usagm.gov/our-work/strategy-and-results/strategic-priorities/research-reports/service-contract-inventory/.* The service contract inventory provides information on service contract actions over $25,000 made in FY 2022. The information is organized by function to show how contracted resources are distributed throughout the Agency. The inventory has been developed in accordance with guidance on service contract inventories issued on November 5, 2010 and on December 19, 2011 by the Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

Dated: February 28, 2024.

Armanda Matthews,

Program Support Specialist, U.S. Agency for Global Media.

[FR Doc. 2024–04475 Filed 3–1–24; 8:45 am]

BILLING CODE 8610–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Clinical Laboratory Improvement Advisory Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting for the Clinical Laboratory Improvement Advisory Committee (CLIAC). This is a virtual meeting. It is open to the public, limited only by the number of webcast lines available. Time will be available for public comment, and the public is also welcome to submit written comments in advance of the meeting (see the public participation section below).

DATES: The meeting will be held on April 10, 2024, from 10 a.m. to 6 p.m., EDT.

ADDRESSES: This is a virtual meeting. Meeting times are tentative and subject to change. The confirmed meeting times, agenda items, and meeting materials, including instructions for accessing the live meeting broadcast, will be available on the CLIAC website at *https://www.cdc.gov/cliac.* Check the website on the day of the meeting for the web conference link.

FOR FURTHER INFORMATION CONTACT: Heather Stang, M.S., Senior Advisor for Clinical Laboratories, Division of Laboratory Systems, Center for Laboratory Systems and Response, Office of Laboratory Science and Safety, Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop V24–3, Atlanta, Georgia 30329–4027. Telephone: (404) 498–2769; Email: *HStang@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Clinical Laboratory Improvement Advisory Committee (CLIAC) is charged with providing scientific and technical advice and guidance to the Secretary, Department of Health and Human Services; the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention (CDC); the Commissioner, Food and Drug Administration (FDA); and the Administrator, Centers for Medicare & Medicaid Services (CMS). The advice and guidance pertain to general issues related to improvement in clinical laboratory quality and laboratory medicine and specific questions related to possible revision of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) standards. Examples include providing guidance on studies designed to improve quality, safety, effectiveness, efficiency, timeliness, equity, and patient-centeredness of laboratory services; revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards on medical and laboratory practice; and the modification of the standards and provision of non-regulatory guidelines to accommodate technological advances, such as new test methods, the electronic transmission of laboratory information, and mechanisms to improve the integration of public health and clinical laboratory practices.

Matters to be Considered: The agenda will include agency updates from CDC, CMS, and FDA. Presentations and CLIAC discussions will focus on the applicability of CLIA personnel requirements to preanalytic testing, the role of artificial intelligence and machine learning in the clinical laboratory, and the use of clinical standards to improve laboratory quality. Agenda items are subject to change as priorities dictate.

Public Participation

It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments pertinent to agenda items.

Oral Public Comment: Public comment periods for each agenda item are scheduled immediately prior to the Committee discussion period for that item. In general, each individual or group requesting to present an oral comment will be limited to a total time of five minutes (unless otherwise indicated). Speakers should email *CLIAC@cdc.gov* or notify the contact person above (see **FOR FURTHER INFORMATION CONTACT**) at least five business days prior to the meeting date.

Written Public Comment: CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, it is requested that comments be submitted at least five business days prior to the meeting date so that the

comments may be made available to the Committee for their consideration and public distribution. Written comments should be submitted by email to *CLIAC@cdc.gov* or to the contact person above. All written comments will be included in the meeting minutes posted on the CLIAC website.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04432 Filed 3–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Sole Source Cooperative Agreement To Fund Uganda National Health Laboratories and Diagnostic Services (NHLDS)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $10,000,000, for Year 1 funding to NHLDS. The award will strengthen laboratory systems in Uganda by contributing to the attainment of HIV epidemic control and establishing sustainable and integrated systems for quality assured disease diagnostics, monitoring, and surveillance. Funding amounts for years 2–5 will be set at continuation.

DATES: The period for this award will be September 30, 2024, through September 29, 2029.

FOR FURTHER INFORMATION CONTACT: Christina Mwangi, Center for Global Health, Centers for Disease Control and Prevention, US Embassy Kampala, US Centers for Disease Control and Prevention, 1577 Ggaba Road, Telephone: 256772139023, Email: *mwn0@cdc.gov.*

SUPPLEMENTARY INFORMATION: The sole source award will strengthen Uganda's access to quality laboratory services during the scale up of HIV prevention, care, and treatment by supporting implementation of the Uganda National Health Laboratory Services (UNHLS) Policy II (2016) and its Strategic Plan (2020–2025).

NHLDS is in a unique position to conduct this work, as it is the primary stakeholder of laboratory-related policy development, strategic planning, and resources mobilization for the Ministry of Health (MOH). Additionally, NHLDS directly houses and manages the Central Public Health Reference Laboratory (CPHL) which is the national reference laboratory for HIV early infant diagnosis and viral load, national microbiology reference laboratory, national Tuberculosis (TB) reference laboratory, the national laboratory biorepository and national equipment calibration center. Furthermore, the NHLDS is the primary coordinator of the integrated national laboratory specimen transportation network that handles both HIV, TB and outbreak specimen referral across the country.

Summary of the Award

Recipient: Uganda National Health Laboratories and Diagnostic Services (NHLDS).

Purpose of the Award: The purpose of this award is to strengthen laboratory systems in Uganda by contributing to the attainment of HIV epidemic control and establishing sustainable and integrated systems for quality assured disease diagnostics, monitoring, and surveillance.

Amount of Award: For NHLDS, the approximate year 1 funding amount will be $10,000,000 in Federal Fiscal Year (FYY) 2024 funds, subject to the availability of funds. Funding amounts for years 2–5 will be set at continuation.

Authority: This program is authorized under Public Law 108–25 (the United States Leadership Against HIV AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601, *et seq.*] and Public Law 110–293 (the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008), and Public Law 113–56 (PEPFAR Stewardship and Oversight Act of 2013).

Period of Performance: The period for this award will be September 30, 2024, through September 29, 2029.

Dated: February 26, 2024.

Jamie Legier,

Acting Director, Office of Grants Services, Centers for Disease Control and Prevention.

[FR Doc. 2024–04399 Filed 3–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Nominations for Appointment to the Communications and Public Engagement Workgroup (CPEW) of the Advisory Committee to the Director (ACD), CDC

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership to the Communications and Public Engagement Workgroup (CPEW) of the Advisory Committee to the Director, CDC. The CPEW workgroup consists of approximately 15 members who are experts in the fields associated with communications, including public relations, health communication, risk communication, communication research, and marketing; community and partner engagement; public health science and practice, including implementation; and behavioral science/behavior change campaigns.

DATES: Nominations for membership on the CPEW workgroup must be received no later than March 28, 2024. Late nominations will not be considered for membership.

ADDRESSES: All nominations (cover letters and curriculum vitae) should be emailed to *ACDirector@cdc.gov* with the subject line: ''Nomination for CDC ACD Communications and Public Engagement Workgroup.''

FOR FURTHER INFORMATION CONTACT: Kate Galatas, MPH, Senior Communications Specialist, Office of Communications, Centers for Disease Control and Prevention, 1600 Clifton Road (MS H21–11), Atlanta, GA 30329–4027, Telephone: (404) 639–2064; Email: *ACDirector@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The purpose of the ACD, CDC Advisory Committee to the Director shall (1) make recommendations to the Director regarding ways to prioritize the activities of the agency in alignment with the CDC Strategic Plan required under section 305(c); H.R. 2617–1252; (2) advise on ways to achieve or improve performance metrics in relation to the CDC Strategic Plan, and other relevant metrics, as appropriate; (3) provide advice and recommendations on the development of the Strategic Plan, and any subsequent updates, as

appropriate; (4) advise on grants, cooperative agreements, contracts, or other transactions, as applicable; (5) provide other advice to the Director, as requested, to fulfill duties under sections 301 and 311; and (6) appoint subcommittees. The ACD, CDC consists of up to 15 non-federal members, including the Chair, knowledgeable in areas pertinent to the CDC mission, such as health policy, public health, global health, preparedness, preventive medicine, the faith-based and community-based sector, and allied fields.

Purpose: The establishment and formation of the ACD, Communications and Public Engagement Workgroup (CPEW) is to provide input to the Committee on agency-wide activities related to how CDC communicates directly and more effectively with the public, with a focus on reaching local communities with messages. Effective communication with the public includes, but is not limited to: (1) building relationships and mechanisms to communicate via trusted messengers, including but not limited to, clinicians, faith and community leaders, and health department officials at the national, state and local levels; (2) improving risk communication practices; (3) delivering more action-oriented and focused communications to help people protect their health (*e.g.,* effective messages and storytelling); (4) tailoring our messages and communications methods, as appropriate, to audiences, particularly for historically marginalized communities; and (5) increasing transparency by stepping up the pace, content and reach of our communications (*e.g.,* considering impact of different communications channels, such as blogs, TV interviews, emerging platforms).

The CPEW membership consists of approximately 15 members. It is co-chaired by two current ACD, CDC Special Government Employees. The CPEW co-chairs will present their findings, observations, and work products at one or more ACD, CDC meetings for discussion, deliberation, and decisions (final recommendations to CDC).

Nomination Criteria: CPEW members will serve terms ranging from six months to one year and be required to attend CPEW meetings approximately once per month (virtually or in person), and contribute time in between meetings for research, consultation, discussion, and writing assignments.

Nominations are being sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishments of the committee's/workgroup's objectives. Nominees will be selected based on expertise in the fields of communications, including public relations, health communication, risk communication, communication research, and marketing; community and partner engagement; public health science and practice, including implementation; and behavioral science/behavior change campaigns. Federal employees will not be considered for membership. Selection of members is based on candidates' qualifications to contribute to the accomplishment of the CPEW's objectives.

HHS policy stipulates that membership be balanced in terms of points of view represented and the workgroup's function. Appointments shall be made without discrimination based on age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Interested candidates should submit the following items:

- A one-half to one-page cover letter that includes your understanding of, and commitment to, the time and work necessary; one to two sentences on your background and experience; and one to two sentences on the skills/perspective you would bring to the CPEW.
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).
- Current curriculum vitae which highlights the experience and work history being sought relevant to the criteria set forth above, including complete contact information (telephone numbers, mailing address, email address).

Nominations may be submitted by the candidate him or herself, or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04430 Filed 3–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Mine Safety and Health Research Advisory Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC) announces the following meeting of the Mine Safety and Health Research Advisory Committee (MSHRAC). This is a hybrid meeting, accessible both in person and virtually. It is open to the public and limited only by the space available and the number of web conference lines available. Time will be available for public comment.

DATES: The meeting will be held on April 17, 2024, from 8:30 a.m. to 4:10 p.m., EDT.

ADDRESSES: Mine Safety and Heath Administration's Approval and Certification Center, 765 Technology Drive, Triadelphia, West Virginia 26059. The conference room accommodates approximately 49 people.

Please note that the meeting location is a Federal facility and in-person access is limited to U.S. citizens unless prior authorizations, taking up to 30 to 60 days, have been made.

If you wish to attend the meeting either in person or virtually, please contact Ms. Berni Metzger by email at *Metzger@cdc.gov* or by phone at (412) 386–4541 at least 5 business days in advance of the meeting. If you are attending virtually, she will provide you with the Zoom web conference access information (500 web conference lines are available).

FOR FURTHER INFORMATION CONTACT: Steven Mischler, Ph.D., Designated Federal Officer, Mine Safety and Health

Research Advisory Committee, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236. Telephone: (412) 386–5688; Email: *SMischler@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Mine Safety and Health Research Advisory Committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, Centers for Disease Control and Prevention; and the Director, National Institute for Occupational Safety and Health (NIOSH), on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Considered: The agenda will include discussions on NIOSH mining safety and health research organizational structure, capabilities, projects, and outcomes, as well as a verbal report from the Mace Development Workgroup. The meeting will also include an update from the NIOSH Associate Deputy Director, Mine Safety and Research. Agenda items are subject to change as priorities dictate.

Public Participation

Written Public Comment: The public may submit written comments or questions in advance of the meeting, to the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT** above). Written comments received in advance of the meeting will be included in the official record of the meeting, and questions will be answered during the oral comment period open to public participation.

Oral Public Comment: The meeting will include time for members of the public to make an oral comment. The public comment session will be held on April 17, 2024, at 3:30 p.m., EDT, or the conclusion of the planned presentations, whichever comes first. Members of the public will be allocated 5 to 10 minutes each for presentations or comments, as a function of the number of commenters.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04433 Filed 3–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control (CDC) announces a meeting of the Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board). This meeting is open to the public, with a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcomed to listen to the meeting by joining the teleconference (information below). The audio conference line has 150 ports for callers.

DATES: The meeting will be held on April 17, 2024, from 9:15 a.m. to 6 p.m., EDT. A public comment session will be held at 5 p.m. and will conclude at 6 p.m. or following the final call for public comment, whichever comes first.

Written comments must be received on or before April 10, 2024.

ADDRESSES: You may submit comments by mail to: Rashaun Roberts, National Institute for Occupational Safety and Health, 1090 Tusculum Avenue, MS C–24, Cincinnati, Ohio 45226.

Meeting Information: The USA toll-free dial-in numbers are: +1 669 254 5252 US (San Jose); +1 646 828 7666 US (New York). The Meeting ID is: 160 6763 3819 and the Passcode is: 98685439; Web conference by Zoom meeting connection: *https://cdc.zoomgov.com/j/16067633819?pwd=RUdiYXlZZHFKanpJOHZrcGJlbTlaZz09.*

FOR FURTHER INFORMATION CONTACT: Rashaun Roberts, Ph.D., Designated Federal Officer, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 1090 Tusculum Avenue, Mailstop C–24, Cincinnati, Ohio 45226, Telephone (513) 533–6800, Toll Free 1(800) 232–4636, Email: *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the Centers for Disease Control and Prevention (CDC). The National Institute for Occupational Safety and Health implements this responsibility for CDC.

The charter was issued on August 3, 2001, renewed at appropriate intervals, and rechartered under Executive Order 14109 on March 22, 2022, and will terminate on March 22, 2024.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy (DOE) facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Considered: The agenda will include discussions on the

following: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; Procedures Review Finalization/Document Approvals, Dose Reconstruction Review Methods and TBD 6000 Workgroup updates, Metals and Control Corp SEC Petition 236 (Attleboro, MA; January 1968–March 1997), and a Board Work Session. Agenda items are subject to change as priorities dictate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–04431 Filed 3–1–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–0059–N]

RIN 0938–ZB82

National Plan and Provider Enumeration System (NPPES) Data Changes

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides information on changes to data elements that providers are required to submit to the National Plan and Provider Enumeration System (NPPES) to obtain and maintain a National Provider Identifier (NPI). The changes to the required data elements affect the data that is made available to the public from NPPES in downloadable files and in a query-only database on the internet.

DATES: This notice is applicable on April 3, 2024.

FOR FURTHER INFORMATION CONTACT: Christopher S. Wilson, (410) 786–3178 or Beth A. Karpiak, (312) 353–1351.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Regulatory Background

Through subtitle F of title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Congress added Part C, ''Administrative Simplification'' to title XI of the Social Security Act (the Act). (Pub. L. 104–191). Part C of title XI consists of sections 1171 through 1179 of the Act. These sections define various terms and impose requirements on the Secretary of the Department of Health and Human Services (HHS) (hereinafter referred to as the Secretary), health plans, health care clearinghouses, and certain health care providers concerning the adoption of standards and implementation specifications relating to health information. The Secretary delegated authority for administering and enforcing HIPAA Administrative Simplification provisions related to transactions, code sets, unique identifiers, and operating rules, implemented in 45 CFR parts 160 and 162, to the Centers for Medicare & Medicaid Services (CMS) (see 68 FR 60694).

Section 1173(b) of the Act requires the Secretary to adopt a standard unique health identifier for each individual, employer, health plan, and health care provider for use in the health care system and to specify the purposes for which the identifiers may be used. On May 7, 1998 (63 FR 25320), HHS proposed a standard unique health identifier for health care providers and requirements concerning its implementation (hereinafter referred to as the National Provider Identifier (NPI) proposed rule). On January 23, 2004 (69 FR 3434), HHS published a final rule that adopted the NPI as the standard unique health identifier for health care providers (hereinafter referred to as the NPI final rule). The NPI final rule established that HIPAA covered entities must use NPIs to identify health care providers in electronic transactions for which the Secretary has adopted a standard. Covered entities include health plans, health care clearinghouses, and health care providers who transmit any health information in electronic form in connection with a transaction for which the Secretary has adopted a standard.

B. Operational and System Background

The NPI final rule established that NPIs are assigned to health care providers through the National Provider System (NPS). The preamble to the NPI final rule included an ''NPS Data Elements Table'' (69 FR 3457) that listed the data elements HHS expected to collect about a health care provider and include in the NPS. The NPS, now called the National Plan and Provider Enumeration System (NPPES),[1] uniquely identifies health care providers through an application process and assigns NPIs. NPPES creates a record for each health care provider to whom it assigns an NPI. The records are updated when health care providers furnish updates to NPPES.

Health care providers are categorized by NPPES into two types: Individuals, such as physicians; and organizations, such as hospitals. A health care provider may apply for an NPI in one of three ways, by: (1) completing form CMS–10114 (NPI Application/Update Form) and mailing it to NPPES; (2) applying online at *https://NPPES.cms.hhs.gov/;* or (3) having an approved Electronic File Interchange Organization (EFIO) submit its NPI application data to NPPES in an electronic format defined by HHS.[2] [3] Health care providers who apply online have electronic access to the information in their own NPPES records by using user identifiers and passwords they select. This access allows those health care providers to submit updates to their NPPES data electronically via the internet.

The NPI final rule requires that the NPS (now NPPES) disseminate data in response to approved requests. Following publication of the NPI final rule, CMS, as the administrator of NPPES, published a notice in the May 30, 2007 **Federal Register** (72 FR 30011) describing the data dissemination strategy for NPI data maintained in NPPES and the process by which CMS would carry out the strategy (hereinafter referred to as the NPPES Data Dissemination notice). The NPPES Data Dissemination notice included a list of data elements that CMS determined are required to be disclosed under the Freedom of Information Act (FOIA) (see 72 FR 30012).

The health care industry needs NPPES health care provider data to know the NPIs of health care providers to be able to submit HIPAA-compliant health care transactions. In anticipation

[1] *https://nppes.cms.hhs.gov/#/.*

[2] The information collection request is currently approved under OMB control number 0938–0931. (*https://www.reginfo.gov/public/do/DownloadNOA?requestID=311118*).

[3] The Electronic File Interchange (EFI), also referred to as ''bulk enumeration,'' is a process by which a provider or group of providers can have an EFIO apply for NPIs on their behalf. EFIOs are approved by CMS through a certification process and submit information in a format designated by CMS; *https://www.cms.gov/medicare/regulations-guidance/administrative-simplification/efi.*

of an extraordinary demand from the health care industry for FOIA-disclosable NPPES health care provider data, in September 2007, CMS began making this information available to the public, in accordance with the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231), via the internet in two forms:

- *NPI Registry:* The NPI Registry is a query-only database that is updated daily to enable users to query NPPES (for example, search by NPI, provider name, etc.) and retrieve the FOIA-disclosable data from the search results. There is no charge to view the data.
- *NPI Downloadable File:* Full Replacement Monthly NPI File, Weekly Incremental NPI File, and Full Replacement NPI Deactivation File. There is no charge to download the data.

II. Provisions of the Notice

A. Changes to NPPES Data Elements

The NPI final rule acknowledged that the data elements and information presented in the data elements table were not intended to be used for data design purposes and that during the NPS design and development, the names and attributes of the data elements could be revised.[4] The table was included to show the kind of information that CMS expected to collect about health care providers and that could be disseminated by the NPS (69 FR 3455).

The data elements table in the NPI final rule included the following health care provider data elements addressed by this notice: provider first line address location, provider second line address location, and provider gender code. Thirty days after publication of this notice in the **Federal Register**, the NPPES system, NPPES Registry, paper form, and associated data files will be updated to begin collecting and disseminating for these health care provider data elements: (1) amend the description of the provider first line location address and second line location address data elements to permit a provider that does not have a physical location other than their home address to enter a United States Postal Service (USPS) post office box or personal mailbox provided by private delivery services as their provider location address; and (2) add additional choices for provider gender codes. All other attributes assigned to these data elements remain unchanged.

The data elements relevant to this notice are listed in Table 1. Description of the information contained in each column of this table is as follows:

- *Data Element Name:* The name of the data element residing in the NPPES.
- *Description:* The definition of the data element and related information.
- *Data Status:* The instruction for furnishing the information being requested in the data element. The abbreviations used in this column are as follows:

++ *Required (R):* Required for NPI assignment.

++ *NPPES-generated (NG):* Generated or assigned by the NPPES.

++ *Optional (O):* Not required for NPI assignment.

++ *Situational (S):* If a certain condition exists, the data element is required. Otherwise, it is not required.

++ *Repeat (RPT):* Indicates that the data element is a repeating field. A repeating field is one that can accommodate more than one separate entry. Each separate entry must meet the edits, if any, designated for that data element.

- *Data Condition:* Describes the condition(s) under which a ''Situational'' data element must be furnished. NOTE: The abbreviation NA means ''not applicable.''
- *Entity Types:* The ''Entity type codes'' to which the data element applies. Code describing the type of health care provider that is being assigned an NPI. Codes are as follows:

++ *1 = (Person):* individual human being who furnishes health care.

++ *2 = (Non-person):* entity other than an individual human being that furnishes health care (for example, hospital, SNF, hospital subunit, pharmacy, or HMO).

- *Use:* The purpose for which the information is being collected or will be used. The abbreviations used in this column are as follows:

++ I: The data element supports the unique identification of a health care provider.

++ A: The data element supports administrative implementation specification.

TABLE A—NPPES DATA ELEMENTS AT ISSUE IN THIS NOTICE

Data element name	Description	Data status	Data condition (situational status only)	Entity types	Use
Provider first line location address.	The first line location address of the provider being identified. For providers with more than one physical location, this is the primary location. This address can only include the USPS post office box location or personal mailbox offered by a private delivery service if the provider's NPI is Entity type code = 1 and the provider does not have a physical location other than their home address (for example, a provider that exclusively provides telehealth services from their home).	R	NA	1, 2	A
Provider second line location address.	The second line location address of the provider being identified. For providers with more than one physical location, this is the primary location. This address can only include a USPS post office box location or personal mailbox offered by a private delivery service if the provider's NPI is Entity type code = 1 and the provider does not have a physical location other than their home address (for example a provider that exclusively provides telehealth services from their home).	S	Required if it exists	1, 2	A
Provider gender code	The code designating the provider's gender if the provider is a person.	S	Required if the provider's NPI is Entity type code = 1.	1	I

[4] HIPAA Administrative Simplification: Standard Unique Health Identifier for Health Care Providers (NPI final rule) (*69 FR 3455*) *https://www.federalregister.gov/documents/2004/01/23/04-1149/hipaa-administrative-simplification-standard-unique-health-identifier-for-health-care-providers#p-394.*

1. Allowing Provider Address Location To Include Post Office Boxes

The NPI final rule acknowledged that many comments to the NPI proposed rule noted that health care provider practice addresses change frequently, will be burdensome and expensive to maintain, and will be unlikely to be maintained accurately.[5] In response to these comments, we concluded in the NPI final rule that, due to how frequently provider location addresses change, the data element is of limited use in electronic matching of health care providers (69 FR 3450). However, the rule did recognize that capturing one provider location address in NPPES could serve the administrative purpose of providing an address where a health care provider can be contacted in situations when a mailing address is insufficient. For example, a mailing address containing a USPS post office box number cannot be used for mail delivery by entities other than the USPS. The rule concluded that NPPES should collect a provider mailing address and one provider location address as required elements. To support this administrative purpose, both the provider first line location address and provider second line location address data element descriptions included a note indicating, ''This address cannot include a post office box'' (69 FR 3458).

Since the publication of the NPI final rule, health plans, Medicare, and Medicaid programs, have expanded coverage for telehealth services.[6] As such, there are now a number of individual (Entity type code = 1) providers, such as behavioral health service providers, who exclusively furnish telehealth services from the providers' homes. In some instances, providers who exclusively furnish telehealth services from their own homes may not have a provider address location other than their home address. We understand that providers who furnish telehealth services exclusively from their homes often enter a post office box as their provider *mailing* address into NPPES when applying for an NPI. Given the prohibition on including a post office box for the provider *location* address data elements, they enter their home addresses into NPPES to satisfy the provider location address data elements and obtain an NPI.

In accordance with FOIA, NPPES address data, including provider mailing address and provider location address, is publicly available on the internet. Internet posting of provider home address information as a provider location may cause confusion, potentially leading patients and others who may access NPPES data to think that the provider can be accessed for treatment or administrative purposes at the listed home address. We have heard from providers that posting the information also poses privacy and potential safety concerns for themselves and their families.

To address these concerns, while still maintaining the administrative purpose of providing a provider location address that can be accessed by methods other than the USPS when such a location exists outside of the provider's own home, NPPES will keep the provider location address data element status as required, but will allow for submission of a post office box or personal mailbox offered by a private delivery service when a provider's NPI is Entity type code = 1 and the provider does not have a physical location other than their home address (for example, a provider that exclusively furnishes telehealth services from their home). This change is accomplished by removing the language ''This address cannot include a post office box'' from the data element descriptions for both the provider first line location address and provider second line location address and replacing it with ''This address can include a post office box or personal mailbox offered by a private delivery service only if the provider's NPI is Entity type code = 1 and the provider does not have a physical location other than their home address (for example, a provider that exclusively provides telehealth services from their home).''

The change in the data element descriptions allows providers that are persons that do not currently have an NPI, and exclusively furnish telehealth services or other services out of their homes, to obtain an NPI without including their home address in NPPES. Should a provider with Entity type code = 1 that has as an existing NPI, and exclusively furnishes telehealth services or other services out of their homes, wish to remove their home address from NPPES and replace it with a post office box, they may do so by updating their NPPES records, either themselves or through the EFIO that submitted their NPI application data to NPPES. The change in the data element descriptions does not require providers that already have an NPI assigned through NPPES, including telehealth providers that do not have a physical location address other than their home address, from changing any existing information in NPPES. Should a provider who furnishes telehealth services or other services exclusively from their home address wish to maintain their home address as their provider location address within their NPPES record, they may do so.

2. Adding Additional Provider Gender Code Choices

The NPI final rule identified provider gender code as a required data element if the provider's NPI is Entity type code = 1. While neither the NPI final rule nor the NPPES Data Dissemination notice identified the gender codes that NPPES would collect and disseminate when applying for an NPI, providers are given the option to click on a box that captures gender as either male or female. NPPES stores that selection as code (F) should an individual select female and (M) should an individual select male. The NPI Registry query-only database displays the descriptions ''Male'' and ''Female'' to disseminate provider gender and NPI downloadable files display the information using the codes (M) and (F).

NPPES will permit selection of, and disseminate, gender code options beyond M and F to promote improved accuracy in publicly available data and support unique identification and enumeration of health care providers. The NPPES system, NPPES Registry, paper form, and associated data files will be updated to begin collecting and disseminating these new values 30 days after publication of this notice in the **Federal Register**. NPPES will provide additional guidance on the new codes and instructions for selecting gender codes when applying for an NPI and maintaining NPI data.

Adding gender codes aligns with HHS efforts, as described in E.O. 14075 (87 FR 37189), to advance equity and full inclusion of lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) individuals through inclusive federal data collection practices.

Providers with Entity type code = 1 who previously furnished a provider gender code to NPPES may update or change their selection in NPPES, or have the EFIO that submitted their NPI application data to NPPES cause them to be changed in NPPES, at any time. HHS encourages providers who have

[5] HIPAA Administrative Simplification: Standard Unique Health Identifier for Health Care Providers (NPI final rule)(69 FR 3455) *https://www.federalregister.gov/documents/2004/01/23/04-1149/hipaa-administrative-simplification-standard-unique-health-identifier-for-health-care-providers#p-394.*

[6] *https://telehealth.hhs.gov/; https://data.cms.gov/summary-statistics-on-use-and-payments/medicare-service-type-reports/medicare-telehealth-trends; https://www.ama-assn.org/practice-management/digital/new-survey-data-shows-doctors-steadfast-commitment-telehealth.*

obtained NPIs to review their NPPES records to ensure that the information they furnished when applying for their NPIs is up-to-date and accurate.

B. Impact on FOIA-Releasable NPPES Data

The NPPES Data Dissemination notice identified both the provider location address and provider gender code as NPPES data elements that must be released under FOIA. The changes to these data elements described in section II. of this notice do not affect HHS's assessment of their releasability under FOIA and the data elements will continue to be made available to the public through the NPI registry and the NPI downloadable files.

III. Collection of Information Requirements

This document imposes new information for collection and recordkeeping requirements. It makes reference to an existing information collection request that will be revised as a result of the revised data elements discussed in this notice. Specifically, we will submit a non-substantive change request to OMB for review and approval of the data element revisions associated with the information collection request currently approved under 0938–0931.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on February 27, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–04517 Filed 3–1–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Head Start REACH: Strengthening Outreach, Recruitment, and Engagement Approaches With Families—Mixed Methods Study (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) within the U.S. Department of Health and Human Services (HHS) is proposing to collect data on different approaches that Head Start programs use to recruit, select, and enroll families, and the ways in which such practices reflect programs' community contexts. We are not attempting to recruit a nationally representative sample. Instead, the study will aim to obtain a variety of eligibility, recruitment, selection, enrollment, and attendance (ERSEA) practices and experiences to explore how these practices and experiences intersect with different adversities, demographic characteristics, and community contexts.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Building on information collected previously through case studies (OMB #0970–0580), the Head Start REACH: Strengthening Outreach, Recruitment, and Engagement Approaches with Families Project is proposing to conduct a mixed-methods study to expand understanding of (1) how Head Start programs implement recruitment, selection, and enrollment practices; and (2) the ways in which practices reflect programs' community contexts. The mixed-methods study would achieve several goals including (1) providing in-depth contextual information about recruitment, selection, and enrollment practices and experiences; (2) identifying promising recruitment, selection, and enrollment practices and experiences; and (3) informing training and technical assistance regarding recruitment, selection, and enrollment challenges and needs. We will aim to collect information from 60 Head Start and Early Head Start programs in 15 geographic areas in states, from Head Start regions I–X, located in census tracts where the rate of deep poverty is high.

We will collect information about the characteristics of families in Head Start programs and their communities; programs' enrollment numbers and goals; programs' use and perceived effectiveness of and challenges with recruitment, selection, and enrollment practices; promising recruitment, selection, and enrollment practices for potential future replication; families' reasons for choosing Head Start and experiences with and perceptions of recruitment, selection, and enrollment practices; and how community partner staff support recruitment, selection, and enrollment of families into Head Start. The findings are intended to help Head Start programs understand how to support the needs of families facing adversities. We will disseminate findings in a report, research brief, and presentations or briefings.

Respondents: Head Start program directors (one per program), ERSEA lead staff (one per program), Head Start parents/caregivers (up to 10 per program), and staff from community organizations with which Head Start programs partner for ERSEA activities (four in each geographic area).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
Program director survey (*Instrument 1)*	60	1	0.17	10.2
ERSEA lead staff survey (*Instrument 2)*	60	1	0.75	45
Onsite coordination [a]	60	1	1.5	90
Head Start parent/caregiver survey *(Instrument 3)*	600	1	0.5	300
Community partner survey *(Instrument 4)*	60	1	0.25	15

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total/annual burden (in hours)
ERSEA lead staff focus group guide *(Instrument 5)*	24	1	1.5	36
Estimated Total Annual Burden Hours				496.2

[a] There is no instrument associated with this activity. We will ask each program director to nominate a staff person who will help coordinate data collection activities. This line accounts for the time of the onsite coordinator.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Head Start Act Section 640 [42 U.S.C. 9835].

Mary C. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2024–04520 Filed 3–1–24; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–2460]

Determination of Regulatory Review Period for Purposes of Patent Extension; SOTYKTU

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for SOTYKTU and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by May 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–E–2460 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SOTYKTU.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly

available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, SOTYKTU (deucravacitinib). SOTYKTU is indicated for the treatment of adults with moderate-to-severe plaque psoriasis who are candidates for systemic therapy or phototherapy. Subsequent to this approval, the USPTO received a patent term restoration application for SOTYKTU (U.S. Patent No. RE47,929) from Bristol-Myers Squibb Company, and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of SOTYKTU represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for SOTYKTU is 2,136 days. Of this time, 1,770 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* November 6, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 6, 2016.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* September 10, 2021. FDA has verified the applicant's claim that the new drug application (NDA) for SOTYKTU (NDA 214958) was initially submitted on September 10, 2021.

3. *The date the application was approved:* September 9, 2022. FDA has verified the applicant's claim that NDA 214958 was approved on September 9, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,037 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04483 Filed 3–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–5740]

Determination of Regulatory Review Period for Purposes of Patent Extension; SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for the SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination

because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that medical device.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by May 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–E–5740 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA has approved for marketing the medical device SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM. The SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM is indicated for relief of aortic stenosis in patients with symptomatic heart disease due to severe native calcific aortic stenosis who are judged by a Heart Team, including a cardiac surgeon, to be appropriate for the transcatheter heart valve replacement therapy. The device is indicated for patients with symptomatic heart disease

due to failing (stenosed, insufficient, or combined) of a surgical or transcatheter bioprosthetic aortic valve, a surgical bioprosthetic mitral valve, or a native mitral valve with an annuloplasty ring who are judged by a Heart Team, including a cardiac surgeon, to be at high or greater risk for open surgical therapy (*i.e.,* predicted risk of surgical mortality ≥8 percent at 30 days, based on the Society of Thoracic Surgeons (STS) risk score and other clinical co-morbidities unmeasured by the STS risk calculator). Subsequent to this approval, the USPTO received a patent term restoration application for the SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM (U.S. Patent No. 7,780,723) from Edwards Lifesciences Corporation, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 21, 2020, FDA advised the USPTO that this medical device had undergone a regulatory review period and that the approval of the SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for the SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM is 101 days. Of this time, 0 days occurred during the testing phase of the regulatory review period, while 101 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption for this device, under section 520(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360j(g)), became effective: not available.* The applicant claims that the testing phase began on April 6, 2018. However, FDA is unable to validate the beginning of a testing phase. No investigational device exemption as required under section 520(g) of the FD&C Act for human tests to begin was referenced, no evidence of institutional review board approval was found, and no confirmation of the date on which the device was first used with human subjects as part of a clinical investigation to be filed with FDA to secure premarket approval of the device could be determined in available FDA records.

2. *The date an application was initially submitted with respect to the device under section 515 of the FD&C Act (21 U.S.C. 360e):* September 18, 2018. The applicant claims September 14, 2018, as the date the premarket approval application (PMA) for the SAPIEN 3 ULTRA TRANSCATHETER HEART VALVE SYSTEM (PMA P140031S074) was initially submitted. However, FDA records indicate that PMA P140031S074 was submitted on September 18, 2018.

3. *The date the application was approved:* December 27, 2018. FDA has verified the applicant's claim that PMA P140031S074 was approved on December 27, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 184 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04478 Filed 3–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–E–2603; FDA–2023–E–2604; FDA–2023–E–2605; and FDA–2023–E–2606]

Determination of Regulatory Review Period for Purposes of Patent Extension; RELYVRIO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for RELYVRIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by May 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any

confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket Nos. FDA–2023–E–2603; FDA–2023–E–2604; FDA–2023–E–2605; and FDA–2023–E–2606 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; RELYVRIO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, RELYVRIO (sodium phenylbutyrate and taursodiol) indicated for treatment of amyotrophic lateral sclerosis in adults. Subsequent to this approval, the USPTO received patent term restoration applications for RELYVRIO (U.S. Patent Nos. 9,872,865; 10,251,896; 10,857,162; 11,071,742; 10,857,162; and 11,071,742) from Amylyx Pharmaceuticals Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of RELYVRIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for RELYVRIO is 3,359 days. Of this time, 3,023 days occurred during the testing phase of the regulatory review period, while 336 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* July 21, 2013. The applicant claims April 10, 2017, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was July 21, 2013, which was 30 days after FDA receipt of an earlier IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* October 29, 2021. FDA has verified the applicant's claim that the new drug application (NDA) for RELYVRIO (NDA 216660) was initially submitted on October 29, 2021.

3. *The date the application was approved:* September 29, 2022. FDA has verified the applicant's claim that NDA 216660 was approved on September 29, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 383 days, 499 days, 803 days, or 1,010 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04480 Filed 3–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0970]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments: Selection of Strain(s) To Be Included in the 2024 to 2025 Formula for COVID–19 Vaccines

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. On May 16, 2024, the Committee will meet in open session to discuss and make recommendations on the selection of strain(s) to be included in the 2024–2025 Formula for COVID–19 vaccines. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on May 16, 2024, from 8:30 a.m. to 4:30 p.m. eastern time.

ADDRESSES: All meeting participants will be heard, viewed, captioned, and recorded for this advisory committee meeting via an online teleconferencing and/or video conferencing platform. The online web conference meeting will be available at the following link on the day of the meeting: *https://youtube.com/live/weaKQiFk_98.* Answers to commonly asked questions about FDA advisory committee meetings, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–0970. The docket will close on May 15, 2024. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. eastern time at the end of May 15, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before May 8, 2024, will be provided to the Committee. Comments received after May 8, 2024, and by May 15, 2024, will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–N–0970 for ''Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA 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 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 the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Sussan Paydar or Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 240–506–4946, *CBERVRBPAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. On May 16, 2024, the Committee will meet in open session to discuss and make recommendations on the selection of strain(s) to be included in the 2024–2025 Formula for COVID–19 vaccines.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before May 8, 2024, will be provided to the Committee. Comments received after May 8, 2024, and by May 15, 2024, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. eastern time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, along with their names, email addresses, and direct contact phone numbers of proposed participants, and an indication of the approximate time requested to make their presentation on or before 12 p.m. eastern time on May 1, 2024. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by 6 p.m. eastern time May 3, 2024.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sussan Paydar or Prabhakara Atreya (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform. This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for issuance of a waiver under 21 CFR 10.19 are met.

Dated: February 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04523 Filed 3–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–1705]

Determination of Regulatory Review Period for Purposes of Patent Extension; FYARRO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for FYARRO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are

incorrect must submit either electronic or written comments and ask for a redetermination by May 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–E–1705 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; FYARRO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, FYARRO (sirolimus protein-bound injectable suspension/albumin-bound) indicated for the treatment of adult patients with locally advanced unresectable or metastatic malignant perivascular epithelioid cell tumor. Subsequent to this approval, the USPTO received a patent term restoration application for FYARRO (U.S. Patent No. 8,911,786) from Aadi Bioscience, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of FYARRO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO

requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for FYARRO is 5,416 days. Of this time, 5,237 days occurred during the testing phase of the regulatory review period, while 179 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* January 26, 2007. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 26, 2007.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* May 28, 2021. FDA has verified the applicant's claim that the new drug application (NDA) for FYARRO (NDA 213312) was initially submitted on May 28, 2021.

3. *The date the application was approved:* November 22, 2021. FDA has verified the applicant's claim that NDA 213312 was approved on November 22, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,357 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04481 Filed 3–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–E–1575]

Determination of Regulatory Review Period for Purposes of Patent Extension; VOXZOGO

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VOXZOGO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by May 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 3, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2023–E–1575 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VOXZOGO.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with § 10.20 (21 CFR 10.20) and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, VOXZOGO (vosoritide) indicated to increase linear growth in pediatric patients with achondroplasia who are 5 years of age and older with open epiphyses. This indication is approved under accelerated approval based on an improvement in annualized growth velocity. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trial(s). Subsequent to this approval, the USPTO received a patent term restoration application for VOXZOGO (U.S. Patent No. 8,198,242) from BioMarin Pharmaceutical Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of VOXZOGO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for VOXZOGO is 3,614 days. Of this time, 3,157 days occurred during the testing phase of the regulatory review period, while 457 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* December 30, 2011. The applicant claims November 30, 2011, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 30, 2011, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* August 20, 2020. FDA has verified the applicant's claim that the new drug application (NDA) for VOXZOGO (NDA 214938) was initially submitted on August 20, 2020.

3. *The date the application was approved:* November 19, 2021. FDA has verified the applicant's claim that NDA 214938 was approved on November 19, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: February 28, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–04479 Filed 3–1–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Stakeholder Listening Session for the G20 Health Track

AGENCY: Office of Global Affairs, Department of Health and Human Services.

ACTION: Notice of public listening session; request for comments.

DATES: The listening session will be held on Thursday, April 18, 2024, from 10 a.m. to 12 p.m. eastern daylight time. This meeting is open to the public but requires RSVP to *oga.rsvp@hhs.gov* by April 12, 2024. See RSVP section in **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: The session will be held virtually, with online and dial-in information shared with registered participants.

SUPPLEMENTARY INFORMATION:

Purpose: The U.S. Department of Health and Human Services (HHS), with support from relevant health-related U.S. Government offices, is charged with leading the U.S. engagement in the Group of 20 (G20) Health Track and will convene an informal Stakeholder Listening Session.

The Stakeholder Listening Session is designed to seek input from stakeholders and subject matter experts to help inform and prepare for U.S. Government engagement with G20 health ministries.

The Group of Twenty (G20) is a major forum for international economic cooperation. It plays an important role in defining and strengthening global architecture and governance on major international economic issues. Initially, the G20 focused mainly on general macroeconomic issues, but later expanded its agenda to include topics such as trade, sustainable development, health, agriculture, energy, the environment, climate change and the fight against corruption.

The G20 is comprised of 19 countries (Argentina, Australia, Brasil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Saudi Arabia, South Africa, Russia, Türkiye, UK and USA) and two regional bodies: the African Union and the European Union. The members of the G20 represent around 85% of the world's GDP, more than 75% of world trade and around two-thirds of the world's population.

Each year, a different member country holds the presidency of the group and hosts the meetings. The presidency proposes the group's priorities for the year and hosts discussions to work towards consensus positions and actions on those priorities. This year's G20 presidency is Brazil, which will be hosting Health Working Group meetings throughout the year, culminating in a Health Ministers' Meeting on October 31, 2024, in Rio de Janeiro, Brazil.

Matters to be Discussed: The Stakeholder Listening Session will cover global health issues under the general themes of global health security and health systems strengthening that could benefit from G20 engagement.

Participation is welcome from stakeholder communities, including:

- Public health and advocacy groups
- State, local, and Tribal groups
- Private industry
- Minority health organizations
- Academic and scientific organizations

RSVP: Persons seeking to attend or speak at the listening session must register by Friday, April 12, 2024.

Registrants must include their full name and organization, if any, and indicate whether they are registering as a listen-only attendee or as a speaker participant to *oga.rsvp@hhs.gov.*

Requests to participate as a speaker must include:

1. The name and email address of the person desiring to participate
2. The organization(s) that person represents, if any
3. Identification of the primary topic(s) of interest

Other Information: Written comments should be emailed to *oga.rsvp@hhs.gov* with the subject line ''Written Comment Re: Stakeholder Listening Session in preparation for the G20 Health Track'' by Friday, April 25, 2024.

We look forward to your comments on U.S. engagement in the G20 Health Track.

Susan Kim,

Principal Deputy Assistant Secretary, Office of Global Affairs.

[FR Doc. 2024–04473 Filed 3–1–24; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Reaching Equity at the Intersection of HIV and Substance Use: Novel Approaches to Address HIV Related Health Disparities in Minority Populations.

Date: March 21, 2024.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Scientific Review Branch, Office of Extramural Policy, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; REI: Training and Diversifying the Data Science Workforce for Addiction Research.

Date: May 22, 2024.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892.

Contact Person: Soyoun Cho, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 594–9460, *Soyoun.cho@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 27, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04440 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Benjamin Hurley at 240–276–5489 or *benjamin.hurley@nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Vaccinia Virus Strain WR With Deletion of Growth Factor Genes (''vSC20'')

Description of Technology:

This technology relates to mutant vaccinia virus expression vectors. Researchers at NIAID have developed a recombinant vaccinia virus in which the growth factor genes were deleted from both ends of the genome. The recombinant vaccinia virus is attenuated and can replicate efficiently in rapidly dividing cells such as tumors.

The mutation in the recombinant virus was confirmed through various tests, including Southern blot analysis and growth factor assays. The mutant expression vectors show diminished virus replication in non-dividing cells and attenuation in animal models compared to other vaccinia virus expression vectors. They may have use as vaccines, cancer therapies as well as for gene delivery.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Recombinant vaccinia virus with deletion of growth factor genes can be used for cancer therapeutics and diagnostics.

Competitive Advantages:

- The recombinant vaccinia virus is attenuated and can replicate efficiently in rapidly dividing cells, such as tumors.
- Applications include use in tumor-directed gene therapy, given the enhanced safety profile, tumor selectivity, and the oncolytic effects after systemic delivery.

Development Stage:

- Pre-Clinical.

Inventors: Bernard Moss, M.D., Ph.D. and Sekhar Chakrabarti, Ph.D., both of NIAID.

Publications: Buller, R M et al. ''Deletion of the vaccinia virus growth factor gene reduces virus virulence.'' *Journal of virology* vol. 62,3 (1988): 866–74. doi:10.1128/JVI.62.3.866–874.1988; McCart, J A et al. ''Systemic cancer therapy with a tumor-selective vaccinia virus mutant lacking thymidine kinase and vaccinia growth factor genes.'' *Cancer research* vol. 61,24 (2001): 8751–7.

Intellectual Property: HHS Reference No. E–028–2021. U.S. Patent 8506947B2, issued on August 13, 2013.

Licensing Contact: To license this technology, please contact Benjamin Hurley at 240–276–5489 or *benjamin.hurley@nih.gov* and reference E–028–2021.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Benjamin Hurley at 240–276–5489 or *benjamin.hurley@nih.gov.*

Dated: February 14, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–04424 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Peter Tung at 240–669–5483 or *peter.tung@nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

Licensing information and copies of the patent applications listed below may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852 by contacting Peter Tung at 240–669–5483 or *peter.tung@nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Enhanced Single-Component AMA1–RON2 Vaccine Candidates: A Breakthrough in Malaria Immunization

Description of Technology

This technology focuses on the creation of single-component AMA1–RON2 (Apical membrane antigen 1-rhoptry neck protein 2) vaccine candidates. These candidates are based on a novel composition of matter designed to elicit a more effective immune response against the malaria parasite Plasmodium falciparum. The standout aspect of this technology is the Structure-Based Design 1 (SBD1) immunogen, engineered through a structure-based design that significantly enhances its ability to produce potent, strain-transcending neutralizing antibodies. This approach not only surpasses the efficacy of traditional AMA1–RON2 complexes and other insertion fusion designs but also boasts higher thermal stability, indicating better preservation and longevity of the vaccine. The technology's increased stability and efficiency in production present an opportunity to lower vaccine

manufacturing costs and simplify logistics, especially in regions where malaria is endemic. Additionally, the adaptability of these immunogens for integration with nanoparticle platforms could further amplify their immunogenicity, paving the way for more robust and lasting protection against malaria. This innovation can potentially transform malaria prevention and control, offering a more effective, stable, and cost-efficient solution to a disease that continues to impact millions worldwide.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

• Stable single-component AMA1–RON2 immunogens hold promise for improving malaria prevention and control efforts in endemic regions around the world.

Competitive Advantages

• No blood-stage malaria vaccine has been approved. This technology offers a competitive edge over other vaccine candidates in development through its easily manufactured single-component AMA1–RON2 design that elicits a potent broadly neutralizing response that is better than competing candidates.

Development Stage

• The efficacy of stable single-component AMA1–RON2 immunogens has been validated in rat and rabbit models. Following identification of the most cost-effective platform for vaccine production, the immunogens will be advanced for virulent parasite challenge studies in *Aotus* monkeys and towards human trials.

Inventors: Niraj Tolia, Ph.D., Thayne Dickey, Ph.D., Palak Patel, Ph.D., all of NIAID.

Publications: Patel, P. N. et. al., Structure-based design of a strain transcending AMA1–RON2L malaria vaccine. Nat. Commun. 14, 5345 (2023).

Intellectual Property: HHS Reference No. E–096–2023–0–US–01US–01; US Provisional Application No. 63/524,522, filed on June 30, 2023.

Licensing Contact: To license this technology, please contact Peter Tung at 240–669–5483 or *peter.tung@nih.gov,* and reference E–096–2023.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Peter Tung at 240–669–5483 or *peter.tung@nih.gov.*

Dated: February 27, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–04441 Filed 3–1–24; 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Hepatology, Pharmacology, and Toxicology.

Date: March 25–26, 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: Jodie Michelle Fleming, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 812R, Bethesda, MD 20892, (301) 867–5309, *flemingjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–117: Maximizing Investigators' Research Award for Early-Stage Investigators.

Date: March 25–26, 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: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Disease Control and Applied Immunology.

Date: March 25, 2024.

Time: 10:00 a.m. to 5:00 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: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, 301–435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Genetics and Evolution.

Date: March 27, 2024.

Time: 8:30 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: Karobi Moitra, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–6893, *karobi.moitra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Research Enhancement Award (R15) in Oncological Sciences.

Date: March 27, 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: Byung Min Chung, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496–4056, *justin.chung@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cell and Developmental AREA/REAP Review.

Date: March 27, 2024.

Time: 10:00 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: Robert O'Hagan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (240) 909–6378, *ohaganr2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Developmental Biology.

Date: March 27, 2024.

Time: 11:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6107 Rockledge Drive, Bethesda, MD 20892, (301) 402–8559, *jimok.kim@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 20–298: Development of the Fetal Immune System.

Date: March 27, 2024.

Time: 1:00 p.m. to 5:00 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: Elaine Sierra-Rivera, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, Bethesda, MD 20892, (301) 435–2514, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Pathogenic Eukaryotes.

Date: March 27, 2024.

Time: 1:30 p.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: Liying Guo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 827–7728, *lguo@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment, Neurodegeneration, and Glia Biology.

Date: March 27, 2024.

Time: 12:00 p.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: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, *topczewskij2@csr.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 27, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04445 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel; Developing Measures to Advance Access and Quality in Global Mental Health Services.

Date: April 2, 2024.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Regina Dolan-Sewell, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, (240) 796–6785, *regina.dolan-sewell@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 27, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04443 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Establishment of the of the Board of Scientific Counselors, National Institute on Minority Health and Health Disparities and National Institute of Nursing Research

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. 1001–1014), the Director of the National Institutes of Health (NIH) announces the establishment of the Board of Scientific Counselors, National Institute on Minority Health and Health Disparities and National Institute of Nursing Research, as authorized by 42 U.S.C. 282(b)(16), section 402(b)(16) of the Public Health Service Act, as amended.

The Director, NIH, has determined that the Board of Scientific Counselors, National Institute on Minority Health and Health Disparities and National Institute of Nursing Research is in the public interest in connection with the performance of duties imposed on NIH by law and that these duties can best be performed through the advice and counsel of the committee.

The committee will review and evaluate the intramural programs and the work of tenured, tenure track, and staff scientists and physicians and shall also, as requested by the Director, NIH, undertake peer review of extramural funding applications as required by section 492 of the Public Health Service Act, as amended.

Inquiries may be directed to Claire Harris, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *Claire.Harris@nih.gov.*

Dated: February 27, 2024.

Monica M. Bertagnolli,

Director, National Institutes of Health.

[FR Doc. 2024–04496 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK22–021 Collaborative Research Using Biosamples

from Type 1 Diabetes Clinical Studies (R01—Clinical Trial Not Allowed).

Date: March 29, 2024.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 27, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04444 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Brian Bailey, Ph.D., at 240–669–5128 or 301–201–9217, or by email at *bbailey@mail.nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

SARS–CoV–2 Pseudotyping Plasmids for Cutting-Edge Studies

Description of Technology

NIAID scientists have developed plasmids that allow for production of pseudoviruses expressing SARS–CoV–2 spike protein. As SARS–CoV–2 is a lethal airborne virus, it must be handled in high-containment Biosafety Level 3 (BSL–3) laboratories that require strict airflow, ventilation and decontamination procedures. The pseudotyping plasmids of this invention provide a secure platform for exploring SARS–CoV–2 dynamics without the need for high-risk handling of live virus and ensure a controlled environment for scientists to study SARS–CoV–2 more expeditiously in standard Biosafety Level 2 (BSL–2) laboratories. The plasmids can be used for diverse SARS–CoV–2 research applications, including the study of newly emerging or potential future variants of interest.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

- Research material that can be used in the development of neutralization assays

Competitive Advantages

- Expedite SARS–CoV–2 related experiments by enabling them to be conducted in laboratories with a lower Biosafety Level (BSL–2) than that required for handling SARS–CoV–2 (BSL–3)

Development Stage

- Research material.

Inventors

Dr. Barney Graham, Dr. Lingshu Wang, Dr. John Mascola, Dr. Kizzmekia Corbett, all of NIAID.

Intellectual Property

HHS Reference No. E–223–2020–0.

Licensing Contact

To license this technology, please contact Brian Bailey, Ph.D.; 240–669–5128 or 301–201–9217; *bbailey@mail.nih.gov,* and reference E–223–2020.

Dated: February 14, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–04425 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Brian Bailey, Ph.D., at 240–669–5128 or 301–201–9217, or by email at *bbailey@mail.nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852: tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

SARS–CoV–2 Spike Fused to Hepatitis B Surface Antigen

Description of Technology:

The emergence of the SARS–CoV–2 virus and its immune-escaping variants have led to global COVID–19 pandemic/endemic, underscoring the urgent need for effective vaccines with strong and durable immune responses.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases (NIAID) used a novel approach to SARS–CoV–2 vaccine development by leveraging hepatitis B surface antigen (HBsAg), which has a proven track record of safety and efficacy in hepatitis B vaccines. They designed fusion protein constructs comprised of HBsAg linked by a series of glycine-serine residues to the prefusion stabilized spike protein of SARS–CoV–2. These constructs can self-assemble into nanoparticles in mammalian cells and bind monoclonal antibodies (mAbs) that are specific to different domains of the SARS–CoV–2 spike. The nanoparticles elicit potent and durable immune responses including neutralizing antibody

response. *In vitro* and *in vivo* experiments demonstrate that this nanoparticle platform has the potential for use as a robust SARS–CoV–2 vaccine.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Novel SARS–CoV–2 vaccine and universal vaccines against coronavirus
- Vaccine development against other viral pathogens such as HIV and flu

Competitive Advantages:

- Higher potency, potentially longer protection compared to other SARS–CoV–2 vaccine formulations.
- Potent immune response via genetic delivery, including DNA and RNA immunization.
- Improved immunogenicity compared to other nanoparticle or virus-like-particle (VLP)-based vaccines for SARS–CoV–2 spike protein.

Development Stage:

- Pre-Clinical.

Inventors: Drs. John Mascola, Cuiping Liu, Wei Shi, Amarendra Pegu, Lingshu Wang, Wing-Pui Kong, all of NIAID.

Publication: Liu, C., Wang, L., Merriam, J.S. *et al.* Self-assembling SARS–CoV–2 spike-HBsAg nanoparticles elicit potent and durable neutralizing antibody responses via genetic delivery. *npj Vaccines* 8, 111 (2023). *https://doi.org/10.1038/s41541-023-00707-w.*

Intellectual Property: HHS Reference No. E–171–2021–0–EIR–00 U.S. Patent Application No. 63/278,956 filed on November 12, 2021; HHS Reference No. E–171–2021–0–EIR–00 U.S. Patent Application No WO 2023/086961; PCT/US2022/079750, filed on November 11, 2022.

Licensing Contact: To license this technology, please contact Brian Bailey, Ph.D.; 240–669–5128 or 301–201–9217; *bbailey@mail.nih.gov,* and reference E–171–2021.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Areas of specific interest include (a) testing developability of the antibodies elicited by SARS–CoV–2 spike-HBsAg nanoparticles (*e.g.,* biophysical characteristics, cross-reactivity, pharmacokinetics, toxicity), (b) pre-clinical model assessment, and (c) human clinical trials. For collaboration opportunities, please contact Brian Bailey, Ph.D.; 240–669–5128 or 301–201–9217, *bbailey@mail.nih.gov.*

Dated: February 15, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–04423 Filed 3–1–24; 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems: Cardiovascular.

Date: March 21–22, 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: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Microbial and Host Interactions.

Date: March 21, 2024.

Time: 10:00 a.m. to 3:00 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: Jui Pandhare, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–7735, *pandharej2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Atherosclerosis and Vascular Inflammation.

Date: March 21, 2024.

Time: 11:00 a.m. to 3:00 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: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population and Public Health Approaches in HIV/AIDS.

Date: March 22, 2024.

Time: 10:00 a.m. to 5:00 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: Elia E. Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–827–7189, *femiaee@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Genetics and Genomics.

Date: March 22, 2024.

Time: 1:00 p.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: Brian Paul Chadwick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3586, *chadwickbp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell, Structure and Function-1.

Date: March 22, 2024.

Time: 1:00 p.m. to 6:30 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: Anne Marie Strohecker, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *stroheckeram@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–23–013: Partnerships with Common Fund Data Ecosystem Resources.

Date: March 26, 2024.

Time: 9:00 a.m. to 5:00 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: Ian Frederick Thorpe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 903K, Bethesda, MD 20892, (301) 480–8662, *ian.thorpe@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Alzheimer's Disease and Traumatic Brain Injury.

Date: March 26–27, 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: Roger Alan Bannister, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1010–D, Bethesda, MD 20892, (301) 435–1042, *bannisterra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Discovery and Molecular Pharmacology.

Date: March 26, 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: Victoria Martinez Virador, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4703, *victoria.virador@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS-Related Research.

Date: March 26, 2024.

Time: 10:30 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: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *mulkya@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 27, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–04447 Filed 3–1–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; (e) of the addition of data collection in the U.S. Territories; and (f) implications and feedback on proposing to change the name of the survey.

Proposed Project: National Survey on Drug Use and Health (OMB No. 0930–0110)

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to provide estimates of substance use and mental illness at the national, state, and substate levels. NSDUH data also help to identify the extent of substance use and mental illness among different subgroups, estimate trends over time, and determine the need for treatment services. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2025 NSDUH, SAMHSA is proposing to change the name of the study to the National Household Survey on Behavioral Health (NHSBH) to emphasize the inclusion of the long-standing mental health-related survey elements and to clarify for key stakeholders the full content of the survey's questions and data. The proposed name change will facilitate participant, researcher, and public understanding that the NSDUH is focused on both drug use but also mental health. The current name of the survey does not specifically capture questionnaire items across substance use and mental health, both separately and as co-occurring conditions. In addition, the name change will better align the survey with SAMHSA's mission.

The survey's name is currently well recognized by those in the community, states, and academia, and this recognition comes from the quality of the information provided. The continuing excellence of the information provided is anticipated to re-establish the recognition of the survey with the new name. It is anticipated that changing the name of the survey will highlight mental health components.

SAMHSA is committed to addressing any concerns with a name change that may lead to confusion and/or misperception among some stakeholders and the general public, which could affect participation in the survey, misinterpretation of changes with the survey's content or purpose, or difficulty locating the pertinent information about the study's results. Nonetheless, these potential stakeholder responses and challenges will be addressed by emphasizing the significance of a name that reflects the complete content of the survey. A new name may also facilitate discussions on substance use and co-occurring mental health disorders.

Efforts will be made to promote, market, and educate about the quality and applicability of the results. These efforts may spark renewed interest in the survey and the uptake of the results in publications and reports.

As with all NSDUH/NHSDA [1] surveys conducted since 1999, the sample size of the NSDUH main study for 2025 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate for the NSDUH main study is shown below in Table 1.

[1] Prior to 2002, the NSDUH was referred to as the National Household Survey on Drug Abuse (NHSDA).

TABLE 1—ANNUALIZED ESTIMATED BURDEN FOR 2025 NSDUH

Instrument	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
Household Screening	285,894	1	285,894	0.083	23,729
Interview	67,507	1	67,507	1.008	68,047
Screening Verification	6,004	1	6,004	0.067	402
Interview Verification	7,088	1	7,088	0.067	475
Total	366,493	.....	366,493	.....	92,653

Exploratory Pilot Testing in the U.S. Territories

SAMHSA is interested in expanding NSDUH data collection to include U.S. territories. This will involve conducting several pilot tests and implementing a phased approach before expanding data collection full scale into the U.S. Territories. The initial phase will explore logistical considerations in Puerto Rico and in the U.S. Virgin Islands, followed by various data collection pilot efforts that will assess the ease or difficulty with recruiting field staff, potential travel difficulties due to terrain, internet reliability, differences in address conventions, language dialect differences, and differences in demographic characteristics. The results of the pilot testing will provide SAMHSA with insights into the feasibility of successfully conducting full-scale data collection in future NSDUH surveys.

Mental Illness Calibration Study

In addition, the Mental Illness Calibration Study (MICS) will continue to be embedded within the NSDUH main study for the remainder of 2024 to recalibrate the estimates of serious mental illness (SMI) for the NSDUH using the Diagnostic and Statistical Manual of Mental Disorders (DSM), fifth edition (DSM–5) criteria published by the American Psychiatric Association (APA). The 2023 and 2024 MICS will be sampled from the main study NSDUH using completed mental health items as screeners.

During MICS data collection from January 2023 through December 2024, approximately 17,180 NSDUH adult main study interview respondents (aged 18+) will be selected for a follow-up clinical interview at the end of the main study interview in order to produce a final sample size of at least 4,000 adult MICS follow-up clinical interviews (2,000 interviews per year). These follow-up clinical interviews will be conducted virtually via Zoom (video and/or phone) within four weeks following the NSDUH main study interview using the NetSCID, a computerized version of the Structured Clinical Interview for DSM–5 (SCID) that calculates skip logic in real-time based on responses.

Many of the procedures and protocols in the MICS are based upon those previously employed as part of the 2008–2012 NSDUH Mental Health Surveillance Study (approved as an add-on to NSDUH under OMB No. 0930–0110). The total annual burden for the 2023 and 2024 MICS was approved under previous NSDUH ICRs (OMB No. 0930–0110).

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 *or* email him a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by May 3, 2024.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2024–04429 Filed 3–1–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No USCG–2024–0021]

Recertification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of recertification.

SUMMARY: The Coast Guard announces the recertification of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) as an alternative voluntary advisory group for Prince William Sound, Alaska. This certification allows the PWSRCAC to monitor the activities of terminal facilities and crude oil tankers under an alternative composition, other than prescribed, the Prince William Sound Program established by the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990.

DATES: This recertification is effective for the period from March 1, 2024 through February 28, 2025.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email LT Case Kuikhoven, Seventeenth Coast Guard District (dpi), by phone at (907) 463–2809 or email at *case.a.kuikhoven@uscg,mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose: The Coast Guard published guidelines on December 31, 1992 (57 FR 62600), to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504), to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act, and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440), the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every three years. For each of the two years between the triennial application procedures, applicants submit a letter requesting recertification that includes a description of any substantive changes to the information provided at the previous triennial recertification. Further, public comment is only solicited during the triennial comprehensive review.

The Alyeska Pipeline Service Company pays the PWSRCAC $3.7 million annually in the form of a long-term contract. In return for this funding, the PWSRCAC must annually show that it ''fosters the goals and purposes'' of OPA 90 and is ''broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound.'' The PWSRCAC is an independent, nonprofit organization founded in 1989. Though it

receives federal oversight like many independent, nonprofit organizations, it is not a federal agency. The PWSRCAC is a local organization that predates the passage of OPA 90. The existence of the PWSRCAC was specifically recognized in OPA 90 where it is defined as an ''alternative voluntary advisory group.'' Alyeska Pipeline Service Company funds the PWSRCAC, and the Coast Guard ensures the PWSRCAC operates in a fashion that is broadly consistent with OPA 90.

Recertification: By letter dated February 27, 2024, the Commander, Seventeenth Coast Guard District, certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on February 28, 2025.

Dated: February 27, 2024.

M.M. Dean,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. 2024–04489 Filed 3–1–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7092–N–17]

Privacy Act of 1974; System of Records

AGENCY: Office of General Counsel, HUD.

ACTION: Notice of a modified system of records.

SUMMARY: Under the provisions of the Privacy Act of 1974, as amended, the Department of Housing and Urban Development (HUD), Office of General Counsel (OGC), is issuing a public notice of its intent to modify a system of records entitled, ''eDiscovery Management System'' (EDMS). This System of Records Notice (SORN) covers two systems: the eDiscovery Management System (EDMS) and Relativity. Both systems will exist simultaneously as part of the eDiscovery process. These systems are cloud and client-server based, respectively and rely on workflow management from the EDMS SharePoint instance hosted in the HUD SharePoint environment. The modification makes updates to the Categories of Individuals, Record Source Categories, and Routine Use. The updates are explained in the **SUPPLEMENTARY INFORMATION** section of this notice. Specific modification includes the following: changes to record source categories, and updated routine use sections.

DATES: Comments will be accepted on or before April 3, 2024. The proposed new routine use actions will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number by one method:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; Mr. LaDonne White, Chief Privacy Officer; The Executive Secretariat; 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: LaDonne White, 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001; telephone number 202–708–3054 (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.*

SUPPLEMENTARY INFORMATION: HUD, Office of General Counsel in conjunction with the eDiscovery contractor maintains the eDiscovery Management System (EDMS) and Relativity system of records. eDiscovery is the process in which attorneys overseeing court-ordered discovery or litigation may request electronically stored information (ESI), tangible data, and other evidence relevant to the case for specified individuals for litigation purposes. The eDiscovery process consists of two systems that are closely interrelated, and both are consistently used in the eDiscovery process. EDMS is the system utilized to issue and track various eDiscovery templates and allows users to submit data preservation/collection and keyword search requests, and for specific data (email, G:drive/One Drive, J:drive, C:drive, SharePoint, Teams data, etc.) to be preserved or collected in accordance with the user request. EDMS provides the Department with a method to initiate, track, preserve, collect to produce data in response to discovery requests, court-ordered discovery/litigation, Freedom of Information Act (FOIA) requests, Officer of Inspector General (OIG) investigations, Office of Special Counsel (OSC) and Congressional Oversight Committee requests. EDMS also includes secure folders to create and store various eDiscovery templates, including Litigation Hold memoranda, eDiscovery Certifications, Closure Letters, and any other documents related to the discovery process as well as a workflow for users to submit ESI data collection requests and ESI search requests. EDMS relies on tracking and workflow management from the EDMS SharePoint instance hosted in the HUD SharePoint environment. The Relativity system is the litigation review tool portion of the eDiscovery process that allows users to review data for relevance and privilege before producing data to a court or other outside party. The two systems are closely interrelated; if a case proceeds to discovery/litigation, the data that was previously collected in a network storage location by the HUD eDiscovery contractor via the EDMS system is processed and provided to the user for review in Relativity. The user can then request an export from Relativity to produce the data for a court or other outside party in response to discovery/litigation obligations. The following are updates since the previous SORN publication:

Records Source Categories: Updated to cover all electronic record sources for internal and external systems to HUD.

Routine Use of Records: Updated to cover routine uses that are new, modified, or removed. Routine Use 1 has not changed. Routine Use 2 has been rewritten to avoid duplicating permissible disclosures under 5 U.S.C. 552a(b)(6) and to permit disclosures to the Office of Government Information Services (OGIS), National Archives and Records Administration (NARA), in connection with OGIS's responsibilities under the Freedom of Information Act. Former Routine Use 3 has been split into two distinct routine uses and rewritten to reflect OMB guidance. Specifically, Routine Use 3 was modified to reflect OMB's guidance from May 24, 1985. The second half of former Routine Use 3 was renumbered as Routine Use 5 and modified to reflect OMB's guidance from July 9, 1975 (40 FR 28948). Former Routine Uses 4 and 6 have been removed as unnecessary for

this system. Former Routine Use 5 has been renumbered to Routine Use 4 and modified to clarify that contractors are subjected by statute to the Privacy Act's requirements. Former Routine Use 7 has been renumbered to Routine Use 6 and modified to reflect OMB's guidance from May 24, 1985. Former Routine Use 8 has been renumbered to Routine Use 7. Former Routine Use 9 has been removed and replaced by Routine Uses 8 and 9 to comply with OMB Memorandum 17–12. Routine Use 10 has been removed as unnecessary for this system. Routine Use 11 has been removed as unnecessary for this system.

SYSTEM NAME AND NUMBER:

eDiscovery Management System (EDMS), HUD/OGC–01.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained on servers at the National Center for Critical Information Processing and Storage (NCCIPS), 9325 Cypress Loop RD., Stennis Space Center, MS 39529 and on HUD Azure Cloud managed by HUD's Office of the Chief Information Officer (OCIO) at 451 Seventh Street SW, Room 4160, Washington, DC 20410–0001.

SYSTEM MANAGER(S):

Tenille Washburn, Assistant General Counsel, Office of General Counsel Field Management, and IT Division, HUD, 451 Seventh Street SW, Room 10286, Washington, DC 20410–0001; Telephone number (202) 402–6536.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 11315 and 44 U.S.C. 3506. In addition, the federal statutes that authorize the collection and storage of ESI for other purposes including FOIA, OIG investigations, and Congressional requests include: The Freedom of Information Act. 5 U.S.C 552 for responses to the FOIA requests. The Legislative Reorganization Act of 1970 (Pub. L. 91–510) and implied in the Constitution of the Unites States for responses to Congressional Oversight Committee requests; and The Inspector General Act of 1978 as amended, 5 U.S.C app. (Pub. L. 95–452, sec. 1, Oct. 12, 1978, 92 Stat. 1101) (sec. 6(a)(1) authorizes OIG to have access to records and other documentation).

PURPOSE(S) OF THE SYSTEM:

The purpose of the eDiscovery process and systems are in direct response to the eDiscovery legal and business requirements stated in the Federal Rules of Civil Procedure (FRCP) and case law. The eDiscovery obligations require the preservation/collection and possible production of electronically stored information (ESI) related to any individual who may have data or other records related to ''reasonably anticipated'' litigation. The individuals subject to the eDiscovery requirements include employees across all HUD offices nationwide as well as contractors. The eDiscovery systems and process assist HUD to preserve, collect, and review ESI and data of any individual who is, or will be, in discovery or litigation with HUD. Relativity facilitates data analysis, review (relevance, privilege etc.), tagging, redaction, privilege log, and production of ESI and data to respond to litigation discovery requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons subject to a litigation hold due to a ''reasonable anticipation of litigation'' as determined by HUD's OGC based on anticipated litigation trigger dates for the various types of litigation across the Department; all persons deemed a participant of past or present litigation or anticipated litigation where HUD is involved; and specified individuals impacted by FOIA requests, discovery/litigation, OIG investigations, Congressional Oversight Committee requests and other cases in HUD.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual(s) name; Individual(s) work address; Individual(s) work email address; Individual(s) work phone number; HUD Submitter Office Location; Case name; Case number; Case Type (Litigation, FOIA, OIG, Congressional) Date Range for requested Electronically Stored Information (ESI) collection; and Requested Data Sources for ESI (*e.g.,* email data, C:drive, G:drive, One Drive, J:drive, SharePoint, Teams data).

RECORD SOURCE CATEGORIES:

HUD employees and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. To a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the request of the individual to whom the records pertain.

2. To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

3. To any component of the Department of Justice or other Federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when HUD determines that the use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his or her official capacity; or (3) any HUD employee in his or her individual capacity where the Department of Justice or agency conducting the litigation has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

4. To contractors, grantees, experts, consultants, and the agents thereof, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for HUD, when necessary, to accomplish an agency function related to its system of records. Disclosure is limited to only those data elements considered relevant to accomplish an agency function. Contractors provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to HUD officers and employees.

5. To appropriate Federal, State, local, Tribal, or other governmental agencies or multilateral governmental organizations responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where HUD determines that the information would assist in the enforcement of civil or criminal laws and when such records, either alone or in conjunction with other information, indicate a violation or potential violation of law.

6. To a court, magistrate, administrative tribunal, or arbitrator in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, mediation, or settlement negotiations, or in connection with criminal law proceedings; when HUD determines that use of such records is relevant and necessary to the litigation and when any of the following is a party to the litigation or have an interest in such litigation: (1) HUD, or any component thereof; or (2) any HUD employee in his

or her official capacity; or (3) any HUD employee in his or her individual capacity where HUD has agreed to represent the employee; or (4) the United States, or any agency thereof, where HUD determines that litigation is likely to affect HUD or any of its components.

7. To a grand jury agent pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court.

8. To appropriate agencies, entities, and persons when (1) HUD suspects or has confirmed that there has been a breach of the system of records,· (2) [the agency] has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HUD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with [the agency's] efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. To another Federal agency or Federal entity, when HUD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Individual(s) name and work email address.

POLICIES AND PRACTICIES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Data and paper records subject to a litigation hold are preserved for the duration of the litigation hold. Litigation files having an unusual significance to the Department are kept for seven years after entry of order or last appeal. Other litigation files are kept for four years after entry of order or last appeal. Files kept on administrative adjudications are kept for six years after entry of order or last appeal.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Strict quality and access controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the data/records in EDMS is limited to those individuals who are authorized to access by appropriate security clearances and user ID/password permissions. Only assigned users with a need-to-know are allowed access, on a case-by-case basis, after going through HUD's background investigation process.

RECORD ACCESS PROCEDURES:

Individuals requesting records of themselves should address written inquiries to the Department of Housing Urban and Development 451 7th Street, SW Washington, DC 20410–0001. For verification, individuals should provide their full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

CONTESTING RECORD PROCEDURES:

The HUD rule for contesting the content of any record pertaining to the individual by the individual concerned is published in 24 CFR 16.8 or may be obtained from the system manager.

NOTIFICATION PROCEDURES:

Individuals requesting notification of records of themselves should address written inquiries to the Department of Housing Urban Development, 451 7th street SW, Washington, DC 20410–0001. For verification purposes, individuals should provide their full name, office or organization where assigned, if applicable, and current address and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made under 24 CFR 16.4.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

For those records within the system collected and maintained pursuant to the Federal Rules of Civil Procedure and/or for the purpose of civil discovery, action or proceeding, 5 U.S.C. 552a(d)(5) will apply, which states ''nothing in this [Act] shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.''.

HISTORY:

Docket No. FR–5613–N–06–C published on February 11, 2013 at 78 FR 9721.

LaDonne White,

Chief Privacy Officer, Office of Administration.

[FR Doc. 2024–04474 Filed 3–1–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037507; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Folsom History, Folsom, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Folsom History 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 Sacramento County, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after April 3, 2024.

ADDRESSES: Shelby Sorensen, Folsom History, 823 Sutter Street, Folsom, CA 95630, telephone (916) 985–2707, email *shelby@folsomhistory.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 Folsom History. 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 Folsom History.

Description

Human remains representing, at minimum, one individual were removed from Sacramento County, CA. The human remains, one 2″ bone—likely a 4th right metacarpal, were accessioned on April 15, 2005, at Folsom History. Donor information is available upon request. The location of the burial is possibly near How and Folsom Blvd. in

Sacramento, CA. The one lot of associated funerary objects is a collection of several hundred beads of various sizes and materials.

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: biological information, geographical information, historical information, kinship, 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 Folsom History has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The one lot of 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 Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), 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 April 3, 2024. If competing requests for repatriation are received, Folsom History 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. Folsom History 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 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–04455 Filed 3–1–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037504; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Gilcrease Museum, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Gilcrease Museum 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 an unknown location.

DATES: Repatriation of the human remains in this notice may occur on or after April 3, 2024.

ADDRESSES: Laura Bryant, Gilcrease Museum, 800 S Tucker Drive, Tulsa, OK 74104, telephone (918) 596–2747, email *laura-bryant@utulsa.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 Gilcrease Museum. 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 Gilcrease Museum.

Description

Human remains representing, at minimum, three individuals were removed from an unknown location. Around 1900, Emil Lenders, a painter and collector, traveled throughout the Plains and acquired these three scalp locks. Thomas Gilcrease purchased Lenders' collection, including these three individuals, in 1950. Thomas Gilcrease transferred his collection to the City of Tulsa in 1955. The three individuals are of unknown age and sex. 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: biological information, oral traditions, historical information, and museum records.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Gilcrease Museum has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- 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 Ponca Tribe of Indians of Oklahoma and the Ponca Tribe of Nebraska.

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 April 3, 2024. If competing requests for repatriation are received, the Gilcrease Museum 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 Gilcrease Museum 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 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–04454 Filed 3–1–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–37538; 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 24, 2024, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by March 19, 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 24, 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.

FLORIDA

St. Johns County

Lodge and Hut, 9177–9179 Old A1A Highway, Summer Haven, SG100010155

Sumter County

Community of Royal Rural Historic District, Bounded by Cty. Rd. 475, Cty. Rd. 216A, Cty. Rd. 223, and US Hwy. 44, Wildwood, RS100009226

HAWAII

Honolulu County

The Bowers' House, 4837 Sierra Drive, Honolulu, SG100010159

MARYLAND

Frederick County

Emmitsburg Historic District (Boundary Increase), A portion of the south side of the 400 block of West Lincoln Avenue, from Patterson Avenue, 375′ west, to the west property line of 439 West Lincoln Avenue, Emmitsburg, BC100010150

Prince George's County

Washington, George, House (Additional Documentation), (The Women's Suffrage Movement in Maryland MPS), Baltimore Ave. at Upshur St., Bladensburg, MP74002198

MICHIGAN

Branch County

Capri Drive-In Theater, 119 West Chicago Road, Batavia Township, SG100010158

Jackson County

Hayes Hotel, 226–234 West Michigan Avenue, Jackson, SG100010157

Tuscola County

Moore, William J. and Lovila (Wooley), House, 123 North Almer Street, Caro, SG100010162

MISSOURI

Callaway County

Middle River School (One-Teacher Public Schools of Missouri MPS), 6587 County Road 305, Fulton, MP100010147

St. Louis INDEPENDENT CITY

Chouteau's Landing Historic District, Cedar St., South 1st St., Chouteau Ave., South 3rd St., St. Louis, SG100010146

MONTANA

Hill County

Northern Montana College Girls Residence Hall, 300 West 11th Street, Havre, SG100010160

PENNSYLVANIA

Allegheny County

Mt. Alvernia Historic District, 146 Hawthorne Road, Shaler, SG100010142

TENNESSEE

Anderson County

Cross—Boggs Place, 453 Oliver Springs Highway, Clinton, SG100010138

TEXAS

Bexar County

Monkey House/Commissary (San Antonio Zoo) (Historic Buildings and Structures of the San Antonio Zoo MPS), 3903 North St. Mary's Street, San Antonio, MP100010141

Gonzales County

Edwards High School, 1427 Fly Street, Gonzales, SG100010161

VERMONT

Windsor County

Old South Church, 146 Main Street, Windsor, SG100010130

WISCONSIN

Door County

PEORIA Shipwreck (Schooner) (Great Lakes Shipwreck Sites of Wisconsin MPS), 0.15 miles northeast of the Baileys Harbor Marina entrance, in Baileys Harbor, Lake Michigan, Baileys Harbor vicinity, MP100010152

Waukesha County

Morey, Theodore I. and Margaret, House, 1516 Pleasant View Avenue, Waukesha, SG100010153

Additional documentation has been received for the following resource(s):

COLORADO

Weld County

Dearfield (Additional Documentation), Along CO 34, 11 mi. W of Wiggins, Wiggins vicinity, AD95001002

MARYLAND

Frederick County

Emmitsburg Historic District (Additional Documentation), Roughly, Main St. E of Mountain View Cemetery to Creamery Rd. and Seton Ave. adjacent to Main, Emmitsburg, AD92000076

TENNESSEE

Davidson County

Federal Office Building (Additional Documentation), 701 Broadway, Nashville, AD72001232

Gymnasium, Vanderbilt University (Additional Documentation), 2301 West End Avenue, Nashville, AD72001233

Hays-Kiser House (Additional Documentation), 834 Reeves Rd., Antioch, AD74001906

Knox County

Craighead-Jackson House (Additional Documentation), 1000 State St., Knoxville, AD73001801

Maury County

Grace Episcopal Church (Additional Documentation), 5291 Main Street, Spring Hill, AD76001789

Roane County

Harriman City Hall (Additional Documentation), 332 N Roane Street, Harriman, AD71000828

Sevier County

Waters House (Additional Documentation), 217 Cedar St., Sevierville, AD75001784

Shelby County

Lee and Fontaine Houses of the James Lee Memorial (Additional Documentation) 680—690 Adams Ave., Memphis, AD71000835

St. Mary's Catholic Church (Additional Documentation), 155 Market St., Memphis, AD74001929

Steele Hall (Additional Documentation), 783 Walker Avenue, Memphis, AD79002481

Sullivan County

Johnson, J. Fred, House (Additional Documentation), 1322 Watauga Street, Kingsport, AD73001843

Authority: Section 60.13 of 36 CFR part 60.

Sherry A. Frear,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

[FR Doc. 2024–04501 Filed 3–1–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037508; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Folsom History, Folsom, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Folsom History intends to repatriate certain cultural items that meet the definition of unassociated funerary objects or objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Sacramento County, CA, or an unknown county.

DATES: Repatriation of the cultural items in this notice may occur on or after April 3, 2024.

ADDRESSES: Shelby Sorensen, Folsom History, 823 Sutter Street, Folsom, CA 95630, telephone (916) 985–2707, email *shelby@folsomhistory.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 Folsom History. 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 Folsom History.

Description

The three cultural items were removed from Sacramento County, CA, or an unknown county, CA. The date of removal is unknown or from a general local area. Acquisition dates are listed from 1977 to found in collection in 2022. One cultural item was created by artist, Harry Fonesca. Donor information is available upon request for all objects. It is likely the object listed as 2015.01.17 (rhythm necklace; Nisenan) was gifted or purchased from the Pacific Western Traders. The one unassociated funerary item is a collection of 27 arrowheads and points. The two objects of cultural patrimony are one rhythm necklace (Nisenan) and one framed pen and ink with colored pencil both created by artist, Harry Fonesca.

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: geography, kinship, biology, archeology, anthropology, linguistics, folklore, oral tradition, historical information, and other relevant information or expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations Folsom History has determined that:

- The one cultural item 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.
- The two cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), 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 April 3, 2024. If competing requests for repatriation are received, Folsom History 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. Folsom History 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 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–04456 Filed 3–1–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037497; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Fowler Museum at the University of California Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Fowler Museum at the University of California Los Angeles (Fowler Museum at UCLA), 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 Orange County, CA.

DATES: Repatriation of the human remain in this notice may occur on or after April 3, 2024.

ADDRESSES: Michael Chavez, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, email *michaelchavez@arts.ucla.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 Fowler Museum at UCLA. 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 Fowler Museum at UCLA.

Description

Human remains representing, at minimum, one individual were removed from Orange County, CA. The ancestor was transferred from Catherine Asper to Renatta Russell in 1975 along with a typed letter stating that they were found on a golf course in Aliso Beach. Russell then mailed the ancestor to Dr. Berger, Director of the UCLA Radiocarbon Laboratory in 1976. In 1994 after UCLA closed the Laboratory many of the collections were transferred to UC Riverside's Radiocarbon Laboratory. In 2019, after the retirement of Professor Erwin Taylor, UCR inventoried all the materials and returned collections to UCLA including this ancestral remain, assigned catalog number PC#618A. In 2021 UCLA determined that there was sufficient reason to assume control and in consultation with local archaeologists and tribal members that the individual represented by PC#618A may have been taken from ORA–9. No lineal descendant can be determined. 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: 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 Fowler Museum at UCLA 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 Pechanga Band of Indians (previously listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, 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 identified in this notice and, if joined to a request from one or more of the Indian Tribes, the Juaneno Band of Mission Indians Acjachemen Nation—Belardes; Juaneno Band of Mission Indians Acjachemen Nation 84A; and the Gabrielino/Tongva Nation.
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 April 3, 2024. If competing requests for repatriation are received, the Fowler Museum at UCLA 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 Fowler Museum at UCLA 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 23, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–04453 Filed 3–1–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–36997; PPWODIREP0; PPMPSAS1Y.000000; PX.XDIRE0039]

Advisory Committee on Reconciliation in Place Names; Charter Renewal

AGENCY: National Park Service, Interior.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of the Interior is giving notice of the renewal of the Advisory Committee on Reconciliation in Place Names. The Committee identifies geographic feature names and

Federal land unit names that are considered derogatory and solicits input on the process for generating replacement names.

FOR FURTHER INFORMATION CONTACT: Andrea DeKoter, Committee Manager for the Advisory Committee on Reconciliation in Place Names, Office of Policy, National Park Service, 1849 C St. NW, Washington, DC 20240; by email at *reconciliation_committee@nps.gov;* or by telephone at (202) 354–2220.

SUPPLEMENTARY INFORMATION: The Committee was established by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906 and is regulated by the Federal Advisory Committee Act. This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). The certification of renewal is published below.

Certification Statement: I hereby certify that the renewal of the Advisory Committee on Reconciliation in Place Names is necessary, in the public interest, and is in connection with the performance of duties imposed on the Department of the Interior and in furtherance of the National Park Service Organic Act (54 U.S.C. 100101 *et seq.*), the Fish and Wildlife Act of 1956 (16 U.S.C. 742a), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd), and other Acts applicable to specific bureaus.

(Authority: 5 U.S.C. Ch. 10)

Deb Haaland,

Secretary of the Interior.

[FR Doc. 2024–04484 Filed 3–1–24; 8:45 am]

BILLING CODE 4312–52–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 Medical Programmers with Printed Circuit Boards, Components Thereof, and Products and Systems for Use with the Same,* DN 3727; 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 Medtronic, Inc., Medtronic Logistics, LLC, Medtronic USA, Inc., and Medtronic Puerto Rico Operations Co. on February 28, 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 medical programmers with printed circuit boards, components thereof, and products and systems for use with the same. The complaint names as a respondent: Axonics, Inc. of Irvine, CA. The complainant requests that the Commission issue an 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. 3727'') 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

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 28, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–04506 Filed 3–1–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–24–010]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: March 8, 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. Nos. 701–TA–704–705 and 731–TA–1664–1666 (Preliminary) (Paper Plates from China, Thailand, and Vietnam). The Commission currently is scheduled to complete and file its determinations on March 11, 2024; views of the Commission currently are scheduled to be completed and filed on March 18, 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 29, 2024.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2024–04634 Filed 2–29–24; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation. No. 337–TA–1391]

Certain Network Equipment Supporting NETCONF; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 19, 2024, under section 337 of the Tariff Act of 1930, as amended, on behalf of Optimum Communications Services, Inc. of Jersey City, New Jersey. Supplements to complaint were filed on February 2 and 5, 2024. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network equipment supporting NETCONF by reason of the infringement of certain claims of U.S. Patent No. 10,567,474 (''the '474 patent'') and U.S. Patent No. 10,848,546 (''the '546 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2023).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 27, 2024, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1, 2, and 4–7 of the '474 patent; and claims 1–3 and 5–9 of the '546 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337; [1]

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

[1] Commissioner Kearns does not vote to institute the investigation for the reasons set forth in his

Continued

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''[o]ptical line termination (OLT) and optical network unit/terminal (ONU/ONT) equipment, and subassemblies thereof, for passive optical networks that support NETCONF, conforming to internet standards IETF RFCs 6241 (NETCONF) and its companion RFC 7950 (YANG), as well as applicable modules and updates for them'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Optimum Communications Services, Inc., 344 Grove Street #242, Jersey City, NJ 07302

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Changsha Silun Network Technology Co., Ltd., Address 6007, South Tower, Building 1b, Changsha Headquarters Base, Jinhai Road, Changsha, Hunan, China 410123

Hunan Maiqiang Network Technology Company Limited, Address Room 2002, Building 3, Changfang Tianyi Future City, No. 298, Shuguang Middle Rd., Changsha, Hunan, China 410021

Hunan Zikun Information Technology Co., Ltd., Address 6th Floor, Changsha Headquarters Base, Jinhai Rd, Yuhua District, Changsha, Hunan, China 410123

Guangzhou Qiton Electronics Technology Co., Ltd., Address Room 405, 27–3, Yuanxiatian 4th Road, Yongping Street, Guangzhou, Guangdong, China 510420

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 27, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–04446 Filed 3–1–24; 8:45 am]

BILLING CODE 7020–02–P

memo expressing his separate views (Memo No. CO87–UU–005).

DEPARTMENT OF JUSTICE

[OMB Number 1122–0005]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for Grants To Reduce Violent Crimes Against Women on Campus Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Higher Education Amendments of 1998 originally created the Grants to Combat Violent Crimes Against Women on Campuses Program (renamed the Grants to Reduce Violent Crimes Against Women on Campus Program in the Violence Against Women Act (VAWA) of 2000 (Campus Program)). 34 U.S.C. 20125 Campus Program grant funds may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for Grants

to Reduce Violent Crimes Against Women on Campus Program

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1122–0005.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public-Institutions of higher education that are grantees of the Grants to Reduce Violent Crimes Against Women on Campus Program (Campus Program). The obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The affected public includes the approximately 100 grantees (institutions of higher education) of the Campus Program whose eligibility is determined by statute. The time per response is one hour to complete the Semi-Annual Progress Report for Grants to Reduce Violent Crimes Against Women on Campus Program.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 200 hours, that is 100 grantees completing a form twice a year with an estimated completion time for the form being one hour.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The annualized costs to the Federal Government resulting from the OVW staff review of the progress reports submitted by grantees are estimated to be $11,200.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hour)	Total annual burden (hours)
Progress Report Form	100	2/semiannually	200	1	200
Unduplicated Totals	100		200		200

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: February 27, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–04436 Filed 3–1–24; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0011]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for the Grants to Tribal Sexual Assault and Domestic Violence Coalitions Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program supports the development and operation of nonprofit, nongovernmental tribal domestic violence and sexual assault coalitions. Tribal coalitions provide education, support, and technical assistance to member Indian service providers and tribes to enhance their response to victims of domestic violence, dating violence, sexual assault, and stalking. 34 U.S.C. 10441(d) and 12511(d).

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for the Grants to Tribal Sexual Assault and Domestic Violence Coalitions Program (Tribal Coalitions Program)

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1122–0011.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* The affected public includes 14 grantees from the Tribal Coalitions Program. The Tribal Coalitions Program grantees include Indian tribal governments that will support the development and operation of new or existing nonprofit tribal domestic violence and sexual assault coalitions in Indian country. The obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the approximately 14 respondents (Tribal Coalitions Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Tribal Coalitions Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 28 hours, that is 14 grantees completing a form twice a year with an estimated completion time for the form being one hour.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The annualized costs to the Federal Government resulting from the OVW staff review of the progress reports submitted by grantees are estimated to be $1,568.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
Progress Report Form	14	2/semiannually	28	1	28
Unduplicated Totals	14		28		28

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: February 27, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–04434 Filed 3–1–24; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application and Permit for Permanent Exportation of Firearms

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Melissa Mason, NFAD, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *nfaombcomments@atf.gov,* or telephone at 304–616–4500.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: ATF Form 9 (5320.9) is typically used by a Federal firearms licensee who has paid the special (occupational) tax to deal, manufacture or import NFA firearms. The form must be filed (in quadruplicate) for approval to permanently export NFA firearms registered in the National Firearms Registration and Transfer Record. Once authorization has been granted, one copy is retained by ATF and the remaining copies returned to the exporter to establish that the exportation took place. The information collection (IC) OMB 1140–0008 (Application and Permit for Permanent Exportation of Firearms—ATF Form 9 (5320.9) is being revised to change the last sentence in 'Instructions 1a'. This change includes deleting ''to that effect'' and adding ''certifying compliance with 26 U.S.C. 5854 and 27 CFR 479.33.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Application and Permit for Permanent Exportation of Firearms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 9 (5320.9).

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* Private Sector—businesses for or not for profit institutions. The obligation to respond is required to retain or obtain benefits.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,831 respondents will use the form annually, and it will take each respondent approximately 18 minutes to complete their responses.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is

549 hours, which is equal to 1,831 (total respondents) * 1 (# of response per respondent) *.30 (18 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $320.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (mins)	Total annual burden (hours)
ATF Form 9 (5320.9)	1,831	1	1,831	18	549

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: February 28, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–04460 Filed 3–1–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0010]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office on Violence Against Women, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until May 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Catherine Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—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;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The Violence Against Women Act of 2000 (VAWA 2000) authorized the Attorney General to award grants to state sexual assault and domestic violence coalitions. The Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions Program) is intended to provide federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities. 34 U.S.C. 10446.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program (State Coalitions Program)

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* 1122–0010.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* The affected public includes the 88 grantees from the State Coalitions Program. The State Coalitions Program provides federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities. The obligation to respond is required to obtain/retain a benefit.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the approximately 88 respondents (State Coalitions Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A State Coalitions Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 176 hours, that is 88 grantees completing a form twice a year with an estimated completion time for the form being one hour.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* The annualized costs to the Federal Government resulting from the OVW staff review of the progress reports submitted by grantees are estimated to be $9,856.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annua responses	Time per response	Total annual burden (hours)
Progress Report Form	88	2/semiannually	176	1 hour	176
Unduplicated Totals	88		176		176

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: February 27, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–04435 Filed 3–1–24; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0100]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Report of Multiple Sale or Other Disposition of Certain Rifles

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on December 26th, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until April 3, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Matthew Grim, EPS/NTCD/TORM, by email at *matthew.grim@atf.gov,* or telephone at 304–260–3683.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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;

—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;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this 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 information collection or the OMB Control Number 1140–0100. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Report of Multiple Sale or Other Disposition of Certain Rifles.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 3310.12.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract: Affected Public:* Private Sector-for or not for profit institutions.

Abstract: Licensed dealers and pawnbrokers in Arizona, California, New Mexico and Texas must submit to ATF reports of multiple sales or other dispositions of certain rifles whenever, at one time or during any five consecutive business days, you sell to an unlicensed person or otherwise dispose of two or more semi-automatic rifles capable of accepting a detachable magazine and with a caliber greater than .22 (including .223/5.56 caliber). The required information must be submitted on ATF F3310.12. The information collection (IC) OMB #1140–0100 is being revised to expand the FFL population required to complete the form. ATF is now requiring Type 07 FFLs and Type 08 FFLs in these States to also report multiple sales of certain rifles on ATF Form 3310.12.

5. *Obligation to Respond:* The obligation to respond is mandatory. The statutory requirements are implemented in title 18 U.S.C. 923(g)(5)(A).

6. *Total Estimated Number of Respondents:* The estimated number of eligible respondents is 15,000 but the estimated number of responses is approximately 12,000.

7. *Estimated Time per Respondent:* 12 minutes.

8. *Frequency:* As needed.

9. *Total Estimated Annual Time Burden:* 2,400 hours.

10. *Total Estimated Annual Other Costs Burden:* The average wage for a firearms sales clerk is $16.70 per hour and postage at $0.51. Accordingly, the total burden on respondents is

$46,200.00 annually (2,400 total hourly burden × $16.70 hourly wage rate for a sales clerk) + (postage: $0.51 × 12,000 responses).

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: February 28, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–04461 Filed 3–1–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Anhydrous Ammonia Storage and Handling Standard

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Occupational Safety & Health Administration (OSHA)-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 4, 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: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The collections of information are necessary for the safe handling and storage of anhydrous ammonia, a substance which is extremely dangerous to humans including toxic and corrosive. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 27, 2023 (88 FR 73877).

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–OSHA.

Title of Collection: Anhydrous Ammonia Storage and Handling Standard.

OMB Control Number: 1218–0208.

Affected Public: Private Sector—Farms.

Total Estimated Number of Respondents: 2,500.

Total Estimated Number of Responses: 2,059.

Total Estimated Annual Time Burden: 342 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–04512 Filed 3–1–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: National Medal for Museum and Library Service Nomination Form

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this notice is to solicit comments related to the nomination form for the annual IMLS National Medal for Museum and Library Service Program designed to recognize outstanding libraries and museums that have made significant contributions in service to improve the wellbeing of their communities. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 30, 2024.

ADDRESSES: Send comments to Sandra Narva, Acting Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Narva can be reached by telephone at 202–653–4634, or by email at *snarva@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Katherine Maas, Chief of Staff, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Maas can be reached by telephone at 202–653–4798, or by email at *nationalmedals@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

IMLS is the primary source of Federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. Our vision is a nation where museums and libraries work together to transform the lives of individuals and communities. To learn more, visit *www.imls.gov.*

II. Current Actions

The purpose of this collection is to administer the IMLS process by which organizations nominated for the National Medal for Museum and Library Service submit administrative information about their organizations, communities, and programs. IMLS uses a standardized electronic form to collect this information from museums and libraries when they submit their nominations. The National Medal for Museum and Library Service is the nation's highest honor for institutions that make significant and exceptional contributions to their communities. Since 1994, IMLS has presented the award to institutions that demonstrate extraordinary and innovative approaches to community service. In addition to the Medal, IMLS may provide a monetary award. This action is to renew the content, form, and instructions for the next three years.

Agency: Institute of Museum and Library Services.

Title: National Medal for Museum and Library Service Program Nomination Form.

OMB Control Number: 3137–0097.

Agency Number: 3137.

Affected Public: Library and Museum applicants.

Total Estimated Number of Annual Respondents: 175.

Frequency of Response: Once per year.

Average Hours per Response: 9.

Total Estimated Annual Burden Hours: 1,575.

Total Annual Cost Burden: $50,225.

Total Annual Federal Costs: $8,024.

Public Comments Invited: Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: February 27, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–04451 Filed 3–1–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: IMLS Library and Museum Reviewer Forms

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning the annual IMLS Library and Museum Reviewer Forms which are used by library and museum professionals to submit their interest and expertise to be considered for selection as an IMLS peer reviewer. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 30, 2024.

ADDRESSES: Send comments to Sandra Narva, Acting Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Narva can be reached by telephone: 202–653–4634, or by email at *snarva@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Sandra Narva, Acting Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Narva can be reached by telephone at 202–653–4634, or by email at *snarva@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

IMLS is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

This Notice proposes renewing the clearance of the content, forms, and instructions for IMLS Library and Museum Reviewer Forms for the next three years.

All proposals submitted for IMLS competitive awards are reviewed by library and museum professionals who know the needs of communities, can share promising practices, and are well versed in the issues and concerns of libraries and museums today. Peer reviewers dedicate their time and expertise to advance the highest professional practices in the field. The IMLS review process is well respected, and the success of our grant programs is largely due to the expertise of our reviewers. These peer reviewer forms, accessed through the IMLS website, allow library and museum professionals to indicate their interest and provide information on their professional expertise to be considered for selection as an IMLS peer reviewer.

Agency: Institute of Museum and Library Services.

Title: IMLS Library and Museum Reviewer Forms.

OMB Control Number: 3137–0099.

Agency Number: 3137.

Affected Public: Library and Museum professionals.

Total Estimated Number of Annual Responses: 1,450.

Frequency of Response: Once per year.

Average Minutes per Response: 15.

Total Estimated Annual Burden Hours: 363.

Total Annual Burden: $11,649.

Total Annual Federal Costs: $3,989.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: February 27, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–04411 Filed 3–1–24; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Charter Renewal

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of renewal of the Charter of the Advisory Committee on the Medical Uses of Isotopes.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has determined that renewal of the charter for the Advisory Committee of the Medical Uses of Isotopes (ACMUI) until February 28, 2026, is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

SUPPLEMENTARY INFORMATION: The purpose of the ACMUI is to provide advice to the NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

Contact Information: Lillian Armstead, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; email: *Lillian.Armstead@nrc.gov.*

Dated at Rockville, Maryland this 28th day of February, 2024.

For the U.S. Nuclear Regulatory Commission.

Russell E. Chazell,

Federal Advisory Committee Management Officer.

[FR Doc. 2024–04462 Filed 3–1–24; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February March 4, 11, 18, 25, and April 1, 8, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public and closed.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of March 4, 2024

Thursday, March 7, 2024

10:00 a.m.—Briefing on NRC International Activities (Closed Ex. 1 and 9)

Week of March 11, 2024—Tentative

There are no meetings scheduled for the week of March 11, 2024.

Week of March 18, 2024—Tentative

There are no meetings scheduled for the week of March 18, 2024.

Week of March 25, 2024—Tentative

There are no meetings scheduled for the week of March 25, 2024.

Week of April 1, 2024—Tentative

There are no meetings scheduled for the week of April 1, 2024.

Week of April 8, 2024—Tentative

Tuesday, April 9, 2024

10:00 a.m.—Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/*.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 28, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–04571 Filed 2–29–24; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–196 and CP2024–202]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 6, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–196 and CP2024–202; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 194 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 27, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* March 6, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–04490 Filed 3–1–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–195 and CP2024–201]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 5, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service

agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–195 and CP2024–201; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 193 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 26, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* March 5, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–04410 Filed 3–1–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99610; File No. SR–CboeBYX–2023–020]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Modify Rule 11.24 To Introduce an Enhanced RPI Order and Expand Its Retail Price Improvement Program To Include Securities Priced Below $1.00

February 27, 2024.

On December 27, 2023, Cboe BYX Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Rule 11.24 to introduce an Enhanced RPI Order and expand its Retail Price Improvement program to include securities priced below $1.00. The proposed rule change was published for comment in the **Federal Register** on January 17, 2024.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 2, 2024. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, pursuant to section 19(b)(2) of the Act,[5] the Commission designates April 16, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBYX–2023–020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04426 Filed 3–1–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99614; File No. 10–242]

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

February 27, 2024.

On February 6, 2024, 24X National Exchange LLC (''24X'' or ''Applicant'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act.[1] The Applicant's Form 1 application provides detailed information on how 24X proposes to satisfy the requirements of the Exchange Act.

The Commission is publishing this notice to solicit comments on 24X's Form 1 application. The Commission will take any comments it receives into consideration in making its determination about whether to grant 24X's request to be registered as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99311 (Jan. 10, 2024), 89 FR 2993.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78f. 24X filed a Form 1 application on Mar. 25, 2022. *See* Securities Exchange Act Release No. 95007 (May 31, 2022), 87 FR 34333 (June 6, 2022) (''2022 Form 1 Application''). 24X withdrew the 2022 Form 1 Application on Feb. 16, 2023. *See* Securities Exchange Act Release No. 97043 (Mar. 3, 2023), 88 FR 14663 (Mar. 9, 2023).

regulations thereunder with respect to 24X are satisfied.[2]

24X's Form 1 application states that 24X would be wholly owned by its parent company, 24X US Holdings LLC (''US Holdings''), which in turn is wholly owned by 24X Bermuda Holdings LLC (''Bermuda Holdings'').

The Form 1 application provides that 24X would operate a fully automated electronic trading platform for the trading of listed equities and would not maintain a physical trading floor. One novel feature of 24X's Form 1 application is that 24X proposes to enter into an agreement with MEMX Technologies, LLC to license the technology underlying 24X.[3] The Form 1 application provides that liquidity would be derived from quotes as well as orders to buy and orders to sell submitted to 24X electronically by 24X members from remote locations. 24X proposes to have one class of membership open to registered broker-dealers. Another novel feature of 24X's proposed trading rules is that 24X intends to allow equities trading 24 hours a day, 7 days per week, 365 days a year.[4] 24X has proposed specific rules to govern trading outside of regular trading hours.[5]

A more detailed description of the manner of operation of 24X's proposed system can be found in Exhibit E to 24X's Form 1 application. The proposed rulebook for the proposed exchange can be found in Exhibit B to 24X's Form 1 application, and the governing documents for 24X, US Holdings and Bermuda Holdings can be found in Exhibit A and Exhibit C to 24X's Form 1 application. A listing of the officers and directors of 24X can be found in Exhibit J to 24X's Form 1 application. A complete set of forms concerning membership and access can be found in Exhibit F to 24X's Form 1 application.

24X's Form 1 application, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as in the Commission's Public Reference Room. Interested persons are invited to submit written data, views, and arguments concerning 24X's Form 1 application, including whether the application is consistent with the Exchange 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 10–242 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 10–242. 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/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to 24X's Form 1 application filed with the Commission, and all written communications relating to the application 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 10–242 and should be submitted on or before April 18, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–04427 Filed 3–1–24; 8:45 am]

BILLING CODE 8011–01–P

[2] 15 U.S.C. 78s(a).

[3] *See* Exhibits C and E to 24X's Form 1 application.

[4] *See* proposed 24X Rule 11.1 (describing the hours of trading and trading days for 24X).

[5] For example, *see* proposed 24X Rule 11.16 (describing what orders are eligible for execution outside of regular trading hours).

[6] 17 CFR 200.30–3(a)(16) and (a)(71)(i).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 7, 2024.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street, NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 29, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–04597 Filed 2–29–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, March 6, 2024, at 9:45 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 9:45 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt amendments to the national market system (NMS) stock order execution disclosure requirements of Regulation NMS under the Securities Exchange Act of 1934 that would expand the scope of entities subject to Rule 605, modify the categorization and content of order information reported under the rule, and require reporting entities to produce a summary report of execution quality.

2. The Commission will consider whether to adopt rules to require registrants to provide certain climate-related information in their registration statements and annual reports.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 28, 2024.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2024–04572 Filed 2–29–24; 2:00 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 12341]

30-Day Notice of Proposed Information Collection: Two (2) Passport Services Information Collections: Supplemental Questionnaire To Determine Entitlement for a U.S. Passport and Supplemental Questionnaire To Determine Identity for a U.S. Passport

ACTION: Notice of request for public comment and submission to the Office of Management and Budget (OMB) for the proposed collection of information.

SUMMARY: The Department of State has submitted the information collections described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on these collections from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: The Department will accept comments from the public up to April 3, 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 information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You must include the DS form number, information collection title, and the OMB control number in any correspondence (if applicable). You may send requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to the following email address: *Passport-Form-Comments@State.gov.* You must include the DS form number and information collection title in the email subject line.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Supplemental Questionnaire to Determine Entitlement for a U.S. Passport.
- *OMB Control Number:* 1405–0214.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services.
- *Form Number:* DS–5513.
- *Respondents:* United States Citizens and Non-citizen Nationals.
- *Estimated Number of Respondents:* 760.
- *Estimated Number of Responses:* 760.
- *Average Time per Response:* 85 minutes.
- *Total Estimated Burden Time:* 1,080 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.
- *Title of Information Collection:* Supplemental Questionnaire to Determine Identity for a U.S. Passport.
- *OMB Control Number:* 1405–0215.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services.
- *Form Number:* DS–5520.
- *Respondents:* United States Citizens and Non-citizen Nationals.
- *Estimated Number of Respondents:* 10,000.
- *Estimated Number of Responses:* 10,000.
- *Average Time per Response:* 45 minutes.
- *Total Estimated Time Burden:* 7,500 hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collections

1405–0214, DS–5513, Supplemental Questionnaire to Determine Entitlement for a U.S. Passport: The primary purpose for soliciting this information is to establish entitlement for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad and to administer the passport program.

- *1405–0215, DS–5520, Supplemental Questionnaire to Determine Identity for a U.S. Passport:* The primary purpose for soliciting this information is to establish identity for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad and to administer the passport program.

Methodology

The Supplemental Questionnaire to Determine Entitlement for a U.S. Passport is used to supplement an existing passport application and solicits information relating to the respondent's family and birth circumstances that is needed prior to passport issuance. If the information on form DS–5513 is needed, a passport agency will mail the form directly to the applicant for completion and return or the applicant can download and complete a fillable PDF version found at *travel.state.gov.*

The Supplemental Questionnaire to Determine Identity for a U.S. Passport is used to supplement an existing passport application and solicits information relating to the respondent's identity that is needed prior to passport issuance. If the information on form DS–5520 is needed, a passport agency will mail the form directly to the applicant for completion and return or the applicant can download and complete a fillable PDF version found at *travel.state.gov.*

Amanda E Smith,

Managing Director for Passport Support Operations, Bureau of Consular Affairs, Passport Services, Department of State.

[FR Doc. 2024–04522 Filed 3–1–24; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 12350]

Notice of U.S. State Department's Overseas Security Advisory Council Meeting

SUMMARY: The Department of State announces the meeting of the U.S. State Department's Overseas Security Advisory Council.

DATES: March 29, 2024.

FOR FURTHER INFORMATION CONTACT: Ellen K. Tannor, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2223 email: *TannorE@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. 1009), the meeting will be open to the public. The open session is expected to be held virtually from 11 a.m. to 1 p.m. eastern time on March 29, 2024. Members of the public who wish to attend must RSVP to the Designated Federal Officer, Ellen Tannor, at *osacadmin@state.gov* not later than March 22, 2024, and will receive instructions on how to access the virtual meeting. Requests for reasonable accommodation should also be made at that time. Request made after March 22 will be considered but might be possible to fulfill.

The meeting will focus on examining the Private-Public Partnership process to explore how this construct may align with future collaborative strategic objectives.

(Authority: 5 U.S.C. 1001 *et seq.* and 5 U.S.C. 552)

Ellen K. Tannor,

Designated Federal Officer, Overseas Security Advisory Council, Department of State.

[FR Doc. 2024–04485 Filed 3–1–24; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice: 12352]

Notice of the Program for the Study of Eastern Europe and Eurasia (Title VIII) Advisory Committee Open Virtual Meeting

ACTION: Notice of an advisory committee open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), notice is hereby given for a public virtual meeting of the Title VIII Advisory Committee.

DATES: The meeting will begin at approximately 1:30 p.m. eastern daylight time (EDT) on Thursday, June 27, 2024.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Mr. Robert Zimmerman, telephone number 202–258–8024, Title VIII Program Officer, Department of State, Bureau of Intelligence and Research, *TitleVIII@state.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10 of the Federal Advisory Committee Act (FACA), notice is hereby given for a public virtual meeting of the Title VIII Advisory Committee. All meeting participants are being asked to RSVP by Wednesday, May 15, 2024, via email to *TitleVIII@state.gov,* subject line ''Title VIII Advisory Committee Public Meeting 2024.'' Members of the public requesting reasonable accommodation should make such requests when they register. Upon receipt of the RSVP, attendees will be registered, and will receive instructions for accessing the meeting, including the meeting number and any password. It is anticipated that the meeting will be held via Google Meets. Members of the public who will participate are encouraged to logon 15 minutes prior to the start of the meeting.

Purpose of Meeting and Topics to be Discussed: The Advisory Committee will announce its recommendations for grant recipients for the 2024 funding opportunity for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, in accordance with the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983, Public Law 98–164, as amended. The agenda will include opening statements by the Committee chair and Committee members. The Committee will provide an overview and discussion of eligible grant proposals submitted from U.S organizations with an interest and expertise in conducting research and foreign language training concerning the countries and languages of Eastern Europe and the Independent States of the Former Soviet Union, based on the guidelines set forth in the Notice of Funding Opportunity posted on February 12, 2024, the request for proposals published in both *Grants.gov* and SAMS Domestic (*mygrants.service-now.com*). Following Committee deliberation, interested members of the public may make oral statements concerning the Title VIII program. This meeting will be open to the public; however, attendees must register in advance.

Robert A. Zimmerman,

Designated Federal Officer, Advisory Committee for the Program for the Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 2024–04469 Filed 3–1–24; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF STATE

[Public Notice: 12348]

Notice of Public Meeting of the U.S. President's Emergency Plan for AIDS Relief (PEPFAR) Scientific Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act, the U.S. Department of State announces that the PEPFAR Scientific Advisory Board (SAB) will hold a hybrid meeting of the full board. The meeting is open to the public virtually and a public comment session will be held during the meeting. Pre-registration is required for providing public comment.

DATES: The meeting will be held on Friday April 5th, 2024, from approximately 9 a.m. to 5 p.m. (EDT). SAB members will be in person, but virtual participation will be accommodated using a web-based virtual platform. In-person attendance

will be limited; however, public participation on the virtual platform is welcome. Requests to attend the meeting must be received no later than March 29, 2024. Requests for reasonable accommodations or to provide public comment must be received no later than March 29th, 2024.

ADDRESSES: To participate in the event virtually, individuals are asked to pre-register here: *https://statedept.zoomgov.com/meeting/register/vJItfuyrqj4sH9XaoJXAWIOeLdX-W0yY9QY#/registration.* The agenda will be sent to all registrants and will also be posted on the PEPFAR SAB web page (*https://www.state.gov/scientific-advisory-board-pepfar/*) one week in advance of the meeting, along with instructions on how to access the meeting.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Reid, Director of the Office of Science and Research, at *reidmj@state.gov* or (202) 441–1483, and Dr. Lindsey Yessick, designated Federal officer for the SAB, Bureau of Global Health Security and Diplomacy, U.S. Department of State, at *yessicklr@state.gov* or (202) 549 8769.

SUPPLEMENTARY INFORMATION:

Background: The SAB is established under the general authority of the Secretary of State and the Department of State (''the Department'') as set forth in title 22 of the United States Code as amended, in particular section 2656 of that title, and consistent with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq.*). The SAB serves the U.S. Global AIDS Coordinator solely in an advisory capacity concerning scientific, implementation, and policy issues related to the global response to HIV/AIDS.

Agenda: SAB members will be discussing challenges and opportunities in HIV treatment in PEPFAR programs, PEPFAR's program reporting requirements, the role of behavioral science in PEPFAR programs, and roll out of long-acting prevention tools and PEPFAR's plans with respect to sustainability:

- Challenges and Opportunities in HIV treatment in PEPFAR programs
- PEPFAR's program reporting requirements
- Behavioral Science Interventions in PEPFAR Programs
- Updates on Long-Acting Agents for Prevention
- Advancing PEPFAR's sustainability efforts

Registered members of the public will be permitted to participate in a comment period at the end of the meeting in accordance with the chair's instructions.

Public Participation: Members of the public who wish to participate are asked to register directly at the link listed in the **ADDRESSES** section or by sending an email to Ms. Crystal Solomon at *SolomonCD@state.gov* no later than March 29th, 2024. Individuals are required to provide their name, email address, and organization. At registration, individuals are also asked to indicate any request for reasonable accommodation and/or a request to provide public comment. Time for public comment may be limited. Requests made after March 29th, 2024, will be considered but might not be able to be fulfilled.

Lindsey R. Yessick,

Public Health Systems Advisor, U.S. President's Emergency Plan for AIDS Relief (PEPFAR), Bureau of Global Health Security and Diplomacy, U.S. Department of State.

[FR Doc. 2024–04502 Filed 3–1–24; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2018–0041]

Petition for Renewal of Waiver of Compliance and Notice of Public Hearing

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of public hearing and reopening of comment period.

SUMMARY: On September 19, 2023, FRA published a public notice in Docket Number FRA–2018–0041 announcing that on July 1, 2023, Port Authority Trans-Hudson Corporation (Petitioner) submitted a petition seeking renewal of a waiver. In this notice, FRA is announcing a public hearing to allow interested persons the opportunity to provide comments on the petition. FRA is also announcing it is reopening the comment period for 15 days to allow time for interested parties to submit comments on the petition or in response to views or information provided at the public hearing.

DATES:

(1) The comment period for the notice published September 19, 2023, at 88 FR 64515, is reopened. FRA must receive comments on the petition, or in response to views or information provided at the public hearing, by April 19, 2024. FRA will consider comments received after that date to the extent practicable.

(2) A public hearing will be held on April 3, 2024, from 10 a.m. (ET) to 12 p.m. (ET) in Jersey City, New Jersey.

ADDRESSES:

Public Hearing: The public hearing will be held at One PATH Plaza, Jersey City, NJ 07306. For those participants wishing to make a statement at the public hearing, please contact FRA as described under the Public Participation Procedures heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Comments: Comments related to Docket No. FRA–2018–0041 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (FRA–2018–0041). All comments received will be posted without change to *https://www.regulations.gov*; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Yu-Jiang Zhang, Staff Director—Track and Structures Division, Federal Railroad Administration, telephone: 202–493–6460, email: *yujiang.zhang@dot.gov*; or Veronica Chittim, Attorney Advisor, Federal Railroad Administration, telephone: 202–480–3410, email: *veronica.chittim@dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of this hearing is to receive comments in response to a petition to extend relief from certain requirements of 49 CFR part 214, subpart C. Petitioner should be present at the hearing and prepared to present evidence that relief from the definition of fouling the track (49 CFR 214.7, *Definitions*) in the 11 locations using bench walls for clearing for trains are necessary and in the best interest of safety. Several Labor organizations requested that FRA hold a public hearing on PATH's renewal petition to receive testimony from all

parties interested in and affected by this proceeding.[1]

Interested parties are invited to present statements and to offer information and views at the hearing. The hearing will be an informal, non-adversarial proceeding conducted by a representative FRA designates under FRA's Rules of Practice (49 CFR 211.25). Therefore, there will be no cross-examination of persons presenting statements or offering information. An FRA representative will make an opening statement outlining the scope of the hearing. Interested parties will then be provided with an opportunity to make initial statements. After all initial statements are completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so, in the same order in which the initial statements were made. FRA will announce any additional procedures necessary at the hearing.

There will be a court reporter to record and transcribe comments presented verbatim at the hearing. FRA will add the verbatim transcript of the discussions to the public docket in this proceeding.

Public Participation Procedures

Any person: (1) wishing to attend the hearing, (2) make a statement at the hearing, or (3) both, should notify FRA by contacting Mr. Timothy Presser, FRA Roadway Worker Protection (RWP)/Roadway Maintenance Machines (RMM) Specialist, by email at *timothy.presser@dot.gov,* no later than April 1, 2024, providing the following information, as applicable:

(a) The name, affiliation or party represented, email address, and phone number of the participant.

(b) The subject(s) of the statement and/or presentation the participant wishes to make, and the amount of time requested.

(c) A copy of the oral statement and/or presentation, if available.

FRA reserves the right to limit participation in the hearing of persons who fail to follow the public participation procedures as outlined above, or additional procedures announced at the hearing. FRA also reserves the right to limit the duration of presentations, as necessary, to afford all persons the opportunity to speak, or to limit participation in the hearing of persons who exceed their allotted time or who discuss topics or issues outside the scope of the petition. Further, FRA reserves the right to limit in-person attendance at the hearing, as space is limited; preference in attendance will be provided to persons requesting to present statements.

FRA is committed to providing equal access to this meeting for all participants. If you need alternative formats or other reasonable accommodations to participate in this meeting, please contact FRA RWP/RMM Specialist Mr. Timothy Presser, by email at *timothy.presser@dot.gov,* no later than April 1, 2024.

Reopening of Comment Period

FRA is reopening the comment period for 15 days to April 19, 2024, to allow time for interested parties to submit written comments on the proposal or in response to views or information provided at the public hearing.

Privacy Act

In accordance with FRA Order 1100.14G, FRA solicits comments from the public to better inform its disposition of waivers, exemptions, block signal applications, and other special approvals under the Federal railroad safety laws and regulations and in accordance with FRA's Rules of Practice (Title 49 Code of Federal Regulations (CFR) Part 211). DOT posts these comments, without edit, to *www.regulations.gov,* under docket number FRA–2018–0041, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *https://www.transportation.gov/privacy*. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2024–04510 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–06–P

[1] *See https://www.regulations.gov/comment/FRA-2018-0041-0015*; *https://www.regulations.gov/comment/FRA-2018-0041-0016.*

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0022]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Passage Paid (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0022 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0022 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0022, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Passage Paid is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger tours and charters.
—*Geographic Region Including Base of Operations:* North Carolina, South Carolina. Base of Operations: Oak Island, NC.
—*Vessel Length and Type:* 28′ Motorboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0022 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0022 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04465 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0026]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Strike Force (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0026 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0026 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0026, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in

nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Strike Force is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger fishing charters.
—*Geographic Region Including Base of Operations:* New Jersey. Base of Operations: Brielle, NJ.
—*Vessel Length and Type:* 33′ Motor.

The complete application is available for review identified in the DOT docket as MARAD 2024–0026 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0026 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04467 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0027]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Friendly (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0027 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0027 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0027, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Friendly is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger charters for hotel guests and others.
—*Geographic Region Including Base of Operations:* Wisconsin. Base of Operations: Sister Bay, WI.
—*Vessel Length and Type:* 41.8′ Sail.

The complete application is available for review identified in the DOT docket as MARAD 2024–0027 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0027 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04464 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0023]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Phantom (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0023 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0023 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0023, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Phantom is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger fishing charters.
—*Geographic Region Including Base of Operations:* Hawaii. Base of Operations: Honokohau Harbor, Kona, HI.

—*Vessel Length and Type:* 40′ Sportfishing.

The complete application is available for review identified in the DOT docket as MARAD 2024–0023 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0023 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04466 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0025]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Tell Tales Again (Motor); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0025 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0025 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0025, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Tell Tales Again is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger charters and cruises in Bath Creek and Pamlico River.

—*Geographic Region Including Base of Operations:* North Carolina. Base of Operations: Bath, NC.

—*Vessel Length and Type:* 42′ Catamaran.

The complete application is available for review identified in the DOT docket as MARAD 2024–0025 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or

businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0025 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04468 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2024–0024]

Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: Blue Angel (Sail); Invitation for Public Comments

AGENCY: Maritime Administration, DOT.

ACTION: Notice.

SUMMARY: The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

DATES: Submit comments on or before April 3, 2024.

ADDRESSES: You may submit comments identified by DOT Docket Number MARAD–2024–0024 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Search MARAD–2024–0024 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is U.S. Department of Transportation, MARAD–2024–0024, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

Note: If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

Instructions: All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at *www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

FOR FURTHER INFORMATION CONTACT: Patricia Hagerty, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–461, Washington, DC 20590. Telephone: (202) 366–0903. Email: *patricia.hagerty@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the application, the intended service of the vessel Blue Angel is:

—*Intended Commercial Use of Vessel:* Requester intends to use for passenger sailing trips.

—*Geographic Region Including Base of Operations:* Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Florida. Base of Operations: Belfast, ME.

—*Vessel Length and Type:* 46′ Sailboat.

The complete application is available for review identified in the DOT docket as MARAD 2024–0024 at *https://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly

adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

Public Participation

How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

Where do I go to read public comments, and find supporting information?

Go to the docket online at *https://www.regulations.gov,* keyword search MARAD–2024–0024 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to *SmallVessels@dot.gov.* Include in the email subject heading ''Contains Confidential Commercial Information'' or ''Contains CCI'' and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, please visit *https://www.transportation.gov/privacy.*

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2024–04463 Filed 3–1–24; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing the names of one or more persons whose property and interests in property have been unblocked and who have been removed from the Specially Designated Nationals and Blocked Persons List (SDN List).

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Bradley T. Smith, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On February 28, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. MORALES CIFUENTES, Juan Jose (a.k.a. ''PANCHO''), Colonia 3 de mayo, Tecun Uman, San Marcos, Guatemala; DOB 09 Apr 1990; POB San Marcos, Guatemala; nationality Guatemala; Gender Male; Cedula No. L–1238436 (Guatemala); NIT # 59536969 (Guatemala); C.U.I. 2755498951217 (Guatemala) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. OCHOA VILLAGRAN, Erick Manuel (a.k.a. ''PERICA''), Guatemala; DOB 01 Jun 1985; POB San Marcos, Guatemala; nationality Guatemala; Gender Male; Cedula No. L–1247674 (Guatemala); C.U.I. 1680324221213 (Guatemala) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. SUNIGA MORFIN, Isel Aneli (Latin: SUÑIGA MORFÍN, Isel Aneli), 4ta Calle, Tecun Uman, Ayutla, San Marcos 12017, Guatemala; DOB 07 Sep 1994; POB Ayutla, San Marcos, Guatemala; nationality Guatemala; Gender Female; NIT # 83524479 (Guatemala); C.U.I. 2517372251217 (Guatemala) (individual) [ILLICIT–DRUGS–EO14059] (Linked To: LOS POCHOS DRUG TRAFFICKING ORGANIZATION).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned,

controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Los Pochos Drug Trafficking Organization, a person sanctioned pursuant to E.O. 14059.

Entities

1. CONDADO REAL, 5a Avenida, Zona 1, Tecun Uman, San Marcos, Guatemala; Organization Established Date 26 Dec 2018; Organization Type: Real estate activities on a fee or contract basis; NIT # 83524479 (Guatemala) [ILLICIT–DRUGS–EO14059] (Linked To: SUNIGA MORFIN, Isel Aneli).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Isel Aneli Suniga Morfin, a person sanctioned pursuant to E.O. 14059.

2. CONSTRUHOGAR, San Marcos, Guatemala; Organization Type: Wholesale of construction materials, hardware, plumbing and heating equipment and supplies; NIT # 59536969 (Guatemala) [ILLICIT–DRUGS–EO14059] (Linked To: MORALES CIFUENTES, Juan Jose).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Juan Jose Morales Cifuentes, a person sanctioned pursuant to E.O. 14059.

3. IMPORTADORA JIREH, San Marcos, Guatemala; Organization Established Date 08 Sep 2017; Organization Type: Sale of motor vehicles; NIT # 59536969 (Guatemala) [ILLICIT–DRUGS–EO14059] (Linked To: MORALES CIFUENTES, Juan Jose).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Juan Jose Morales Cifuentes, a person sanctioned pursuant to E.O. 14059.

4. LOS POCHOS DRUG TRAFFICKING ORGANIZATION (a.k.a. ''LOS POCHOS DTO''; a.k.a. ''MORALES CIFUENTES DRUG TRAFFICKING ORGANIZATION''; a.k.a. ''MORALES CIFUENTES DTO''; a.k.a. ''SUNIGA RODRIGUEZ DRUG TRAFFICKING ORGANIZATION'' (Latin: ''SUÑIGA RODRIGUEZ DRUG TRAFFICKING ORGANIZATION'')), Ayutla, San Marcos, Guatemala; Tecun Uman, Guatemala; Guatemala City, Guatemala; Tapachula, Mexico; Mexico City, Mexico; Target Type Criminal Organization [SDNTK] [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. WIV, SOCIEDAD ANONIMA (a.k.a. ''WIV S.A.''; a.k.a. ''WIVSA''), Aldea Los Angeles, Zona 0 Carretera, Tecun Uman, San Marcos, Guatemala; Organization Established Date 09 Dec 2015; Organization Type: Other business support service activities n.e.c.; NIT # 92345093 (Guatemala) [ILLICIT–DRUGS–EO14059] (Linked To: SUNIGA MORFIN, Isel Aneli).

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Isel Aneli Suniga Morfin, a person sanctioned pursuant to E.O. 14059.

B. On February 28, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

Individuals

1. PARADA RODRIGUEZ, Alex Oswaldo (Latin: PARADA RODRÍGUEZ, Alex Oswaldo) (a.k.a. ''LA PANTERA''), 1 Calle 2 Ave. 1–15, Zona 1, Tecun Uman, Ayutla, San Marcos, Guatemala; DOB 15 Aug 1969; POB Tiquisate, Escuintla, Guatemala; nationality Guatemala; Gender Male; Cedula No. L–1220627 (Guatemala); NIT # 66865883 (Guatemala); C.U.I. 1916038210506 (Guatemala) (individual) [SDNTK] (Linked To: SUNIGA RODRIGUEZ DRUG TRAFFICKING ORGANIZATION; Linked To: CEVICHERIA LA CONCHA).

2. SUNIGA RODRIGUEZ, Erik Salvador (Latin: SUÑIGA RODRÍGUEZ, Erik Salvador) (a.k.a. ZUNIGA RODRIGUEZ, Erick Salvador (Latin: ZÚÑIGA RODRÍGUEZ, Erick Salvador); a.k.a. ''EL POCHO''), Caserio Las Delicias, Ayutla, San Marcos, Guatemala; DOB 19 Nov 1975; POB La Nueva Concepcion, Escuintla, Guatemala; nationality Guatemala; Gender Male; Cedula No. L1225520 (Guatemala); Passport 199573956 (Guatemala); NIT # 7174713 (Guatemala); Driver's License No. 1995739560513 (Guatemala); C.U.I. 1995739560513 (Guatemala) (individual) [SDNTK].

Entities

1. CEVICHERIA LA CONCHA, Aldea Sanjon San Lorenzo, Tecun Uman, Ayutla, San Marcos, Guatemala; NIT # 6686588–3 (Guatemala) [SDNTK].

Dated: February 28, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–04488 Filed 3–1–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0677]

Agency Information Collection Activity: Contract for Training and Employment (Chapter 31, Title 38, U.S. Code)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 3, 2024.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0677'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is

being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 501(a) and 38 U.S.C. 3104.

Title: Contract for Training and Employment (Chapter 31, Title 38, U.S. Code), 38 U.S.C. 501(a), 38 U.S.C. 3104.

OMB Control Number: 2900–0677.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–1903 is used to gather the necessary information to develop formal training agreements with an institution, training establishment, or employer for training and rehabilitation under 38 U.S.C. Chapter 31. Additionally, the information is used to authorize a claimant's participation in a program with a training vendor or facility under 38 U.S.C. 3104.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 19697 on April 14, 2021.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,000 hours.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: 1.

Estimated Number of Respondents: 1,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–04486 Filed 3–1–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0668]

Agency Information Collection Activity: Supplemental Income Questionnaire (For Philippine Claims Only); Withdrawn

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; withdrawal.

SUMMARY: On Monday, February 26, 2024, the Veterans Benefits Administration (VA), published a notice in the **Federal Register** announcing an opportunity for public comment on the proposed collection Supplemental Income Questionnaire (For Philippine Claims Only). This notice was published in error; therefore, this document corrects that error by withdrawing this FR notice, document number 2024–03764.

DATES: As of Tuesday, February 27, 2024, the FR notice published at 89 FR 14153 on Monday, February 26, 2024, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.*

SUPPLEMENTARY INFORMATION: FR Doc. 2024–03764, published on Monday, February 26, 2024, is withdrawn by this notice.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–04406 Filed 3–1–24; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Monday,
No. 43 March 4, 2024

Part II

Department of Transportation

Pipeline and Hazardous Materials Safety Administration

49 Parts 107, 171 et al.
Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 178, and 180

[Docket No. PHMSA–2020–0102 (HM–219D)]

RIN 2137–AF49

Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA amends the Hazardous Materials Regulations (HMR) to update, clarify, improve the safety of, or streamline various regulatory requirements. Specifically, this rulemaking responds to 18 petitions for rulemaking submitted by the regulated community between May 2018 and October 2020 that requests PHMSA address a variety of provisions, including but not limited to those addressing packaging, hazard communication, and the incorporation by reference of certain documents. These revisions maintain or enhance the existing high level of safety under the HMR while providing clarity and appropriate regulatory flexibility in the transport of hazardous materials.

DATES:

Effective date: This final rule is effective on April 3, 2024.

Delayed compliance date: March 4, 2025.

Incorporation by reference date: The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of April 3, 2024.

FOR FURTHER INFORMATION CONTACT: Steven Andrews, 202–366–8553, Office of Hazardous Materials Standards, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Administrative Procedure Act (APA) requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule. (*See* 5 U.S.C. 553(e).) PHMSA regulations specify that persons petitioning PHMSA to add, revise, or remove a regulation in the Hazardous Materials Regulations (HMR; 49 CFR parts 171 through 180) must file a petition for rulemaking containing adequate support for the requested action. (*See* 49 CFR 106.100.) PHMSA amends the HMR in response to petitions for rulemaking submitted by shippers, carriers, manufacturers, and industry representatives, and welcomes petitions from any interested stakeholder or member of the public with suggested changes to improve the HMR.

PHMSA now finds that these revisions will maintain the high safety standard currently achieved under the HMR while providing clarity and appropriate regulatory flexibility in the transport of hazardous materials. PHMSA also notes that—insofar as adoption of the petitions could reduce delays and interruptions of hazardous materials shipments during transportation—the amendments will also lower greenhouse gas (GHG) emissions and safety risks to minority, low-income, underserved, and other disadvantaged populations and communities in the vicinity of interim storage sites and transportation arteries and hubs. A detailed discussion of the petitions and revisions can be found in section III of this final rule.

In this final rule, PHMSA revises the HMR to:

- Allow for appropriate flexibility of packaging options in the transportation of compressed natural gas in cylinders.
- Streamline the approval application process for the repair of certain DOT specification cylinders.
- Provide greater clarity on the filling requirements for certain cylinders used to transport hydrogen and hydrogen mixtures.
- Facilitate international commerce, and streamline packaging and hazard communication requirements by harmonizing the HMR with international regulations to allow the shipment of de minimis amounts of poisonous materials.
- Provide greater clarity by requiring a specific marking on cylinders to indicate compliance with certain HMR provisions.
- Streamline hazard communication requirements by allowing appropriate marking exceptions under certain conditions for the transportation of lithium button cell batteries installed in equipment.
- Provide greater flexibility and accuracy in hazard communication by allowing additional descriptions for certain gas mixtures.
- Increase the safe transportation of explosives by updating certain Institute of Makers of Explosives (IME) documents currently incorporated by reference.
- Modify the definition of ''liquid'' to include the test for determining fluidity (penetrometer test) prescribed in the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR).
- Incorporate by reference the Compressed Gas Association's (CGA) publication C–20–2014, ''Requalification Standard for Metallic, DOT and TC 3-series Gas Cylinders and Tubes Using Ultrasonic Examination,'' Second Edition, which will eliminate the need for some existing DOT special permits and allow alternative methods for the requalification of cylinders. This revision would eliminate the need for special permit applications and renewals.
- Incorporate by reference the updated Appendix A of CGA publication C–7–2020, ''Guide to Classification and Labeling of Compressed Gases,'' Eleventh Edition.
- Incorporate by reference the CGA publication C–27–2019, ''Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes, First Edition.''
- Incorporate by reference the CGA publication CGA C–29–2019, ''Standard for Design Requirements for Tube Trailers and Tube Modules, First Edition.''
- Incorporate by reference the CGA publication CGA V–9–2019,

''Compressed Gas Association Standard for Compressed Gas Cylinder Valves, Eighth Edition.''

II. Incorporation by Reference Discussion Under 1 CFR Part 51

According to the Office of Management and Budget (OMB), Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' government agencies must use voluntary consensus standards wherever practical in the development of regulations.

PHMSA currently incorporates by reference into the HMR all or the relevant parts of several standards and specifications developed and published by standard development organizations (SDOs). In general, SDOs update and revise their published standards every two to five years to reflect modern technology and best technical practices. The National Technology Transfer and Advancement Act of 1995 (NTTAA; Pub. L. 104–113, 15 U.S.C. 272 note) directs Federal agencies to use standards developed by voluntary consensus standards bodies in lieu of government-written standards unless doing so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards bodies develop, establish, or coordinate technical standards using agreed-upon procedures. OMB issued Circular A–119 to implement section 12(d) of the NTTAA relative to the utilization of consensus technical standards by Federal agencies. This circular provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements in the NTTAA. Consistent with the requirements of the NTTAA and its statutory authorities, PHMSA is responsible for determining which currently referenced standards should be updated, revised, or removed, and which standards should be added to the HMR. Revisions to materials incorporated by reference in the HMR are handled via the rulemaking process, which allows the public and regulated entities to provide input. During the rulemaking process, PHMSA must also obtain approval from the Office of the Federal Register to incorporate by reference any new materials. Regulations of the Office of the Federal Register require that agencies detail in the preamble of a final rule the ways the materials it incorporates by reference are reasonably available to interested parties, or how the agency worked to make those materials reasonably available to interested parties. (*See* 1 CFR 51.5.)

IME standards are free and accessible to the public via the IME website at *https://www.ime.org/products/category/safety_library_publications_slps.* The CGA references are available for interested parties to purchase in either print or electronic editions through the CGA organization website at *https://portal.cganet.com/Publication/index.aspx.* The UN manual of test and criteria is available at *https://unece.org/fileadmin/DAM/trans/danger/publi/manual/Rev7/Manual_Rev7_E.pdf.* The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) can be found at *https://unece.org/about-adr.* The specific standards are discussed in greater detail in the section-by-section review.

The following standards appear in the amendatory text of this document and have already been approved for the locations in which they appear: ASTM D 4359–90, ''Standard Test Method for Determining Whether a Material is a Liquid or a Solid; CGA Technical Bulletin (TB): 2008–25, ''Design Considerations for Tube Trailers;'' ISO 6406:2005(E), ''Gas cylinders—Seamless steel gas cylinders—Periodic inspection and testing;'' and ISO 16148:2016(E), ''Gas cylinders—Refillable seamless steel gas cylinders and tubes—Acoustic emission examination (AT) and follow-up ultrasonic examination (UT) for periodic inspection and testing.''

III. NPRM: Publication and Public Comments: Executive Order 13924

On March 3, 2023 [88 FR 13624], PHMSA published a notice of proposed rulemaking (NPRM) in the **Federal Register**, titled ''Hazardous Materials: Adoption of Miscellaneous Petitions and Updating Regulatory Requirements,'' under Docket No. PHMSA–2020–0102 (HM–219D). The NPRM proposed revisions to the HMR in response to 18 petitions for rulemaking submitted to PHMSA by various stakeholders in addition to miscellaneous issues such as special permit procedures and harmonizing the HMR with revisions to the Environmental Protection Agency (EPA) regulations. PHMSA discusses these petitions and revisions in detail in section IV (Discussion of Amendments and Applicable Comments) of the preamble to this final rule.

The comment period for the NPRM originally closed on May 3, 2023. On April 6, 2023, PHMSA received a request from Worthington Industries to extend the comment period for the NPRM. In response to the request from Worthington Industries, PHMSA published a document on April 26, 2023 [88 FR 25335], extending the comment period to June 16, 2023. PHMSA received a total of 14 sets of comments from eight separate entities, three of which had submitted petitions that were the basis for HMR amendments proposed in the NPRM. PHMSA received comments from Chemours after the June 16, 2023, deadline. Consistent with 49 CFR 107.70(b), PHMSA considered those late-filed comments given the commenter's interests in the rulemaking and the absence of additional expense or delay resulting from their consideration. An alphabetical list of the persons, companies, and associations that submitted comments to the HM–219D NPRM are listed in the below table:

Commenter name	Docket No.
Arkema	*https://www.regulations.gov/comment/PHMSA-2020-0102-0016.*
Chemours	*https://www.regulations.gov/comment/PHMSA-2020-0102-0015.*
Chemours	*https://www.regulations.gov/comment/PHMSA-2020-0102-0021.*
Compressed Gas Association (CGA)	*https://www.regulations.gov/comment/PHMSA-2020-0102-0010.*
Council on the Safe Transportation of Hazardous Articles (COSTHA)	*https://www.regulations.gov/comment/PHMSA-2020-0102-0011.*
Dangerous Goods Advisory Council (DGAC)	*https://www.regulations.gov/comment/PHMSA-2020-0102-0012.*
Heating, Air-Conditioning, & Refrigeration Distributors International	*https://www.regulations.gov/comment/PHMSA-2020-0102-0018.*
Heating, Air-Conditioning, & Refrigeration Distributors International	*https://www.regulations.gov/comment/PHMSA-2020-0102-0017.*
Institute for the Makers of Explosives	*https://www.regulations.gov/comment/PHMSA-2020-0102-0006.*
The Dow Chemical Company	*https://www.regulations.gov/comment/PHMSA-2020-0102-0013.*
The Plumbing-Heating-Cooling Contractors—National Association (PHCC)	*https://www.regulations.gov/comment/PHMSA-2020-0102-0004.*
Worthington Industries	*https://www.regulations.gov/document/PHMSA-2020-0102-0003.*
Worthington Industries	*https://www.regulations.gov/comment/PHMSA-2020-0102-0019.*

Commenter name	Docket No.
Worthington Industries	*https://www.regulations.gov/comment/PHMSA-2020-0102-0014.*

The comments submitted to this docket may be accessed via the docket file numbers listed in the above table, as well as at *https://www.regulations.gov.* PHMSA developed this final rule in consideration of the comments received to the public docket.

IV. Discussion of Amendments and Applicable Comments

Based on an assessment of the 18 petitions and two miscellaneous amendments and the comments received in response to the NPRM, PHMSA is amending the HMR as detailed in this section.

A. Transportation of Compressed Natural Gas/Methane in UN Pressure Receptacles

In its petition (P–1714),[1] CGA requests that PHMSA consider an amendment to § 173.302b to implement packaging restrictions for the transportation of compressed natural gas (CNG) and methane in United Nations (UN) seamless steel pressure receptacles with a tensile strength greater than 950 MPa. For the purposes of the HMR, ''UN1971, Methane, compressed'' is compressed natural gas that is at least 98 percent methane and free of corroding components. CGA expresses concern regarding the growth in transport of CNG and methane in these packagings, and wants to ensure the safety of the receptacles in this service.

CGA provides the historical context of PHMSA's predecessor agency imposing similar packaging restrictions for CNG transported in certain DOT specification cylinders. (*See* § 173.302a(a)(4).) These restrictions were intended to limit the effect of impurities in the CNG, such as hydrogen sulfide, on the structural integrity of the steel used in the manufacture of the cylinders. CGA cites several studies on the corrosive effects of natural gas contaminants on a cylinder and notes that the contaminants are usually noncorrosive in the absence of liquid water. Finally, CGA highlights an October 27, 1977, incident in which two people were killed, four people were injured, and a compressor station was damaged when a DOT specification 3T seamless steel cylinder ruptured while being filled with natural gas contaminated with hydrogen sulfide and water.

CGA's specific concern is in regard to UN seamless steel pressure receptacles with ultimate tensile strengths greater than 950 MPa being used for the storage and transportation of CNG. Higher strength UN seamless steel pressure receptacles are susceptible to embrittlement from CNG contaminants and embrittlement makes the receptacles more susceptible to fracture.

Currently, use of UN pressure receptacles for CNG and methane in transportation is subject to the general requirements for shipment of compressed gases in § 173.301; additional general requirements of UN pressure receptacles in § 173.301b; and the filling requirements of cylinders with non-liquefied (permanent) gases in § 173.302. However, under current regulations, there are no additional requirements specific to the use of UN pressure receptacles in CNG or methane service.

In the NPRM, PHMSA proposed to revise § 173.302b to include conditions for the transportation of CNG and methane in UN stainless steel pressure receptacles. The NPRM referenced content within CGA's petition requesting such revision, stating that natural gas/methane can be safely transported in UN steel pressure receptacles under the following conditions:

- The product is non-liquefied gas.
- The UN seamless steel pressure receptacle has a maximum tensile strength not greater than 950 MPa (137,750 psig), and bears an ''H'' mark indicating the cylinder is manufactured from a specific type of steel that is intended to prevent hydrogen embrittlement.
- Each UN tube has a drain tube.
- The moisture content and concentration of the corroding components in the product conforms to the requirements in § 173.301b(a)(2). Specifically, the requirements in § 173.301b(a)(2) state that gases or gas mixtures must be compatible with the UN pressure receptacle and valve materials, as prescribed for metallic materials in International Organization for Standardization (ISO) 11114–1:2012(E), ''Gas cylinders—Compatibility of cylinder and valve materials with gas contents.''

In addition, the NPRM included the CGA-requested proposal to include new text that clarifies the requirements for transporting methane gas with a purity of at least 98 percent within a UN seamless steel pressure receptacle.

PHMSA also noted in the NPRM that it had previously considered this issue under petition P–1661[2] submitted by CGA on July 15, 2015. That petition was denied due to its conflict with the requirements in § 173.302a(a)(4) for DOT specification 3AAX and 3T cylinders when used in methane service. Currently, § 173.302a(a)(4) only allows methane that is non-liquefied; has a minimum purity of 98 percent; and is commercially free from corroding components to be filled in specification (3AX, 3AAX, and 3T) cylinders. PHMSA agreed that DOT specification 3T cylinders with a tensile strength in the range of 135–155 kilopounds per square inch (ksi) [931–1,069 megapascals per square inch (MPa)] and steel embrittlement can become a safety issue. However, DOT specification 3AX and 3AAX cylinders typically have strength below 135 ksi (931 MPa), and steel embrittlement is usually not a safety concern.

In its denial letter, PHMSA encouraged CGA to consider a revised petition and limit cylinders to steel strengths below 950 MPa for ISO cylinders made in accordance with ISO 9809–1:2010, ''Gas cylinders—Refillable seamless steel gas cylinders—Design, construction and testing,'' and IS0 11120, ''Gas cylinders—Refillable seamless steel tubes of water capacity between 150 l and 3000 l—Design, construction and testing'' standards. This is because, had PHMSA proposed P–1661, it would have caused conflicting requirements for methane shipments in specification (3AAX, 3T, etc.) cylinders versus shipments in UN steel cylinders (ISO 9809–1 and ISO 11120 standards).

In response to PHMSA's denial of P–1661, CGA submitted a new petition (P–1714) that addresses PHMSA's concerns by not including DOT 3T specification cylinders where steel embrittlement poses an unreasonable risk. As a result of PHMSA's technical review of CGA petition (P–1714), and because it requested regulatory amendments for shipment of methane (including CNG with a methane content of 98 percent or greater) only in UN cylinders, PHMSA determined that the proposals in P–1714 would be limited to pressure receptacles where steel embrittlement is not a safety

[1] P–1714—CGA (PHMSA–2018–0054), *https://www.regulations.gov/docket/PHMSA-2018-0054.*

[2] P–1661—CGA (PHMSA–2015–0169), *https://www.regulations.gov/docket/PHMSA-2015-0169.*

issue. Additionally, PHMSA notes this revision will align HMR references to UN cylinders with equivalent DOT specification cylinders. PHMSA further agrees that CNG, other than methane, can cause steel embrittlement in seamless steel pressure receptacles with tensile strengths greater than 950 MPa. Therefore, PHMSA believes the changes outlined in the CGA petition P–1714 will improve the safe transportation of CNG.

As noted in the NPRM, PHMSA conducted an economic review of this petition and expects these amendments will not result in any material changes in costs or operations for market participants because they are accepted industry practices and address an important safety concern. To the degree that market participants are currently transporting low-purity methane in high-tensile strength receptacles, affected participants would be required to use substitute packaging. Similarly, theses revisions will provide safety benefits to the extent there is any noncompliance with the practice presented by CGA. A more detailed discussion of this economic analysis can be found in the Regulatory Impact Analysis (RIA) posted in the docket to this rulemaking.

PHMSA received comments from CGA and DGAC in support of the revisions to § 173.302b(f) as proposed. PHMSA did not receive any comments opposing the proposed revisions. Therefore, PHMSA revises the requirements for transporting CNG with methane in certain UN specification seamless stainless steel cylinders. Amending these requirements will enhance safety by authorizing CNG of less than 98 percent methane only in pressure receptacles where steel embrittlement is unlikely to occur.

B. Threading and Repair of Seamless DOT 3-Series Specification Cylinders and Seamless UN Pressure Receptacles

In its petition (P–1716),[3] FIBA Technologies, Inc. (FIBA) requests PHMSA consider a revision to the requirements for repairing seamless DOT 3-series specification cylinders and seamless UN pressure receptacles manufactured without external threads, and also to authorize the performance of this work without requiring prior approval from PHMSA. Specifically, this petition requests that PHMSA authorize machining new threads on a previously manufactured seamless cylinder or seamless UN pressure receptacle without requiring an approval. Further, FIBA requests that PHMSA expand the population of UN pressure receptacles eligible for repair work. Regarding external threads, in accordance with the current § 180.212(b)(2), repair work not requiring prior approval is limited to the ''rethreading'' of DOT specification 3AX, 3AAX, or 3T cylinders, or a UN pressure receptacle mounted in multiple-element gas containers (MEGC).[4]

FIBA notes there are older DOT specification 3AAX cylinders that were not equipped with external neck threads at the time of manufacture. These cylinders were manufactured in the 1960s, and were mounted on a semi-trailer by inserting the tube neck into a flange on the semi-trailer bulkhead and then secured in place using set screws. FIBA argues that these methods have been mostly abandoned in favor of a threaded tube neck because a threaded flange and anti-rotation pins provide a more secure connection. Moreover, risk will be reduced by a threaded neck surface and flange connection, rather than a neck with no threads and set screws, because the threaded neck and flange more securely mount the cylinders and tubes within the MEGC or motor vehicle (tube trailer or frame). Set screws do greater damage to the tube than a threaded neck and flange because of the penetration depth required to achieve a secure connection. Section 180.212(b)(2) already allows the repair of damaged threads, which can be so worn as to be the same as a tube manufactured with no outer diameter neck threads. FIBA argues that there is no difference between threads no longer capable of joining the tube neck to the flange and a tube neck having no threads from the start. The same threading process will be performed on the tube with worn threads as the tube with no threads. Additionally, the same CGA C–23 evaluation process used to determine suitability of the tube neck for rethreading will be used to confirm the suitability of the neck for threading.

As noted in the NPRM, PHMSA has conducted a technical review of this petition and now determines that authorizing the threading of DOT 3AX; 3AAX manufactured without external threads; or 3T specification cylinders; or UN pressure receptacles will enhance safety by authorizing a more secure method of connecting MEGC pressure receptacles. PHMSA concludes this is an improvement over the previous method of using set screws to secure the tubes, a process that results in indentations being carved into the tube necks as the tube jostles during transport. Moreover, DOT did not originally authorize the threading of previously manufactured cylinders due to a lack of standardized safe threading practices at the time PHMSA adopted provisions for these cylinders. Lastly, PHMSA concludes that the machining of neck threads or rethreading of seamless UN pressure receptacles should be authorized regardless of whether the receptacle is mounted in a MEGC. As such, standardization in the area of cylinder connections is vital to reducing damage to the cylinder necks and thus to reducing hazardous materials releases. In summary, the technical review of this petition determines the revision will improve safety by ensuring a more secure connection to the motor vehicle.

PHMSA has determined that this revision will not impose any costs to industry. Further, it has determined that the changes would provide appropriate regulatory flexibility and potential cost savings (*i.e.,* avoided costs associated with an unnecessary approval application process or use of an outdated securement method) without any impact on safety. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments from both CGA and DGAC in support of the revision as proposed. PHMSA did not receive any comments opposing these revisions. Therefore, in this final rule, PHMSA revises § 180.212(b)(2) to allow the machining of external threads on all seamless DOT specification 3AX, 3AAX, or 3T cylinders, or a seamless UN pressure receptacle originally manufactured without external threads. Additionally, PHMSA authorizes the machining of neck threads or rethreading of UN pressure receptacles regardless of whether the receptacle is mounted in a MEGC.

C. Clarification of the Requirements for Certain Non-Liquefied Compressed Gases

In its petition (P–1717),[5] FIBA requests that PHMSA consider an amendment to § 173.302a(c) of the HMR for the special filling limits for DOT specification 3A, 3AX, 3AA, and 3AAX cylinders containing Division. 2.1 (flammable) gases. The HM–233F final

[3] P–1716—FIBA (PHMSA–2018–0074), *https://www.regulations.gov/docket/PHMSA-2018-0074.*

[4] A multiple-element gas container is an assembly of UN cylinders, tubes, or bundles of cylinders interconnected by a manifold and assembled within a framework. The term includes all service equipment and structural equipment necessary for the transport of gases.

[5] P–1717—FIBA (PHMSA–2018–0075), *https://www.regulations.gov/docket/PHMSA-2018-0075.*

rule [6] adopted DOT Special Permit (DOT–SP) 6530 [7] into the HMR. This revision authorized the transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen in certain cylinders filled to 10 percent in excess of their marked service pressure. As part of the HM–233F final rule, PHMSA adopted safety control measures in paragraph (c)(3) of § 173.302a instead of paragraph (c). In the NPRM, in response to FIBA's request, PHMSA proposed to amend § 173.302a(c)(3) to clarify that the requirements in § 173.302a(c)(3)(i) and (ii) are independent provisions. FIBA asserts this revision will accurately reflect the technical conditions associated with the design and manufactured properties of DOT specification 3A, 3AX, 3AA, and 3AAX cylinders.

FIBA also submitted petition (P–1725) [8] requesting further amendments to § 173.302a(c), concurrent with those requested in P–1717. In the NPRM, in response to FIBA's request, PHMSA proposed a requirement that the plus sign (+) be added following the test date marking on a DOT specification 3A, 3AX, 3AA, and 3AAX cylinder filled with hydrogen or mixtures of hydrogen with helium, argon, or nitrogen to signify that the cylinder may be filled to 10 percent in excess of its marked service pressure. Furthermore, FIBA requested that cylinders qualifying for the special filling limit in § 173.302a(c) also be equipped with a pressure relief device (PRD), in accordance with CGA S–1.1 (2011), rather than the requirements in § 173.302a(c)(4), which could potentially conflict with each other. CGA S–1.1 prescribes standards for selecting the correct PRD to meet the requirements of § 173.301(f) for more than 150 gases. It also provides guidance on when a PRD can be optionally omitted and when its use is prohibited, as well as direction on PRD manufacturing, testing, operational parameters, and maintenance. At the time FIBA submitted P–1725, CGA S–1.1 (2011) had not been incorporated by reference into the HMR. Since then, the HM–234 final rule [9] was published, which incorporated by reference CGA S–1.1 (2011) into the HMR and outlines the PRD requirements for cylinders filled with a gas and offered for transportation.

The plus sign marking (+) is associated with a commonly applied provision in the HMR that authorizes a DOT specification cylinder to be filled to 10 percent in excess of its marked pressure. FIBA states that the plus sign marking (+) is an important means of communicating to cylinder refillers that a cylinder can be filled to 10 percent more than its marked service pressure and, thus, should be added to the special filling requirements in § 173.302a(c).

As noted in the NPRM, PHMSA conducted a technical review of the proposals in both petitions along with DOT–SP 6530 and the HM–233F final rule. After this review, PHMSA noted in the NPRM that it agrees with FIBA that the safety control measures within DOT–SP 6530 were independent provisions. In the HM–233F final rule, PHMSA intended to adopt those provisions into the HMR as independent provisions and inadvertently adopted two of the safety controls in § 173.302(c)(3)(i) and (ii) as paragraphs of § 173.302a(c)(3). In addition, the NPRM noted that PHMSA concurs that the revision to require the plus sign (+) on DOT specification 3A, 3AX, 3AA, and 3AAX cylinders filled with hydrogen or mixtures of hydrogen with helium, argon, or nitrogen would improve the safety of filling these cylinders by providing clarity on the conditions for special filling limits and helping prevent the overfilling of unauthorized cylinders. Finally, PHMSA noted it agrees that cylinders in hydrogen service that are filled to 10 percent in excess of its marked pressure should be equipped with a PRD that is selected as to type, location, and quantity, and tested in accordance with CGA S–1.1, in the same manner as is generally required for cylinders filled with a gas, in accordance with § 173.301(f), instead of § 173.302a(c)(4). PHMSA determined that CGA S–1.1 provides much greater specificity than § 173.302a(c)(4) about the type of pressure relief device required for a particular gas service. PHMSA now concludes that the amendments associated with P–1717 will provide greater clarity on requirements for cylinder design and manufacture, and will not represent any incremental, quantifiable safety effects because PHMSA already authorizes the transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen in certain cylinders filled to more than 10 percent of their marked service pressures. These amendments will also not impose any new or incremental cost because they merely reorganize the regulations for clarity. Additionally, while amendments associated with P–1725 would create a new requirement, PHMSA determines this amendment will result in only minimal incremental costs to the industry, and impose only minimal regulatory burden on small businesses or other entities. The additional request that the cylinders qualified for the special filling limit be equipped with pressure relief devices in accordance with CGA S–1.1 will not add any additional cost on affected industries or entities. Currently, § 173.302a(c)(4) contains the same requirements as CGA S–1.1 and therefore the addition of the CGA S–1.1 requirement will not cause any new additional costs beyond those already accounted for previously. A more detailed discussion of the economic analysis of the proposal can be found in the RIA posted to the docket for this rulemaking.

PHMSA received a comment from CGA in support of the revision as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, in this final rule, PHMSA revises § 173.302a(c) to reflect the safety provisions currently in § 173.302a(c)(3)(i) and (ii) are independent material construction requirements under paragraph (c) and as such have separated them into new paragraphs (c)(4) and (5). Moreover, PHMSA adds a requirement in § 173.302a(c)(7) to require the plus sign (+) following the test date marking to indicate compliance with paragraph (c), indicating that the cylinder is allowed to be filled to more than 10 percent of its marked service pressure. Lastly, PHMSA replaces the PRD requirements—found in current § 173.302a(c)(4)—with a new § 173.302a(c)(6). The new provision requires that cylinders must be equipped with PRDs sized and selected as to type, location, and quantity and tested in accordance with CGA S–1.1 (2011) and § 173.301(f).

D. De Minimis Quantities of Poisonous Materials

In its petition (P–1718),[10] the Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA) requests that PHMSA amend § 173.4b to harmonize the *de minimis* exceptions for Division 6.1, Packing Group (PG) I (no inhalation hazard) materials with international regulations, including the International Civil Aviation Organization Technical

[6] 81 FR 3635 (Jan. 21, 2016).

[7] DOT SP–6530, *https://cms7.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP6530.pdf/2018019065/SP6530.*

[8] P–1725—FIBA (PHMSA–2018–0112), *https://www.regulations.gov/docket/PHMSA-2018-0112.*

[9] 85 FR 85380 (Dec. 28, 2020).

[10] P–1718—COSTHA (PHMSA–2018–0077), *https://www.regulations.gov/docket/PHMSA-2018-0077.*

Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI) and the International Maritime Dangerous Goods Code (IMDG Code). The *de minimis* exceptions in the HMR provide relief from the general requirements of the HMR for certain hazardous materials shipped in extremely small quantities. The maximum quantity allowed in order to utilize the *de minimis* exception per inner receptacle is 1 mL for authorized liquids and 1 g for authorized solids. Additionally, the aggregate quantity per package may not exceed 100 mL for liquids and 100 g for solids. The exception also requires cushioning and package testing requirements, along with specific provisions for certain materials.

International harmonization includes adopting changes in the HMR to improve regulatory consistency with international regulations and standards, such as the IMDG Code, the ICAO TI, and the UN Recommendations on the Transport of Dangerous Goods—Model Regulations (UN Model Regulations). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Safety is enhanced by creating a uniform framework for compliance. As the volume of hazardous materials transported in international commerce continues to grow, harmonization is increasingly important. Moreover, the Federal Hazardous Materials Transportation Law (HMTA; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable.

The exceptions in the HMR for *de minimis* quantities were initially adopted in the HM–224D/HM–215J final rule [11] in § 173.4b of the HMR, and were intended to align with the provisions for *de minimis* exceptions found in the ICAO Technical Instructions and IMDG Code. However, HM–224D/HM–215J addressed exceptions for *de minimis* quantities of only Division 6.1, PG II and PG III hazardous materials. As noted in the PHMSA Letter of Interpretation (LOI) reference number (Ref. No.) 17–0138,[12] PHMSA considered exceptions for *de minimis* quantities of only Division 6.1, PG II and PG III hazardous materials in response to a petition for rulemaking.

In the NPRM, PHMSA proposed to harmonize the scope of the applicability of the *de minimis* exceptions with what is allowed under the international standards by including Division 6.1, PG I materials (no inhalation hazard). As discussed in the NPRM, a technical review of this petition found the inclusion of *de minimis* quantities for Division 6.1, PG I (no inhalation hazard) materials into the international regulations can be traced back to working paper ST/SG/AC.10/C.3/2009/45,[13] which was submitted by the United States. Based on the review of this working paper, PHMSA noted that it had preliminarily concluded that Division 6.1, PG I (no inhalation hazard) materials should be included as part of the *de minimis* exception.

PHMSA noted in the NPRM that the primary concern regarding the transportation of a Division 6.1, PG I (no inhalation hazard) material is leakage from a package and potential human exposure. A leak of such a material poses a risk to human health by poisoning. To counter these concerns, this hazard is mitigated by the conditions for transportation in the *de minimis* exceptions, namely, imposing limitations on the quantities allowed to 1 mL or 1 g per inner receptacle. In addition, § 173.4b requires that inner receptacles have removable closures sealed by wire, tape, or other positive means (*see* § 173.4b(a)(2)), which limits the possibility for leakage. Furthermore, a Division 6.1 PG I material that does not pose an inhalation hazard equally poses no vaporization risk should the package rupture. Lastly, *de minimis* packages are required to have cushioning and absorbent material that are not reactive with the hazardous material and can absorb the entirety of the package's contents if the receptacle ruptures. These requirements severely limit the risk of exposure presented by transportation of these materials.

While maintaining safety as described in the prior paragraph, PHMSA concludes in this final rule that this harmonization will not impose any direct costs on industry, and will provide cost savings to shippers by providing the option to ship Division 6.1, PG I (no inhalation hazard) materials under the *de minimis* provisions that provide alternative communication and packaging requirements associated with the preparation of these packages. In total, PHMSA estimates that the revision will result in cost savings of approximately $178,570 annually. A more detailed discussion of the economic analysis of the proposal can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments from both COSTHA and DGAC in support of the revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, upon review of the COSTHA petition to revise the *de minimis* quantities exception to include Division 6.1, PG I materials (no inhalation hazard), PHMSA revises § 173.4b to include Division 6.1, PG I materials (no inhalation hazard) to the list of authorized materials in § 173.4b(a). PHMSA finds expanding the *de minimis* exceptions to Division 6.1, PG I materials (no inhalation hazard) will maintain the safety of transportation of hazardous materials and provide cost savings through alternative packaging options.

E. Clarification of the Marking Requirements for Button Cell Lithium Batteries Contained in Equipment

In its petition (P–1726),[14] COSTHA requests that PHMSA amend § 173.185(c)(3) to clarify that lithium button cell batteries installed in equipment are excepted from the marking requirement and not subject to the quantity per package or per consignment limitation. Currently, § 173.185(c)(3) states: ''Each package must display the lithium battery mark except when a package contains button cell batteries installed in equipment (including circuit boards), or no more than four lithium cells or two lithium batteries contained in equipment, where there are not more than two packages in the consignment.'' In its petition, COSTHA asserts that the language and grammar used to convey the exception from display of the lithium battery mark has led some in industry to interpret the exception for button cell batteries to be dependent on the number of cells in a package or the number of packages in the consignment. Industry has made several requests for letters of interpretation—12–0261,[15] 14–0013,[16]

[11] 74 FR 2200 (Jan. 14, 2009).

[12] PHMSA LOI 17–0138, *https://www.phmsa.dot.gov/regulations/title49/interp/17-0138.*

[13] Working paper ST/SG/AC.10/C.3/2009/45, *https://unece.org/DAM/trans/doc/2009/ac10c3/ST-SG-AC10-C3-2009-45e.pdf.*

[14] P–1726—COSTHA (PHMSA–2019–0002), *https://www.regulations.gov/docket/PHMSA-2019-0002.*

[15] PHMSA LOI 12–0261; *https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretations/2012/120261.pdf.*

[16] PHMSA LOI 14–0013; *https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/2014/140013.pdf.*

15–0171,[17] and 16–0172 [18]—that illustrates the confusion within the regulated community.

PHMSA published final rule HM–224F [19] to revise the HMR applicable to the transport of lithium cells and batteries, consistent with the UN Model Regulations, the ICAO Technical Instructions, and the IMDG Code. As part of final rule HM–224F, PHMSA consolidated the requirements for shipping and transporting lithium cells and batteries into § 173.185 by:

- Requiring cells and batteries to be tested in accordance with the latest revisions to the UN Manual of Tests and Criteria, and requiring manufacturers to retain evidence of successful completion of UN testing.
- Eliminating the exceptions for small cells and batteries in air transportation, except with respect to extremely small cells packed with or contained in equipment.
- Providing relief for (1) the shipment of low production run and prototype batteries, and (2) batteries being shipped for recycling or disposal.

In the NPRM, PHMSA proposed to revise § 173.185(c)(3) to clarify the applicability of the lithium battery mark exception for button cell batteries installed in equipment. Consistent with the COSTHA petition, PHMSA noted that its proposed revisions would clarify that the exception in § 173.185(c)(3) applies when a package contains only button cell batteries installed in equipment; or when there is a consignment consisting of two packages or less, and each package contains no more than four lithium cells or two batteries installed in equipment.

PHMSA now concludes that this revision to the HMR is neither expected to result in a cost to industry nor a change to the safety requirements for packages containing lithium button cell batteries contained in equipment. The revision simply clarifies how the exception is applied for better understanding by the reader. Since PHMSA already authorizes this lithium battery mark exception, the change will not represent a quantifiable safety effect. Qualitatively, improved regulatory clarity will assist the regulated community in complying with the requirement and properly exercising the exception. Some entities were reasonably confused by the current text and applied the required mark unnecessarily. To the extent this occurred, the revision could provide economic benefit while maintaining safety. PHMSA determines there is limited risk in excepting packages of button cell lithium batteries installed in equipment from the lithium battery mark. A more detailed discussion of the economic analysis of the proposal can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments from both COSTHA and DGAC in support of this revision as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA now revises the introductory language in § 173.185(c)(3) to clarify that lithium button cell batteries installed in equipment are not subject to any quantity per package or consignment limitations when applying the exception.

F. Incorporate by Reference CGA C–20 (2014)

In its petition (P–1727),[20] CGA requests that PHMSA incorporate by reference CGA C–20 (2014), ''Requalification Standard for Metallic, DOT, and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition.'' CGA also proposes to revise § 180.205 to reflect the ultrasonic examination (UE) methods authorized by CGA C–20. CGA C–20 are an industry standard for the periodic requalification of certain metallic DOT and Transport Canada (TC) 3-series cylinders and tubes. CGA asserts that the incorporation by reference of CGA C–20 would eliminate the need for many special permits that authorize the use of UE methods and would harmonize the various UE methods to requalify these pressure receptacles. CGA further asserts that this standard would establish a uniform set of techniques, uniform acceptance and rejection criteria, and a standard calibration method used during the requalification process of these 3-series gas cylinders and tubes, in contrast to the current special permits, which vary on the requirements associated with use of the UE nondestructive testing methodology for requalification. Finally, the petition asserts that the incorporation by reference of CGA C–20 would enhance public safety by clarifying and mandating consistent requalification practices using UE throughout the gas industry. In the NPRM, PHMSA proposed the incorporation by reference of CGA C–20 (2014), ''Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition'' and to revise § 180.205 to reflect the UE methods authorized by CGA C–20 (2014).

CGA C–20 identifies and describes the various acceptable UE methods that may be used in place of the baseline HMR requirements (*e.g.,* internal visual inspection and hydrostatic requalification methods) used to examine certain metallic DOT/TC 3-series gas cylinders and tubes. This standard also specifies the allowable flaw acceptance/rejection criteria.

Under the HMR, requalification periods for DOT/TC 3-series specification cylinders range from three to 12 years, depending on the specification under which each cylinder was made (*e.g.,* 3, 3AA, etc.). Periodic requalification ensures the safety of cylinders by checking for leaks and damage that might threaten the integrity of a cylinder. Cylinders are requalified using volumetric expansion testing, proof pressure testing, and external and internal visual inspections. Currently, a person must apply for a special permit in order to receive authorization to use UE in lieu of the requalification requirements in § 180.205.

CGA notes that the increased use of UE necessitates clear and consistent instruction in the application of this technical method, as well as the adherence to proper calibration and acceptance/rejection criteria. CGA asserts that the modifications ensure that this requalification method is applied consistently to safeguard cylinder serviceability.

PHMSA noted in the NPRM that it had participated in the task force meetings, provided technical assistance during the development of CGA C–20, and completed a technical review of the final standard. As discussed in the NPRM, PHMSA has conducted a technical review and determined that the CGA C–20 standard will positively impact safety by prescribing appropriate procedures for applying UE as the requalification method for DOT/TC 3-series cylinders and tubes.

The total cost savings for industry regarding requalification using CGA C–20 is based on the number of active special permits and the costs associated with periodic renewal of the special permit. We estimate average annual industry cost savings of $30,313 due to companies no longer being required to apply for a special permit. A more detailed discussion of the economic analysis of this revision can be found in

[17] PHMSA LOI 15–0171; *https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/2016/150171.pdf.*

[18] PHMSA LOI 16–0172; *https://cms7.phmsa.dot.gov/sites/phmsa.dot.gov/files/legacy/interpretations/Interpretation%20Files/2017/160172.pdf.*

[19] 79 FR 46011 (Aug. 6, 2014).

[20] P–1727—CGA (PHMSA–2019–0007), *https://www.regulations.gov/docket/PHMSA-2019-0017.*

the RIA posted to the docket for this rulemaking.

PHMSA received comments from CGA and DGAC in support of the revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revisions. Therefore, PHMSA adds a reference to CGA C–20, ''Methods For Ultrasonic Examination Of Metallic, DOT, And TC 3-Series Gas Cylinders And Tubes, Second Edition,'' in § 171.7, and revises § 180.205 to reflect the UE methods authorized by CGA C–20. In addition, as proposed in the NPRM, PHMSA revises § 180.205(i) to state that when a cylinder containing hazardous materials is condemned, the requalifier must stamp the cylinder ''CONDEMNED'' and affix a readily visible label on the cylinder stating: ''UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION.'' PHMSA also is clarifying that the requalifier may only transport the condemned cylinder by private motor vehicle carriage to a facility capable of safely removing the contents of the cylinder. Lastly, the NPRM inadvertently left out necessary revisions to table 1 to paragraph (a) in § 180.209 that reference the inclusion of UE for DOT 3T cylinders and certain special permit cylinders. Therefore, in this final rule, PHMSA is revising table 1 to paragraph (a) in § 180.209 to reference UE for the cylinders intended to be allowed to undergo UE as proposed and revised in § 180.205.

G. Gas Mixtures Containing Components Defined as Liquefied Gases

In its petition (P–1728),[21] CGA proposes that PHMSA authorize an alternative description of gas mixtures containing components defined as liquefied gases. The CGA petition would revise the HMR to allow for a gas mixture with components that meet the definition of liquefied compressed gas in § 173.115(e) to be described as a ''compressed gas'' when the partial pressures of the liquefied gas components of the mixture are intentionally reduced so that liquefaction does not occur at 20 °C (68 °F). CGA requests in its petition that special provisions be added to Column (7) in the Hazardous Material Table (HMT) in § 172.101 applicable to liquefied gas mixtures. In the NPRM, PHMSA proposed to revise § 173.115(e) to allow for a gas mixture with components that meet the definition of liquefied compressed gas to be described as a ''compressed gas'' when the partial pressures of the liquefied gas components of the mixture are intentionally reduced so that liquefaction does not occur at 20 °C (68 °F).

Some compressed gas mixtures contain components that when shipped in their pure form would be considered a liquefied gas. However, when the gas is in a mixture, it can be manipulated to be entirely gaseous at its intended use temperature of 20 °C (68 °F) by reducing the components' partial pressures. Partial pressure is the pressure that would be exerted by one of the gases in a mixture if it occupied the same volume on its own. The sum of all components' partial pressures equals the total pressure of the mixture. Therefore, partial pressure can be lowered by lowering pressure generally (*e.g.,* by lowering temperatures or increasing volume) or altering the ratio of gases in the mixture.

As noted in the NPRM, PHMSA has conducted a technical review of this petition and concludes in this final rule that it agrees with CGA that when the gas is in a mixture, it can be manipulated to be entirely gaseous at its intended use temperature of 20 °C (68 °F) by reducing the components' partial pressures. PHMSA notes that during transportation, the gas mixture or its components may partially liquefy, forming condensation on the container wall, if ambient temperatures are lower than 20 °C (68 °F), but still above −50 °C (−58 °F). When the mixture returns to its use temperature, the condensation will transform back to the gaseous state. There are scenarios where a gas mixture might contain a component that meets the definition of a liquefied compressed gas, and under small temperature changes, a cloud or condensation could build up inside the cylinder. This could lead to the ''liquefied compressed gas'' description potentially misrepresenting the cylinder's contents to first responders and end users. Moreover, while CGA does not cite a safety concern with the current requirements under the HMR, they do note that there can be confusion among stakeholders when the content of a cylinder is described as a liquefied compressed gas, but resembles a non-liquefied compressed gas during transportation and use. Thus, PHMSA has determined that this revision is safety neutral or slightly improves safety. However, PHMSA disagrees with the CGA petition to use a special provision to allow for the description of a gas mixture with components that meet the definition of liquefied compressed gas to be described as a ''compressed gas.'' Instead, PHMSA believes that the most appropriate change is to amend the definition of a non-liquefied compressed gas in § 173.115(e), as revising the regulatory text provides a clearer connection for all stakeholders who ship these gases.

This revision to the HMR will not result in any cost to industry or impose any regulatory burden on small businesses. Given that industries already must describe shipments of these materials on a shipping paper, and communicate information about the material and the hazard on the package, there will be little to no cost on entities to change the hazard communication. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments from CGA in support of the revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA revises the HMR to allow certain mixtures of gas with component(s) considered liquefied gas, in accordance with § 173.115(e), to be described as a ''compressed gas'' and considered a non-liquefied gas, in accordance with § 173.115(d). PHMSA revises § 173.115(e) to clarify that gas mixtures with component(s) considered liquefied gases may be described using the appropriate hazardous materials description of a non-liquefied compressed gas in the HMT in § 172.101 when the partial pressure(s) of the liquefied gas component(s) in the mixture are reduced so that the mixture is entirely in the gas phase at 20 °C (68 °F).

H. Incorporate by Reference CGA C–23 (2018)

In its petition (P–1729),[22] CGA requested that PHMSA incorporate by reference CGA C–23 (2018), ''Standard for Inspection of DOT/TC 3 series and ISO 11120 Tube Neck Mounting Surfaces, Second Edition,'' into § 171.7 of the HMR. CGA also requested that PHMSA revise §§ 180.205 and 180.207 to reference the requirements in CGA C–23. CGA C–23 defines a tube as a seamless pressure vessel authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework. Tube modules are also commonly known as skid containers, ISO skids, ISO containers, or MEGCs. Sections 180.205 and 180.207 outline the general requirements for the requalification of specification cylinders and UN pressure receptacles. The CGA petition would require all requalifiers of tube trailers, skid containers, or MEGCs

[21] P–1728—CGA (PHMSA–2019–0018), *https://www.regulations.gov/docket/PHMSA-2019-0018.*

[22] P–1729—CGA (PHMSA-2019-0059), *https://www.regulations.gov/docket/PHMSA-2019-0059.*

to periodically disassemble equipment and perform an examination of tube neck mounting surfaces, in accordance with CGA C–23. In the NPRM, PHMSA proposed to incorporate by reference CGA C–23 (2018), ''Standard for Inspection of DOT/TC 3 series and ISO 11120 Tube Neck Mounting Surfaces, Second Edition,'' into § 171.7 and revise §§ 180.205 and 180.207 to reference the requirements in CGA C–23.

PHMSA noted in the NPRM that these tubes are typically mounted to a semitrailer by engaging the threaded surface on either end of the tube with flanges built into the bulkheads located on opposing ends of the trailer. Although secured in place, these mounting points support the full weight of the tube and, during transportation, are subjected to jostling, temperature changes, and all the dynamic forces associated with the acceleration/deceleration of the transport vehicle. Consequently, the constant motion and wear between the tube's threaded mounting surfaces and the flanges causes, over time, the deterioration of the mounting threads. This deterioration necessitates the periodic disassembly of the tubes from the trailer to inspect them. Therefore, CGA C–23 provides instructions on how to inspect and evaluate DOT/TC 3-Series and ISO 11120 tubes that are 12 feet (3.7 m) or longer; have an outside diameter greater than or equal to 18 inches (457 mm); and are supported by a neck mounting surface. In addition, CGA C–23 provides methods to assess the integrity of tube necks, including but not limited to, damage to mounting threads or to pin or set screw marks, as well as other damage. The assessment as outlined in C–23 provides a method for the identification of rejected tubes so that they can be removed from service, thereby improving the safe transportation of these horizontally mounted cylinder types.

The NPRM also noted that CGA C–23 was developed in response to an incident where a DOT specification 3AAX cylinder was ejected from a semitrailer and ruptured upon initial impact with the roadway. CGA determined that the root cause of the ejection, which contributed to the severity of the incident, was the condition of the connection between the tube neck and flange. CGA asserts that CGA C–23 will enhance the inspection process to include the inspection of the tube mounting and replacement of flanges.

The HMR currently do not reference CGA C–23, but PHMSA references the standard as a safety control in DOT special permits, such as DOT SP–14206.[23] These special permits allow for the requalification of DOT specification cylinders and UN tubes by UE or acoustic emission testing (AET), with a follow-up UE, instead of the hydrostatic test currently required under the HMR. These methods are used to ensure the cylinders and tubes remain qualified for hazardous materials service. Moreover, the UE and AET methods are non-destructive methods of examination and are alternatives to the hydrostatic method. Additionally, the HMR do not require periodic inspection and evaluation of the tube neck mounting surfaces. The CGA petition would enhance transportation safety of these larger cylinders and tubes by including inspection of the tube mounting threads as part of the requalification process.

The language recommended by CGA would require both specification DOT 3-series and UN tubes that are 12 feet or longer, with an outside diameter greater than or equal to 18 inches and supported by the neck mounting surface during transportation in commerce, to be inspected at least every 10 years in accordance with CGA C–23. CGA also proposes new language in §§ 180.205(d) and 180.207(d) to require DOT 3-series and UN tubes that show evidence of corrosion to the neck threads to be removed and examined in accordance with CGA C–23 before being rejected or returned to service. As noted in the NPRM, PHMSA conducted a technical review of the CGA petition and determined that the incorporation by reference of CGA C–23 will enhance safety by implementing a periodic inspection of the mounting of these tubes. Moreover, the requirements of CGA C–23 are consistent with the safety controls referenced in DOT–SP 14206. There are also improvements offered by the CGA C–23 standard versus the procedures outlined in DOT–SP 14206, such as a table that contains specific dimensional values for use in defining acceptance criteria for tubes with local thin areas (LTA). However, PHMSA noted in the NPRM that it had found the CGA proposals in §§ 180.205(d)(5) and 180.207(d)(1)(iii) requiring the disassembly of the tube module when visible corrosion in the neck region is present to be too vague. Therefore, PHMSA references the figures and descriptions provided in Section 4.2 of the CGA C–23 standard for extreme neck thread wear conditions in §§ 180.205(d)(5) and 180.207(d)(1)(iii) to clarify conditions when disassembly of the tube module is required.

[23] DOT SP–14206, *https://www.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP14206.pdf/offerserver/SP14206.*

PHMSA has determined that incorporating by reference CGA C–23 into the HMR will enhance safety for industry and stakeholders by codifying the tube neck thread inspection procedures. PHMSA estimates there will be a one-time cost for industry participants to purchase the CGA C–23 standard. With respect to inspections, there may be some minimal administrative costs associated with special permit holders' permits to reflect the codification of CGA C–23–2018 into the code, but these special permit holders should have been following the requirements of CGA C–23–2018 already. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking. PHMSA received comments from CGA in support of these revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA revises § 171.7 to incorporate by reference CGA C–23, ''Standard for Inspection of DOT/TC 3-Series and ISO 11120 Tube Neck Mounting Surfaces, 2nd Edition.'' PHMSA also adds § 180.205(c)(5) to state that DOT 3-series cylinders horizontally mounted on a motor vehicle or in a framework, and longer than 12 feet, shall be inspected in accordance with CGA C–23 every 10 years; and adds § 180.205(d)(5) to specify conditions (as outlined in Section 4 of CGA C–23) requiring removal and inspection in accordance with CGA C–23. The current § 180.205(d)(5) requiring testing and inspection if the Associate Administrator determines that the cylinder may be in an unsafe condition is renumbered as paragraph (d)(6). PHMSA also revises § 180.205(i)(2)(i)(C) to state that the requalifier must stamp the cylinder ''CONDEMNED'' and affix a readily visible label on the cylinder stating ''UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION'' for a condemned cylinder that contains hazardous materials. The requalifier may only transport the condemned cylinder by private motor vehicle carriage to a facility capable of safely removing the contents of the cylinder. Finally, PHMSA adds § 180.207(d)(1)(ii) to state that steel UN tubes horizontally mounted on a motor vehicle or in a framework, and longer than 12 feet, shall be inspected in accordance with CGA C–23 every 10 years; and to specify conditions (as outlined in Section 4 of CGA C–23) requiring removal and inspection in accordance with Section 6 of CGA C–23. The text at the current

§ 180.207(d)(1) is renumbered as paragraph (d)(1)(i).

Lastly, PHMSA notes that the NPRM proposed language in § 180.205(c) regarding the grace period allowed for neck thread inspections with respect to requalification times. However, PHMSA asserts that this proposed language is redundant with the language already incorporated by reference in CGA C–23, Section 4, and thus not needed as this text would be duplicative.

I. Incorporate by Reference IME Safety Library Publication 23 (SLP–23)

In its petition (P–1731),[24] the IME proposes that PHMSA incorporate by reference an updated version of IME SLP–23 (2021), titled ''Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging.'' IME states that these revisions and improvements to the standard reflect technological advances and best practices in the industry that will maintain a high level of safety. In the NPRM, PHMSA proposed to incorporate by reference IME SLP–23 (2021) into § 171.7. SLP–23 (2021) outlines the requirements for transporting certain explosives and ammonium nitrate emulsions, classified as oxidizers, to ensure their safe and efficient transport in bulk packagings by highway, vessel, and rail. These bulk packagings can either be DOT specification or non-DOT specification packagings (*e.g.,* cargo tanks or portable tanks) adapted to accommodate the physical and chemical properties of the bulk explosives, oxidizers, or fuel oil transported. SLP–23 (2021) makes several non-substantive changes and editorial clarifications from the previous publication. Non-substantive changes include changing the structure of SLP–23 to read more consistently with the HMR and editorial revisions.

Substantive changes to SLP–23 (2021) include:

• Deletion of the Vented Pipe Test (VPT) in Appendix A

Currently, SLP–23 (2011) requires both bulk Division 1.5 explosives and Division 5.1 ammonium nitrate emulsions to pass the VPT. The updated SLP–23 removes the VPT test for these materials. IME asserts that the VPT is not applicable to Division 5.1 and Division 1.5 materials and adds that, as outlined in portable tank instruction TP 32 (applicable to UN0331, UN0332, and UN3377 materials), the VPT is required only to demonstrate suitability for containment in tanks as an oxidizer for ammonium nitrate-based emulsions (ANEs) classified as Division 5.1, UN3375. Additionally, IME notes that a significant change to the requirements applicable to the testing of ANEs was approved by the UN Sub-Committee of Experts on the Transport of Dangerous Goods at its 54th Session (Nov/Dec 2018). Under the new testing regime, acceptance criteria will require passing either test series 8(a), 8(b), and 8(c), or if the substance fails the 8(c) test (*i.e.,* the ''Koenen Test'') and the substance had a time to reaction in that test longer than 60 seconds and a water content greater than 14 percent, the material would be required to pass test series 8(a), 8(b), and 8(e). Test 8(e) is the Minimum Burning Pressure test (MBP). IME noted that industry is currently gathering data to determine whether use of the MBP test obviates the need for the VPT because, in essence, the VPT is a scaled-up Koenen Test and, therefore, has the same limitations associated with extended time of heating.

• Allowing operators to continually monitor driver qualifications and training instead of conducting an annual audit, as currently required in SLP–23 (2011).

IME notes that the current requirement for an ''annual audit'' is inadequate to ensure that driver qualification and training programs are comprehensive, effective, and being implemented properly. IME believes that limiting oversight of the program to an annual audit provides less assurance that operators are compliant than would a requirement to continually monitor the driver qualification program.

In addition, IME requests revisions to the HMR that coincide with the incorporation by reference of SLP–23 (2021). IME requests the adoption of DOT–SP 8723, which authorizes ''UN0332, Explosive, Blasting, type E,'' ''UN3375, Ammonium nitrate emulsion,'' and ''UN3139, Oxidizing liquid n.o.s. (PG II)'' to be transported in IM 101 and 102 portable tanks. IME explains that continuing to operate under DOT–SP 8723 imposes additional administrative costs to both industry and PHMSA, and that one of the advantages of incorporating by reference SLP–23 (2011) into the HMR was the elimination of SPs governing bulk transportation of certain materials manufactured and used by the commercial explosives industry. IME asserts that failure to include the provisions from DOT–SP 8723 was an oversight when SLP–23 (2011) was originally incorporated by reference into the HMR. In addition to the administrative cost savings noted above, IME adds that the conversion of SPs into regulations provides certainty to the regulated community, and increases transparency for government, stakeholders, and the public. IME proposes that TP codes be assigned to ''UN0332, Explosive, blasting, type E,'' ''UN3375, Ammonium nitrate emulsion,'' and ''UN3139, Oxidizing liquid, n.o.s., PG II'' to authorize the use of IM 101 and 102 portable tanks when transported under SLP–23 (2021). Lastly, IME proposes a revision to § 173.251 to state that this section is not applicable when UN3375 is transported in IM 101 or 102 portable tanks in accordance with SLP–23 (2021).

As noted in the NPRM, PHMSA conducted a technical review of the revisions to SLP–23 (2021) and concurs with IME that most of the changes in IME SLP–23 (2021) are either non-substantive or editorial in nature. PHMSA does not believe, however, that sufficient data was provided by IME to no longer require the VPT for Division 1.5 blasting explosives and Division 5.1 ANEs when transported in bulk. While it is true that the UN Subcommittee has discussed whether the VPT is beneficial for ANEs when transported in bulk, the discussions are still in preliminary stages and pending further review by the UN Subcommittee. If these provisions are adopted by the UN, PHMSA may consider changes to VPT requirements in a future international harmonization rulemaking, but PHMSA declines to incorporate that revision at this time. PHMSA also concurs with IME that an annual audit is inadequate to ensure that driver qualification and training programs are comprehensive, effective, and being implemented properly. A continual monitoring program better ensures compliance with the driver qualification requirements. While the timing of the oversight of requirements would change—*i.e.,* continuous monitoring instead of an annual audit—the current elements of the qualification and training program would remain unchanged.

Lastly, PHMSA concurs that there is sufficient merit to adopt the provisions of DOT–SP 8723 to authorize ''UN0332, Explosive, blasting, type E,'' ''UN3375, Ammonium nitrate emulsion,'' and ''UN3139, Oxidizing liquid, n.o.s., PG II'' to be transported in IM 101 and 102 portable tanks when shipped under SLP–23 (2021). This would include a conforming revision to indicate that § 173.251 does not apply when UN3375 material is transported in IM 101 or 102 portable tanks in accordance with SLP–23. PHMSA has determined that these revisions maintain the safety of bulk transport of these materials because the

[24] P–1731—IME (PHMSA–2019–0062), *https://www.regulations.gov/docket/PHMSA-2019-0062.*

SLP–23 (2011) standard currently incorporated by reference already authorizes larger bulk quantities consistent with the hazardous material offered in accordance with DOT–SP 8723 and is supported by a safety record of use for 10 years. PHMSA concludes that the revisions to IME SLP (2021) will streamline regulatory requirements without a negative impact on safety. PHMSA quantified the effects of removing the administrative requirements of applying for a special permit and estimates the average annual cost savings to be $6,746 per year. There are several other effects of the proposal that may result in costs, cost savings, and benefits, but these results are less certain and are described qualitatively. A more detailed discussion of the economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking. IME provided comments mostly in support of the proposed incorporation of IME SLP–23 (2021). However, IME also provided comments on potential revisions to the applicability of IME SLP–23 (2021). IME notes that since the publication of SLP–23 (2021), PHMSA has authorized the use of UN T11 portable tanks in DOT–SP 8723 [25] for ''UN0332, Explosive, blasting, type E or Agent blasting, Type E'', ''UN3375, Ammonium nitrate emulsion or Ammonium nitrate suspension or Ammonium nitrate gel, intermediate for blasting explosives'' and ''UN3139, Oxidizing liquid, N.O.S.'' In its comments, IME request that the IME SLP–23 (2021) be revised to include the addition of T11 UN portable tanks for these materials.

IME also notes that the use of intermediate bulk containers (IBCs) is not expressly authorized under IME SLP–23 (2021) despite their historical use for the transportation of bulk explosives. IME adds that the HM–233D final rule,[26] titled ''Hazardous Materials: Requirements for the Safe Transportation of Bulk Explosives,'' incorporated by reference the IME SLP–23 (2011), which in turn incorporated several DOT special permits authorizing the transportation of certain explosives in bulk containers. One such special permit, DOT–SP–11579,[27] authorized the transportation of blasting materials/ammonium nitrate emulsions in certain IBCs. IME SLP–23 (2021) specifically authorizes bulk packages for materials authorized under §§ 173.240 (UN0331 and NA0331) and 173.242 (UN0332 and UN3375). IME adds that both regulatory provisions limit the transportation of these materials in IBCs to materials for which the IBC type is authorized, according to the IBC packaging code, specified for the specific hazardous material in Column (7) of the HMT in § 172.101. Lastly, IME notes that there are no IBC packaging codes for NA0331, UN0331, and UN0332 in Column (7) of the HMT and, accordingly, their transportation in IBCs is currently prohibited. IME states that it was not their intention to exclude IBCs for these materials when the incorporation of SLP–23 (2011) was originally requested. IME also does not believe it was PHMSA's intent to exclude these materials for transportation in IBCs, since SP–11579 was expressly incorporated into the HMR as part of that incorporation action. IME requests that PHMSA either revise SLP–23 (2021) to state that the IBC code requirements in §§ 173.240 and 173.242 are inapplicable, or amend the HMT to include an IBC Code for the materials.

With respect to T11 UN portable tanks, PHMSA agrees that there is no technical reason to not include UN portable tanks for the transportation of bulk explosives under SLP–23 (2021). Additionally, PHMSA does not believe there is any technical reason to not allow the use of IBCs as requested in SLP–23(2021). However, the APA requires that the public have an opportunity to comment on regulations before they take effect, so any requirements not proposed in the earlier notice cannot be included in this final rule. PHMSA encourages IME to submit a petition for rulemaking to incorporate by reference a revised version of the SLP–23 publication with the revisions that would authorize these packages in a revised version of SLP–23. Until then, PHMSA encourages IME's members to continue to renew DOT SP–8723 for the use of UN portable tanks. Additionally, PHMSA encourages those entities wanting to transport NA0331, UN0331, and UN0332 in IBCs to apply for a special permit similar to what was allowed in DOT SP–11579.

IME also notes that Section I of IME SLP–23 (2021), titled ''Standards for Transporting a Single Bulk Hazardous Material for Blasting by Cargo Tank Motor Vehicles,'' contains a subsection G, which addresses the ''Security and Safety of the Bulk Hazardous Materials Transported under the Provisions of IME SLP–23.'' IME SLP (2021) Section II is titled ''Standards for Cargo Tank Motor Vehicles Capable of Transporting Multiple Hazardous Materials for Blasting in Bulk and Non-Bulk Packaging.'' IME notes that the safety and security requirements are only found in paragraph G of Section I and not Section II. IME adds that one could interpret the applicability of the safety and security provisions in paragraph G to Section I as only applying to CTMVs carrying a single bulk hazardous material. IME states that its intent was to apply safety and security precautions found in paragraph G of Section I to all CTMVs, regardless of whether they are carrying a single hazardous materials or multiple hazardous materials. Accordingly, IME recommends that Section II of SLP–23 be amended to include the same safety and security requirements found in Section I.

As previously stated, under the APA, PHMSA cannot incorporate by reference in the final rule a version of the IME SLP–23 other than the version proposed in the NPRM. The HMR already requires that certain hazardous materials shippers and carriers develop and implement security plans. Specifically, § 172.802 states that security plans must be developed and adhered to by shippers and carriers of certain hazardous materials in specified quantities, including Division 1.1, 1.2, or 1.3 explosives; spent nuclear fuel; highway route controlled quantities of radioactive materials; and more than 25 kg of Division 1.5, 1.3, or 1.1 explosives. Security plans must include an assessment of possible transportation security risks and appropriate measures to address those risks. Specific elements such as personnel security, unauthorized access, and en route security must be addressed.

The safety and security requirements, as outlined in paragraph G of Section 1 of SLP–23 (2021), act as guidance for how CTMVs used to transport bulk shipments of hazardous materials can comply with the regulatory requirements currently found in § 172.802. Although paragraph G is not currently listed in Section II of SLP–23 (2021) for CTMVs containing multiple hazardous materials, PHMSA believes it reasonable to clarify in the preamble to the final rule that the safety and security requirements found in paragraph G of Section 1 should also be applied to shipments of multiple hazardous materials in bulk, in order to comply with the requirements in § 172.802. PHMSA encourages IME to note on its website for downloading SLP–23 that the safety and security requirements found in paragraph G of Section I can also be used in Section II in order to meet the regulatory requirements in § 172.802. Additionally, IME is also encouraged to petition PHMSA to incorporate a new version of SLP–23

[25] *https://www.phmsa.dot.gov/hazmat/documents/offer/SP8723.pdf/offerserver/SP8723.*

[26] 80 FR 79423 (Dec. 21, 2015).

[27] *https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/SP11579_2010010140.pdf.*

which makes the safety and security requirements clearer to the users of SLP–23.

Lastly, IME notes that the current title of Section I of IME SLP–23 (2021) is ''Standards For Transporting A Single Bulk Hazardous Material for Blasting by Cargo Tank Motor Vehicles.'' IME notes that a strict reading of the title implies that Section I is limited to bulk transport by cargo tank motor vehicle (CTMV). However, paragraph B of Section I specifically states that ''highway, vessel, and rail are authorized modes for the transportation of the bulk hazardous materials listed in Section I.A.1 in bulk packagings.'' In order to eliminate any confusion caused by this contradictory language, IME recommends that the title of Section I be modified to read ''Standards for Transporting a Single Bulk Hazardous Material for Blasting.'' In addition, IME requests that a revision be made to Special Provision 148 and § 173.66, which specifically reference the title of Section I of IME SLP–23 (2021).

As previously stated, under the APA, PHMSA cannot incorporate by reference in the final rule a version of the IME SLP–23 other than the version proposed in the NPRM. However, PHMSA is clarifying in the preamble to this final rule that since paragraph B of Section 1 clearly states that ''highway, vessel, and rail are authorized modes for the transportation of the bulk hazardous materials listed in Section I.A.1 in bulk packagings,'' the transportation of bulk explosives under IME SLP–23 applies to the highway, vessel, and rail modes provided the shipment of such materials is approved by the relevant mode in the HMT. As previously stated, PHMSA encourages IME to submit a petition for rulemaking to revise the HMR and provide an updated version of IME SLP–23 that clarifies this issue further.

Therefore, PHMSA incorporates by reference SLP–23 (2021), ''Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging,'' as proposed into § 171.7(r)(2) and replaces the 2011 edition currently incorporated by reference in the HMR. PHMSA also revises special provision 148 to clearly state that the VPT requirements in SLP–23 (2011) would still apply. PHMSA also adds new special provision TP48 to § 172.102(c)(8) to authorize the use of IM 101 and 102 portable tanks for ANEs when transported under SLP–23 (2021). PHMSA assigns TP48 to the following UN numbers in the HMT in § 172.102: ''UN0332, Explosive, blasting, type E;'' ''UN3375, Ammonium nitrate emulsion;'' and ''UN3139, Oxidizing liquid, n.o.s., PG II.'' Lastly, PHMSA revises § 173.251 to state that this section is not applicable when ''UN3375, Ammonium nitrate emulsion'' is transported in IM 101 or 102 portable tanks in accordance with SLP–23 (2021).

J. Revision of Testing and Marking of UN Specification Packagings

In its petition (P–1732),[28] the Sporting Arms and Ammunition Manufacturers' Institute, Inc. (SAAMI) proposes that PHMSA amend § 178.503(a)(6) by allowing UN performance-oriented boxes (*e.g.,* UN 4A, 4B, or 4N for steel, aluminum, or other metal boxes, respectively) to be marked with the last two digits of the year of testing certification rather than the last two digits for year of manufacture. Additionally, the SAAMI petition proposes to add an additional selective testing variation in § 178.601(g) to allow for variation of packagings that include articles containing solid hazardous materials, packed in inner packagings without further testing, subject to certain conditions. SAAMI requests that this variation also allow for an increase in dimensions of the outer packaging of the combination packaging based on the tested design type. In the NPRM, PHMSA proposed to revise § 178.503(a)(6) to allow UN performance-oriented boxes (*e.g.,* UN 4A, 4B, or 4N for steel, aluminum, or other metal boxes, respectively) to be marked with the last two digits of the year of testing certification rather than the last two digits for year of manufacture, and revise § 178.601(g) to allow an additional selective testing variation.

With regard to the marking proposal, the marking requirements in § 178.503(a)(6) currently require packages to be marked with the last two digits of the year of manufacture. SAAMI asserts that the year of manufacture is meant to tie the packaging to a specific certification (*i.e.,* tied to design qualification testing and periodic retesting to a UN standard). SAAMI asserts that while the date of manufacture is informative, this degree of specificity is not necessary for safety or enforcement purposes. SAAMI adds that because the retesting of the design type occurs every two years,[29] industries incur costs to change the year of manufacture marking on packagings that are still being produced under the same design test. (PHMSA notes that this conclusion is based on the presumption that manufacturers of combination packagings are operating at the minimum test frequency of retesting every 24 months.) SAAMI asserts that allowing marking of the last two digits of the year of packaging certification on packagings is considered an acceptable substitute to the current regulatory requirement in § 178.503(a)(6) and eliminates the need to change printing plates biannually.

PHMSA received mixed comments regarding this specific proposal; specifically, some commenters supported it while others opposed. The opposing viewpoint noted that this proposal would cause the package marking on Series 4 Packages to no longer be harmonized with the UN Model Regulations. Therefore, PHMSA is not adopting the proposal to revise § 178.503(a)(6) to allow the marking of Series 4 packages with the year of certification instead of the year of manufacturing. PHMSA has determined that the HMR and the UN Model Regulations packaging specification marks should remain aligned to facilitate efficient cross-border shipping. Deviations from the UN Model Regulations—particularly with respect to standard markings—is not justified based on limited potential cost savings that could be at issue here. Maintaining a global system of consistent transportation requirements protects businesses and people worldwide by allowing for the safe, frustration-free transport of hazardous materials.

With regard to the selective testing variation proposal, § 178.601 contains the general requirements for the testing of non-bulk UN performance-oriented packagings and packages. Section 178.601(g) contains packaging variations that allow for the selective testing of packagings that differ only in minor respects from a tested design type. SAAMI proposes in its petition to create an additional packaging variation under § 178.601(g) to include small arms ammunition—specifically, ''Cartridges for weapons, inert projectile(s) or blank (UN0012 and UN0014); Primers, cap type (UN0044); and Cases, cartridge, empty with primer (UN0055)—packed in inner packages.'' Specifically, SAAMI proposes allowing inner packagings of ammunition to be assembled and transported without packaging testing, provided that the outer packaging of a combination package of articles successfully passes the tests, in accordance with §§ 178.603 and 178.606. Additionally, the SAAMI

[28] P–1732—SAAMI (PHMSA–2019–0069), *https://www.regulations.gov/docket/PHMSA-2019-0069.*

[29] The periodic retest requirements for combination packagings call for conducting design qualification retesting at least once every 24 months. *See* § 178.601(e).

petition proposes for the packaging variation to allow for larger packages to use the certification of a smaller tested package.

As noted in the NPRM, PHMSA conducted a technical review of the SAAMI proposal for a new selective testing variation to allow for limited testing of combination packagings for small arms ammunition and components. PHMSA concurs with the proposal to allow for a variation in combination packagings used for materials classified as UN0012, UN0014, UN0044, and UN0055 without further testing.

PHMSA conducted an economic evaluation of the amendment to § 178.601(g) to allow specified inner packagings to be assembled and transported without testing under certain conditions. For this amendment, PHMSA estimates annualized cost savings of approximately $826,711. A more detailed discussion of the economic analysis of this amendment can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments from COSTHA in support of the revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA is adding a new packaging variation in § 178.601(g)(6) to authorize selective testing of packagings containing ''Cartridges for weapons, inert projectile(s) or blank (UN0012 and UN0014), Primers, cap type (UN0044), and Cases, cartridge, empty with primer (UN0055).'' Inner packagings intended to contain these materials may be assembled and transported without testing provided that the outer packaging of a combination packaging successfully passes the tests, in accordance with §§ 178.603 and 178.606, and the gross mass does not exceed that of the tested type.

K. Authorizing Smaller Combustible Placard on IBCs

In its petition (P–1734),[30] Evonik proposes that PHMSA revise § 172.514(c) by adding an option for smaller placards for intermediate bulk containers (IBCs) carrying combustible liquids by adopting the provisions in DOT–SP 16295 [31] into the HMR. This would allow shippers to transport IBCs containing combustible liquids (NA1993) bearing a combustible placard sized to be consistent with the label size specifications in § 172.407(c). Section 172.407(c) requires diamond shaped labels to be at least 100 mm (3.9 inches) on each side. In the NPRM, PHMSA proposed to revise § 172.514(c) by adding an option for smaller placards for IBCs carrying combustible liquids.

The HMR requires placards to be at least 250 mm (9.84 inches) on each side. Section 172.514(c) prescribes the exceptions for placarding bulk packages. Specifically, paragraph (c)(4) authorizes IBCs to be labeled in accordance with part 172, subpart E. However, IBCs transporting combustible liquids do not qualify for that exception because there is no authorized label for combustible liquids.

Evonik states in its petition that a smaller-sized combustible placard would allow for more space for proper placarding and marking placement due to the commonly limited space available to display hazard information on the IBC side plates and panels. Moreover, Evonik states that a smaller placard provides a level of safety equivalent to the requirements in § 172.514(c)(4), where an IBC is authorized to be labeled instead of placarded (*e.g.,* flammable labels vs. flammable placards), and in § 172.406(e)(6), where duplicate labels are not required on two sides or two ends of an IBC with a volume of 1.8 m^3 (64 cubic feet) or less (approximately 478 gallons). Because these exceptions are allowed for hazardous materials considered to pose greater danger than combustible liquids, Evonik asserts the reduction in size for combustible placards will maintain a safe level of hazard communication for transport of combustible liquids in IBCs.

While this revision is not technical in nature, PHMSA determines that—from a policy and safety perspective—this amendment does not change the safety requirements for the transportation of an IBC, but will provide greater flexibility by making more space available for other necessary information on the IBC. Additionally, this amendment will not result in any cost to industry or impose any new regulatory burden to industry. There will be a marginal cost savings due to current special permit holders no longer needing to apply to renew their special permits. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received feedback from the DGAC supporting proposed changes to allow label sized placards on IBCs containing combustible liquids instead of requiring full sized placards. In its original proposal, PHMSA asked for comments on whether to allow label sized placards instead of full sized placards on other bulk package types containing combustible liquids, such as portable tanks. DGAC recommended that PHMSA expand the changes to also include permitting label sized placards instead of full sized placards on portable tanks for combustible liquids. After further review, PHMSA did not find any technical or safety reasons to not allow the use of label sized placards instead of full sized placards on portable tanks. Therefore, PHMSA revises § 172.514(c)(1) and (4) to allow IBCs and portable tanks containing combustible liquids to be placarded with a combustible placard that meets the label size specifications in § 172.407(c).

L. Incorporate by Reference IME Safety Library Publication 22 (SLP–22)

In its petition (P–1736),[32] IME requests that PHMSA incorporate by reference IME SLP–22 (2019), ''Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials.'' The HMR currently incorporates by reference the IME SLP–22 (2007) version in the HMR at § 171.7(r)(1). In the NPRM, PHMSA proposed the incorporation by reference of IME SLP–22 (2019), ''Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials.''

IME notes that DOT has long accepted the SLP–22 publication and its recommendations for the safe transportation of detonators in a vehicle. SLP–22 (2007) is referenced in §§ 173.63 and 177.835. IME notes that much of the SLP–22 standard has remained virtually unchanged since 1972 and has proven effective for the safe transportation of detonators. Of the millions of shipments of detonators and explosives made using SLP–22, none have resulted in a mass-detonation. The primary intent of SLP–22 is not to prevent mass detonation, but instead to allow sufficient time in the event of a transportation incident, such as fire, to evacuate bystanders to a safe distance. Testing conducted by IME has shown that transporting detonators in an undamaged box constructed to the standard set forth in SLP–22 will prevent, for 30 minutes or longer, mass detonation.

SLP–22 (2019) reflects necessary changes and improvements to the SLP–22 (2007) edition and includes technical corrections, practical improvements, and deletion of outdated practices.

Specifically, changes to SLP–22 include:

[30] P–1734—Evonik (PHMSA–2019–0089), *https://www.regulations.gov/docket/PHMSA-2019-0089.*

[31] DOT SP–16295, *https://cms7.phmsa.dot.gov/approvals-and-permits/hazmat/file-serve/offer/SP16295.pdf/2018080498/SP16295.*

[32] P–1736—IME (PHMSA–2019–0167), *https://www.regulations.gov/docket/PHMSA-2019-0167.*

• Providing clarity on the text ''other positions may be acceptable'' by specifying alternative placement of SLP–22 packages or containers on a motor vehicle based on vehicle cargo space configuration.
• Consistent with the alternative positions, adding a constraint to limit positions of a container on the vehicle as far as possible from the points on the vehicle that are most susceptible to high temperature fires due to accidents or severe mechanical failures (*e.g.,* the vehicle fuel tank).
• Adding reference to IME SLP–23 for containers mounted on a cargo tank motor vehicle.
• Adding a requirement that structural components (*i.e.,* latches) must be bolted or welded to the steel in the wall of the container or compartment.
• Allowing alternative materials of construction subject to certain performance standards (*i.e.,* constructed of or covered with non-sparking material).
• Adopting several revisions that provide clarity and correct typographical errors.

As noted in the NPRM, PHMSA conducted a technical review of each revision included in SLP–22 (2019) and concluded that these changes will either maintain or enhance the safety of transporting detonators by highway with other explosive materials. PHMSA supports the overall intent to allow more time for evacuation should there be an incident. PHMSA incorporates by reference SLP–22 (2019). PHMSA has concluded that the specifications in Section C.9 of the document are adequate to provide the flexibility to allow for alternative materials of construction without compromising safety.

As noted in the NPRM, PHMSA conducted an economic analysis of the IME proposal and found that the changes made to Sections C.1 and C.1.a provide more flexibility for businesses in their placement of SLP–22 boxes while still meeting safety standards. The changes to Section C.1.c regarding padlocks may result in annual cost savings of approximately $2,000, assuming a small percentage of vehicles (0.1 percent) take advantage of the one-time cost savings associated with purchasing new padlocks. C.9's allowance of alternative materials in the construction of SLP–22 boxes may result in cost savings of approximately $965,598 per year. These cost savings, however, are contingent on the quantity and type of material substitutions made by SLP–22 box manufacturers, which is uncertain. A more detailed discussion of this economic analysis of this incorporation by reference can be found in the RIA posted to the docket for the rulemaking.

PHMSA received comments from IME in support of these revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA amends § 171.7(r)(1) to reference IME SLP–22 (2019). In addition, PHMSA makes an editorial revision to § 171.7(r)(1) by inserting a space between ''IME Standard 22,'' and ''IME'' in the first line and amend the date to read ''June 2019.''

M. Definition of a Liquid

In its petition (P–1738),[33] COSTHA proposes that PHMSA modify the definition of a liquid in § 171.8 to include the test for determining fluidity found in ISO 2137:1985, ''Petroleum products—Lubricating grease and petrolatum—Determination of cone penetration,'' (penetrometer test), prescribed in section 2.3.4 of Annex A of the ADR. Section 171.8 states that a liquid means a material, other than an elevated temperature material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 pounds per square inch). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359 (1990), ''Standard Test Method for Determining Whether a Material is Liquid or Solid.'' The UN Model Regulations, ICAO Technical Instructions, and IMDG Code all include the penetrometer test as an alternative to performing the ASTM D 4359 test method in determination of whether a material is a liquid. In the NPRM, PHMSA proposed to modify the definition of a liquid in § 171.8 to include the test for determining fluidity—ISO 2137:1985 (penetrometer test)—prescribed in section 2.3.4 of Annex A of the ADR.

In its petition, COSTHA states there have been no recorded instances of determination of liquidity using the ADR penetrometer test increasing the risk to safety while in transportation. COSTHA adds that under the current system, a material manufactured outside the United States and classified using the penetrometer test may not be reshipped within the United States without first performing the ASTM D 4359 test method. The HMR does not authorize the ADR penetrometer test as a method for determining if a material is a liquid, and thus, any hazard classification based on this result is not valid in the United States. This results in increased cost for shippers to conduct additional testing and creates a barrier to importing materials into the United States.

As noted in the NPRM, PHMSA conducted a technical review of the COSTHA proposal to harmonize the HMR definition with international use of the ADR penetrometer test for determination of a liquid. The test, ISO 2137:1985, as identified in the ADR under section 2.3.4, is referenced in the UN Model Regulations Volume 1, 20th edition, in section 1.2.1, Definitions, Liquid, and in the UN Manual of Tests and Criteria, 7th edition, as a footnote reference to UN Model Regulations 1.2.1 at the end of 20.4.1.5. PHMSA finds that the ISO test is more empirical in nature than ASTM D 4359 and provides better understanding of the physical properties of the tested material. Therefore, PHMSA now determines the adoption of penetrometer test into the HMR will provide a level of safety equal or greater to the currently approved ASTM test method. Lastly, the addition of the penetrometer test into the HMR will allow for more flexibility to offerors by providing an additional option for the testing of liquids. An economic analysis of this petition could not validate the estimates from the petitioner that suggest cost savings from this revision. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments from COSTHA and DGAC in support of the revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA revises the definition of a liquid in § 171.8 to reference the test for determining fluidity (penetrometer test) prescribed in section 2.3.4 of Annex A of the ADR.

N. Incorporate by Reference Updated CGA C–7 (2020)

In its petition (P–1744),[34] CGA proposes that PHMSA incorporate by reference the updated Appendix A of CGA publication C–7 (2020), ''Guide to Classification and Labeling of Compressed Gases,'' Eleventh Edition, into the HMR at § 171.7(n)(8). Currently, the HMR incorporates by reference CGA C–7 (2014), ''Guide to Classification and Labeling of Compressed Gases,'' Tenth Edition. The HMR currently authorizes

[33] P–1738—COSTHA (PHMSA–2019–0233), *https://www.regulations.gov/docket/PHMSA-2019-0233.*

[34] P–1744—CGA (PHMSA–2020–0104), *https://www.regulations.gov/docket/PHMSA-2020-0104.*

the marking of a Dewar flask or a cylinder in accordance with CGA C–7 (2014), Appendix A instead of labeling (*see* § 172.400a). CGA states that an update is needed to CGA C–7, Tenth Edition (2014), to address changes made to Appendix A in the Eleventh Edition (2020), such as:

- Providing greater flexibility in the hazard class display by allowing it to be displayed on one or two lines.
- Clarifying that the marking system elements must meet certain minimum size requirements.
- Providing an example of the CGA marking system for multiple hazard diamonds that are overlapped.

CGA C–7 (2020) states the general principles for labels and markings of cylinders, and provides recommended minimum requirements for many hazardous gases and selected liquids used in such cylinders. In the NPRM, PHMSA proposed to incorporate by reference the updated Appendix A of CGA publication C–7 (2020), ''Guide to Classification and Labeling of Compressed Gases,'' Eleventh Edition, into the HMR at § 171.7(n)(8).

As noted in the NPRM, PHMSA conducted a technical review of this petition, including a review of the revised Appendix A to C–7 (2020), and found that the changes are minor and primarily editorial clarifications. PHMSA concludes that these editorial revisions in Appendix A to CGA C–7 (2020) will not negatively impact hazard communication.

As noted in the NPRM, PHMSA conducted an economic review of this petition and found no quantifiable benefits associated with this change. However, the changes found in Appendix A to CGA C–7 (2020) will provide clearer guidance to the regulated community and thus increase compliance. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments in support of the revisions as proposed from CGA and DGAC. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA revises § 171.7(n)(8) to reference CGA C–7 (2020), ''Guide to Classification and Labeling of Compressed Gases,'' Eleventh Edition.

O. Incorporate by Reference CGA C–27 (2019)

In its petition (P–1746),[35] CGA proposes that PHMSA incorporate by reference CGA C–27 (2019), ''Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes,'' First Edition. PHMSA notes that this publication defines ''tube'' as a seamless steel pressure vessel with openings at both ends and with a water capacity of 120 L or greater. CGA requests PHMSA revise § 180.212(a)(1) to allow for repairs of a seamless steel DOT 3-series cylinder at a repair facility that holds a valid ''K'' number approval, issued under the provisions in § 107.805. Cylinder owners would be permitted to apply to reduce the service pressure of cylinders in accordance with CGA C–27. Approved facilities would then process these applications to determine if a DOT 3-Series cylinder rejected for insufficient minimum wall thickness could be derated from the original marked service pressure. In the NPRM, PHMSA proposed to incorporate by reference CGA C–27 (2019), ''Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes,'' First Edition.

CGA C–27 provides a standard procedure to derate the service pressure of DOT 3-series seamless steel tubes with local thin areas in the walls of the tube that do not meet the minimum thickness criteria of the specification. Derating is the lowering of the maximum allowable service pressure of a cylinder due to thinning of a cylinder's walls to extend the life of the cylinder. In accordance with CGA C–27, any tube with a suspect thin area found during AET, UE, or visual inspection must be evaluated in accordance with CGA C–20. If the tube does not meet the minimum thickness requirements in Section 4b of CGA C–27, a cylinder owner may apply to PHMSA to reduce the marked service pressure of the cylinders, in accordance with Section 4c of CGA C–27. The procedure to derate a tube must be performed by a DOT-approved repair facility. CGA C–27 does not apply to tubes that have been condemned from any requalification method. Cylinder repair shops must be approved by PHMSA to have the authority to repair a cylinder. These companies receive a K-number from PHMSA, and the K-number approval indicates whether a company is authorized to perform repairs or rebuilds of cylinders, and in this case, DOT 3-series tubes.

CGA asserts that the incorporation by reference of CGA C–27 will minimize inquiries to PHMSA by standardizing and codifying the existing process under the PHMSA document ''Guidance for Applications to Down-Rate the Service Pressure of DOT Seamless Steel Cylinders (Rev. 3/27/13),'' [36] and provide persons seeking to derate a tube with instruction on pertinent information to submit to PHMSA in a logical and consistent manner.

As noted in the NPRM, PHMSA conducted a technical review of the proposals in the petition, including a review of CGA C–27, and found that the method for pressure derating of tubes is essentially the same as what is outlined in the PHMSA guidance document. Both documents provide instructions on how persons should conduct an initial inspection using CGA C–6 (2013), ''Standard for Visual Inspection of Steel Compressed Gas Cylinders,'' to establish that the tube is in good physical, serviceable condition for pressure derating with no rejectable corrosion, pitting, dents, gouges, or other defects. If deemed suitable for pressure derating, the tube should undergo 100 percent ultrasonic testing (UT) to establish a minimum sidewall thickness on which to base the new reduced service pressure. The methodology used to calculate the new service pressure is the same as the current methodology used to determine the allowable service pressure for DOT 3-series seamless steel cylinders found in the HMR at §§ 178.36 (3A and 3AX), 178.37 (3AA and 3AAX), and 178.38 (3B). The calculations should then be certified by the tube manufacturer, or by the Independent Inspection Agency (IIA) if the tube manufacturer is no longer in service or available. IIAs are approved by the Associate Administrator to perform a review of a company's inspection or requalification operation. In summary, the PHMSA technical review found that the procedures in CGA C–27 are equivalent to the procedure established in the PHMSA guidance document for pressure derating of tubes and should have no impact on safety.

As noted in the NPRM, PHMSA conducted an economic evaluation of this petition and found that no benefits or additional costs other than the cost to obtain the publication are expected as a result of the changes in this petition. A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments in support of the revisions from CGA. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA incorporates by reference CGA C–27, ''Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes,'' First

[35] P–1746—CGA (PHMSA–2020–0116), *https://www.regulations.gov/docket/PHMSA-2020-0116.*

[36] *https://www.regulations.gov/document/PHMSA-2020-0116-0003.*

Edition, in § 171.7. PHMSA also adds § 180.212(a)(4) for instruction on derating of a cylinder reference to CGA C–27.

P. Incorporate by Reference CGA C–29 (2019)

In its petition (P–1747),[37] CGA proposes that PHMSA incorporate by reference CGA C–29 (2019), ''Standard for Design Requirements for Tube Trailers and Tube Modules,'' First Edition, which would supersede CGA TB–25 (2018), ''Design Considerations for Tube Trailers.'' CGA also proposes conforming revisions to § 173.301 to replace references to CGA TB–25 with references to CGA C–29. In the NPRM, PHMSA proposed to incorporate by reference CGA C–29 (2019), ''Standard for Design Requirements for Tube Trailers and Tube Modules,'' in § 171.7, and revise § 173.301 to replace references to CGA TB–25 with references to CGA C–29.

CGA C–29 defines basic design requirements for tube trailers and tube modules to maintain structural integrity during normal conditions of handling and transport. A tube trailer or tube module manufactured in accordance with this standard is less likely to have a separation of the tubes from the trailer or bundle, or an unintentional release of product when subjected to the multidirectional forces that can occur during a highway collision, including a rollover accident. Under this standard, tube modules must meet the loading and accident protection standards that are applied to tube trailers.

In its petition, CGA outlines the changes between the CGA TB–25 (currently incorporated by reference in § 171.7) and CGA C–29. Examples of these revisions include:

- Changing the Technical Bulletin to a CGA Standard.
- Changing the title of the document to ''Standard for Design Requirements for Tube Trailers and Tube Modules.''
- Adding a scope section that specifies that CGA C–29 is not applicable to a MEGC because MEGC design requirements are found in § 178.75.
- Providing several examples of testing and methods that meet the requirement of verifiable performance testing and analytical methods within the basic design requirements section.
- Changing ''should'' to ''shall'' in several places within the document to provide a standard that includes enforceable language.
- Referencing CGA C–23, ''Standard for Inspection of DOT/TC 3 Series and ISO 11120 Tube Neck Mounting Surfaces,'' Second Edition.

CGA developed CGA C–29 to supersede TB–25 and asserts that CGA C–29 provides a more optimal level of safety for the public and a satisfactory performance standard when cylinders are mounted on motor vehicles or in frames for transportation. In addition, CGA asserts that C–29 provides more enforceable language, whereas TB–25 does not (*i.e.,* use of ''shall'' vs. ''should'').

As noted in the NPRM, PHMSA conducted a technical review of the petition and supporting documents and found that CGA C–29 is technically accurate, consistent with CGA TB–25, and provides safety improvements for the transport of tube trailers. Additionally, PHMSA concludes that tube trailers or modules manufactured in accordance with CGA C–29 are less likely to have separation of tubes from the trailer or bundle, which could result in the unintentional release of hazardous materials, when subjected to multidirectional forces that can occur in highway collisions, including rollover accidents. Therefore, PHMSA asserts the incorporation by reference of CGA C–29 will enhance the safe transportation of hazardous materials in tube trailers.

As noted in the NPRM, PHMSA conducted an economic evaluation and found that most operators are already following the guidelines in CGA C–29, and thus there are limited quantifiable economic benefits. The largest potential source of benefits from mandatory adoption is enhanced safety through a more standardized qualification and testing regime. Minor economic benefits might also be derived from the editorial and definitional clarifications provided in the updated CGA requirements. Making requirements for operators clearer and easier to follow would support compliance with the regulation. A more detailed discussion of the economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments in support of the proposed revision from CGA. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA incorporates by reference CGA C–29, ''Standard for Design Requirements for Tube Trailers and Tube Modules,'' First Edition, into § 171.7, and removes the references to CGA TB–25, ''Design Considerations for Tube Trailers.'' PHMSA also revises § 173.301(i) to replace references to CGA TB–25 with references to CGA C–29.

Q. Incorporate by Reference CGA V–9 (2019)

In its petition (P–1748),[38] CGA requests that PHMSA incorporate by reference CGA V–9 (2019), ''Compressed Gas Association Standard for Compressed Gas Cylinder Valves,'' Eighth Edition. The HMR currently references the Seventh Edition of CGA V–9 (2012). The major updates to CGA V–9 (2019) ensure continuity and consistency with the testing requirements of ISO 10297, ''Gas cylinder—Cylinder valves—Specification and Type Testing.'' In the NPRM, PHMSA proposed to incorporate by reference CGA V–9 (2019), ''Compressed Gas Association Standard for Compressed Gas Cylinder Valves,'' Eighth Edition.

The CGA V–9 (2019) standard covers compressed gas cylinder valve design, selection, manufacture, and use, including performance requirements such as operating temperature limits, pressure ranges, and flow capabilities. The standard also includes requirements for materials, inlet and outlet connections, cleaning, qualification and production testing, maintenance, and reconditioning. In addition, CGA V–9 (2019) includes guidelines and requirements for the design, material selection, testing, and marking of cylinder valve protection caps. Finally, the standard provides a listing of valve types and associated drawings and their application and limitations.

As noted in the NPRM, PHMSA conducted a technical review of CGA V–9 (2019) and verified updates and revisions made to CGA V–9 (2012), which is currently incorporated by reference in the HMR. PHMSA found these revisions were primarily editorial in nature, except for the revision to harmonize CGA V–9 (2019) with the testing requirements of ISO 10297. Because PHMSA has already incorporated by reference ISO 10297 in the HMR, there is no technical reason to not incorporate by reference the updated version of CGA V–9 (2019), which references the ISO 10297 standard. In addition, because CGA–V–9 (2019) now references ISO 10297, it will allow greater flexibility in selecting and qualifying valves, and thus avoid redundant compliance with both ISO 10297 and CGA V–9 (2019).

PHMSA asserts that this incorporation by reference will result in benefits to the industry, as CGA V–9 (2019) allows the use of listed valves in other standards, such as those qualified to ISO 10297,

[37] P–1747—CGA (PHMSA–2020–0117), *https://www.regulations.gov/docket/PHMSA-2020-0117.*

[38] P–1748—CGA (PHMSA–2020–0124), *https://www.regulations.gov/docket/PHMSA-2020-0124.*

thereby avoiding or minimizing additional qualification costs. Manufacturers and users of compressed gas cylinder valves would no longer need to conduct two different tests to satisfy ISO 10927 (as currently required by the HMR) and CGA V–9 (2019). A more detailed discussion of this economic analysis of this revision can be found in the RIA posted to the docket for this rulemaking.

PHMSA received comments in support of the proposed revisions from CGA. PHMSA did not receive any comments in opposition to the proposed revision. Therefore, PHMSA revises § 171.7(n)(26) to replace CGA V–9 (2012), ''Compressed Gas Association Standard for Compressed Cylinder Valves,'' Seventh Edition, with CGA V–9 (2019), ''Compressed Gas Association Standard for Compressed Cylinder Valves,'' Eighth Edition.

R. Phaseout of Hydrofluorocarbons (HFCs)

The Environmental Protection Agency (EPA) published a final rule [39] to issue regulations implementing certain provisions of the American Innovation and Manufacturing (AIM) Act,[40] as enacted on December 27, 2020. One provision of the AIM Act mandates the phasedown of HFCs—a group of chemicals commonly referred to as refrigerants because of their primary use for cooling and refrigeration applications like air conditioning—by at least 85 percent by 2036. HFCs are highly potent greenhouse gases that trap heat in the atmosphere and warm the planet. The AIM Act directs the EPA to implement the phasedown by issuing a fixed quantity of transferrable production and consumption allowances, which producers and importers of hydrofluorocarbons must hold in quantities equal to the number of hydrofluorocarbons they produce or import. For the time period of 2022–2050, the EPA estimated the rulemaking would avoid cumulative emissions of 4,560 million metric tons of exchange value equivalent [41] of HFCs in the United States with a present value of cumulative net benefits of $272.7 billion.[42]

The EPA final rule implemented a two-stage approach that would first prohibit additional disposable cylinders (*i.e.,* non-refillables) from being introduced to the market by January 1, 2025, and second, prohibit sales altogether by January 1, 2027. A primary example of a non-refillable cylinder authorized for transport of HFCs is a DOT 39 cylinder. In the final rule, EPA noted that the AIM Act gives the agency broad authority to implement these prohibitions relating to the sale or distribution, or offer for sale or distribution, of regulated substances that were illegally produced or imported.

In the NPRM, PHMSA proposed adopting the same prohibition on the filling and transportation of certain HFCs in non-refillable cylinders to align with EPA's efforts to fulfill the AIM Act mandate and combat climate impacts, and to avoid potential confusion by industry if PHMSA were to continue to authorize these materials in non-refillable cylinders while prohibited by EPA. In response to this proposal PHMSA received comments from seven different entities opposing the phaseout of HFCs in non-refillable cylinders. Commenters noted that—in their opinion—the proposal goes beyond PHMSA's authority, and therefore PHMSA should not phaseout non-refillable cylinders in the final rule. Additionally, commenters noted that on June 20, 2023, the United States Court of Appeals for the District of Columbia issued a ruling [43] that vacated two provisions of the EPA's Phasedown Rule for HFCs. The court found that the EPA did not have statutory authority to require the use of refillable cylinders or to implement a QR code tracking system for HFCs. PHMSA's proposal to phaseout non-refillable cylinders for the transportation of HFCs was predicated on harmonizing the HMR with the EPA regulations. Following the decision by the United States Court of Appeals for the District of Columbia, PHMSA is no longer considering the phaseout of HFCs in this final rule, and will not finalize the proposal to prohibit the filling and transportation of certain HFCs in non-refillable cylinders.

S. Emergency Processing of Special Permits

Section 107.117 outlines the conditions necessary for applicants who apply for emergency processing of their special permit request. PHMSA occasionally issues a special permit that the Associate Administrator determines is needed to address an imminent safety issue, a threat to national security, or to prevent significant economic loss. *See* § 107.117(a). However, PHMSA has found it necessary to add an additional criteria due to situations that require processing of an emergency special permit but are not clearly outlined in the current § 107.117(a). To meet this need, PHMSA proposed adding a new paragraph (a)(4) to provide clarification that the Associate Administrator may also approve emergency processing of a special permit in support of certain essential governmental functions—both foreign and domestic. For example, a foreign government request for the emergency processing of a special permit application regarding the timely movement of a hazardous material—from or through the United States—in support of law enforcement, life safety (*e.g.,* providing health services items or equipment containing hazardous materials during a pandemic), or judicial activities may qualify under the new paragraph. Furthermore, to provide additional clarification of § 107.117(a)(2), PHMSA proposed to split the current clauses into two distinct paragraphs—(a)(2) and (3).

PHMSA received comments from COSTHA in support of both revisions as proposed. PHMSA did not receive any comments in opposition to the proposed revisions. Therefore, to provide two instances of clarification of § 107.117(a), PHMSA will add a new paragraph (a)(4) and split the current clauses from paragraph (a)(2) into two distinct paragraphs—(a)(2) and (3).

V. Section-by-Section Review

Below is a section-by-section description of the revisions.

A. Section 107.117

Section 107.117 outlines situations when emergency processing of special permits may be appropriate. In this final rule, PHMSA adds § 107.117(a)(4) to clarify that PHMSA may use emergency processing of special permits in support of essential governmental functions. Separately, to provide clarification of § 107.117(a)(2), PHMSA is splitting the current clauses into two distinct paragraphs—(a)(2) and (3).

B. Section 171.7

Section 171.7 lists all standards incorporated by reference into the HMR that are not specifically set forth in the regulations. In this final rule, PHMSA incorporates by reference the following publications by CGA, IME, and the UN:

- CGA C–7 (2020), *Guide to Classification and Labeling of Compressed Gases* (Eleventh Edition), into § 172.400a. This publication has been prepared as a guide for the

[39] 86 FR 55116 (Oct. 5, 2021).

[40] *https://www.epa.gov/climate-hfcs-reduction/aim-act.*

[41] EPA uses the term ''exchange value equivalent'' to provide a common unit of measure between HFCs, and the AIM Act defines ''exchange value'' as the value assigned to a regulated substance (*i.e.,* a regulated HFC).

[42] 86 FR 55116 (Oct. 5, 2021).

[43] *https://www.govinfo.gov/app/details/USCOURTS-caDC-21-01251/USCOURTS-caDC-21-01251-0.*

classification and labelling of compressed gases. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

• CGA C–20 (2014), *Requalification Standard for Metallic, DOT, and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination* (Second Edition), into § 180.205. This publication is used for the requalification of seamless cylinders and tubes using UE. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

• CGA C–23 (2018), *Standard for Inspection of DOT/TC 3 Series and ISO 11120, Tube Neck Mounting Surfaces* (Second Edition), into §§ 180.205 and 180.207. This publication applies to the inspection and evaluation of DOT/TC 3-Series and ISO 11120 tubes 12 ft (3.7 m) or longer with an outside diameter greater than or equal to 18 in (457 mm) that are supported by the neck mounting surface. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

• CGA C–27 (2019), *Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes* (First Edition), into § 180.212. This publication provides a standard procedure to derate the service pressure of DOT 3-series seamless steel tubes with local thin areas (LTA) that do not meet the minimum wall thickness of certain DOT specifications. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

• CGA C–29 (2019), *Standard for Design Requirements for Tube Trailers and Tube Modules* (First Edition), into § 173.301. This publication defines basic design requirements for tube trailers and tube modules, manufactured or modified on or after May 11, 2009, to maintain structural integrity during normal conditions of handling and transport. It is general in nature and does not cover all circumstances for each individual cylinder type or lading. Tube trailers manufactured or modified before May 11, 2009, can continue to follow the requirements in TB–25, ''Design Considerations for Tube Trailers.'' Any modifications to the tube trailer, however, should be done in accordance with CGA C–29.

• CGA V–9 (2019), *Compressed Gas Association Standard for Compressed Gas Cylinder Valves* (Eighth Edition), into § 173.301. This publication covers cylinder valve design, manufacture, and use including performance requirements such as operating temperature limits, pressure ranges, and flow capabilities. It is general in nature and does not cover all circumstances for each individual cylinder type or lading.

• SLP–22 (2019), *Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials,* into §§ 173.63 and 177.835. This publication outlines the guidelines for the safe transportation of detonators in commercial transportation.

• SLP–23 (2021), *Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging,* into §§ 172.102, 173.66 introductory text, 173.251, and 177.835(d). This publication specifies the requirements for the transportation in bulk packaging of certain Class 1 and Class 5 hazardous materials essential to commercial blasting operations.

• *European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR),* which is already incorporated by reference in § 171.23, into § 171.8. The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) outlines regulations concerning the international carriage of dangerous goods by road within the EU and other countries that are party to the agreement. This publication presents the European Agreement, the Protocol Signatures, the annexes, and the amendments. In addition to a new title, the 2020 edition of this document includes amendments necessary to ensure harmonization of ADR with the UN Model Regulations, additional amendments adopted by the Working Group on Tanks, as well as amendments proposed by the Working Group on Standards.

• United Nations' *Recommendations on Test Series 8: Applicability of Test Series 8(d),* June 2019, into § 172.102(c)(1), special provision 148. This test series is used to determine if an ammonium nitrate emulsion, suspension, or gel, intermediate for blasting explosives (ANE), is insensitive enough for inclusion in Division 5.1, and to evaluate the suitability for transport in tanks.

Additionally, CGA has moved to a new headquarters location. Therefore, we have revised § 171.7(n) accordingly.

C. Section 171.8

Section 171.8 defines terms used throughout the HMR that have broad or multi-modal applicability. PHMSA modifies the definition of *liquid* in § 171.8 to include the test for determining fluidity (penetrometer test) prescribed in section 2.3.4 of Annex A of the ADR as an alternative method for determining if a material is a liquid.

D. Section 172.101

The HMT is contained in § 172.101. The HMT lists alphabetically, by proper shipping name, those materials that have been designated hazardous materials for the purpose of transportation. It provides information used on shipping papers, package marking, and labeling, as well as other pertinent shipping information for hazardous materials. PHMSA amends the HMT by referencing special provision TP48 in Column (7) of the HMT for the following HMT entries: ''UN0332, Explosive, Blasting, type E;'' ''UN3375, Ammonium nitrate emulsion;'' and ''UN3139, Oxidizing liquid n.o.s. (PG II).''

E. Section 172.102

Section 172.102 lists special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging requirements, prohibitions, and exceptions applicable to quantities or forms of hazardous materials. PHMSA adds a new special provision—''TP48''—to allow the use of IM 101 and 102 portable tanks when transported in accordance with SLP–23. In addition, PHMSA revises special provision ''148'' to require materials assigned this provision to be subject to the Vented Pipe Test (VPT). This ensures continued performance of VPT requirements in the absence of required use of the test in the update of the incorporation by reference of IME SLP–23.

F. Section 172.514

Section 172.514 prescribes the placarding requirements for bulk packagings. PHMSA revises § 172.514(c)(1) and (4) to allow an option to use a placard that meets the label specification size requirements in § 172.407(c) for combustible liquids transported in IBCs and portable tanks.

G. Section 173.4b

Section 173.4b prescribes exceptions for transporting certain hazardous materials in *de minimis* quantities. PHMSA revises paragraph (a) to include Division 6.1, PG I materials (no inhalation hazard) in the list of materials authorized for this exception.

H. Section 173.115

Section 173.115 prescribes definitions for Class 2, Divisions 2.1, 2.2, and 2.3 hazardous materials. PHMSA revises § 173.115(e) to state that gas mixtures with component(s) that are liquefied gases may be described using the

appropriate hazardous materials description of a non-liquefied compressed gas in the HMT at § 172.101 when the partial pressure(s) of the liquefied component(s) in the mixture are reduced so that the mixture is entirely in the gas phase at 20 °C.

I. Section 173.185

Section 173.185 prescribes the requirements for packaging and transporting lithium cells and batteries. PHMSA revises paragraph (c)(3) to clarify that lithium button cell batteries contained in equipment are not subject to any per package or consignment limitations.

J. Section 173.251

Section 173.251 outlines the bulk packaging requirements for ammonium nitrate emulsion, suspension, or gel. PHMSA revises § 173.251 to state that this section is not applicable when ''UN3375, Ammonium nitrate emulsion'' is transported in IM 101 or 102 portable tanks in accordance with SLP–23 (2021).

K. Section 173.301

Section 173.301 outlines the general requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles, and spherical pressure vessels. PHMSA revises § 173.301 to replace references to CGA TB–25 with references to CGA C–29.

L. Section 173.302a

Section 173.302a specifies the additional requirements for shipment of non-liquefied (permanent) compressed gases in specification cylinders. PHMSA revises paragraph (c) by redesignating § 173.302a(c)(3)(i) and (ii) as § 173.302a(c)(4) and (5) to properly reflect that the safety provisions currently in § 173.302a(c)(3)(i) and (ii) are independent material construction requirements under paragraph (c). PHMSA also adds paragraph (c)(6) to require that cylinders be equipped with pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with CGA S–1.1 (previously in paragraph (c)(4)). Lastly, PHMSA adds paragraph (c)(7) to require a plus sign (+) be added following the test date marking on the cylinder to indicate compliance with paragraph (c) of this section.

M. Section 173.302b

Section 173.302b describes the additional requirements for shipment of non-liquefied (permanent) compressed gases in UN pressure receptacles. PHMSA revises this section by adding a new paragraph (f) to specify packaging restrictions for transporting compressed natural gas and methane in UN seamless steel pressure receptacles. For methane and natural gas with a methane content of 98 percent or greater, the maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 1100 MPa (159,542 psi), and the contents must be free of corroding components. For natural gas with methane content of less than 98 percent, the maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 950 MPa (137,750 psi). Additionally, each discharge end of a UN refillable seamless steel tube must be equipped with an internal drain tube, and the moisture content and concentration of the corroding components must conform to the requirements in § 173.301b(a)(2).

N. Section 178.601

Section 178.601 prescribes the general requirements for the testing of non-bulk performance-oriented packagings and packages. PHMSA redesignates paragraphs (g)(6) through (8) as paragraphs (g)(7) through (9) and adds new paragraph (g)(6) to allow packages tested with articles containing small arms, *i.e.,* ammunition without intermediate packaging(s), to be assembled with any intermediate packaging(s) without further testing. Moreover, PHMSA revises the redesignated paragraph (g)(8) approval provision to include new paragraph (g)(6), such that paragraphs (g)(1) through (7) are referenced in the revised paragraph (g)(8).

O. Section 180.205

Section 180.205 prescribes the general requirements for requalification of specification cylinders. PHMSA revises this section to incorporate provisions consistent with CGA C–20–2014, ''Requalification Standard for Metallic, DOT and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination'' (Second Edition), which allow for the use of UE for cylinder requalification. PHMSA revises paragraph (e)(2) to state that cylinders in corrosive liquid service are still required to do both an internal and external visual inspection. PHMSA is revising paragraph (f)(2) to state that if a cylinder or tube is requalified by ultrasonic examination, only an external visual inspection is required. Additionally, PHMSA adds a new paragraph (h) to specify that requalification using UE must be done in accordance with CGA C–20 and by a facility approved by PHMSA for performing UE operations. PHMSA revises paragraphs (i) and (j) to specify the rejection requirements for a cylinder that fails requalification tests.

PHMSA also adds § 180.205(c)(5). This paragraph specifies that a DOT 3-series specification cylinder that is 12 feet or longer with an outside diameter greater than or equal to 18 inches and supported by the neck mounting surface during transportation in commerce must be inspected at least every 10 years in accordance with CGA C–23. Lastly, PHMSA adds paragraph (d)(5) to specify the conditions for removal and examination of cylinders in accordance with CGA C–23.

P. Section 180.207

Section 180.207 prescribes the requirements for the requalification of UN pressure receptacles. PHMSA revises § 180.207(d)(1) to require that each seamless steel UN pressure receptacle that is 12 feet or longer with an outside diameter greater than or equal to 18 inches supported by the neck mounting surface during transportation in commerce be inspected at least every 10 years in accordance with CGA C–23. In addition, PHMSA specifies conditions for removal and examination of the cylinder in accordance with CGA C–23.

Q. Section 180.209

Section 180.209 describes the requalification requirements for specification cylinders. PHMSA is making an editorial revision to table 1 in paragraph (a) to reference the UE for 3T and special permit cylinders. PHMSA is also making editorial revisions to paragraphs (d) and (m) to reference § 180.205(j) instead of § 180.205(i) to conform with a redesignation of that paragraph.

R. Section 180.212

Section 180.212 specifies the requirements for the repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles. PHMSA adds § 180.212(a)(4) to allow derating the service pressure of DOT 3-series seamless steel tubes. PHMSA also revises § 180.212(b)(2) to: (1) allow, as a repair, the external threading of a DOT 3-series cylinder or a seamless UN pressure receptacle manufactured without external threads; and (2) not limit external rethreading to UN pressure receptacles mounted in a MEGC.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This rulemaking is published under the authority of Federal Hazardous Materials Transportation Law (Federal

Hazmat Law; 49 U.S.C. 5101 *et seq.*), which authorizes the Secretary of Transportation to ''prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.'' The Secretary has delegated the authority granted in the Federal Hazmat Law to the PHMSA Administrator at 49 CFR 1.97. This rulemaking amends several sections of the HMR in response to petitions for rulemaking received from the regulated community.

B. Executive Orders 12866 and 14094, and DOT Regulatory Policies and Procedures

Executive Order 12866 (''Regulatory Planning and Review''),[44] as amended by Executive Order 14094 (''Modernizing Regulatory Review''),[45] requires that agencies ''should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' Agencies should consider quantifiable measures and qualitative measures of costs and benefits that are difficult to quantify. Further, Executive Order 12866 requires that agencies should select those regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach. Similarly, DOT Order 2100.6A (''Rulemaking and Guidance Procedures'') requires that regulations issued by PHMSA and other DOT Operating Administrations should consider an assessment of the potential benefits, costs, and other important impacts of the proposed action, and should quantify (to the extent practicable) the benefits, costs, and any significant distributional impacts, including any environmental impacts.

Executive Order 12866 and DOT Order 2100.6A require that PHMSA submit ''significant regulatory actions'' to the Office of Management and Budget (OMB) for review. This rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 (as amended) and, therefore, was not formally reviewed by OMB. This rulemaking is also not considered a significant rule under DOT Order 2100.6A.

PHMSA is responding to 18 petitions that have been submitted by the public in accordance with the APA and PHMSA's rulemaking procedure regulations (49 CFR 106.95 and 106.100). Overall, this final rule would maintain the continued safe transportation of hazardous materials while producing a net cost savings. PHMSA's findings are summarized here and described in further detail in the Regulatory Impact Analysis (RIA), which can be found in the regulatory docket (Docket ID: PHMSA–2020–0102) at *www.regulations.gov.*

Summary of Findings

PHMSA estimates a present value of quantified net cost savings of approximately $19.95 million over a perpetual time horizon and $1.99 million annualized at a two percent discount rate. These estimates do not include non-monetized and qualitative cost/cost savings discussed in the RIA.

PHMSA's cost savings analysis relies on the monetization of impacts for seven petitions included in this rulemaking. All but one of these petitions have annualized cost savings. The following table presents a summary of the seven petitions that would have monetized impacts upon codification and contribute to PHMSA's estimation of quantified net cost savings.

TOTAL ESTIMATED COST SAVINGS, 2024–2033, DISCOUNTED AT 2% RATE, 2023$USD

	Rule provision	Total net cost savings	Annualized net cost savings
P–1718	49 CFR 173.4b	$1,785,696	$178,570
P–1727	49 CFR 180.205	303,127	30,313
P–1729	49 CFR 171.7	(127,026)	(12,703)
P–1731	49 CFR 171.7(r)(2)	67,460	6,746
P–1732	49 CFR 178.503(a)(6)	8,267,109	826,711
P–1734	49 CFR 172.514(c)(4)	4,244	424
P–1736	49 CFR 171.7(r)(1)	9,655,983	965,598
Total		19,956,593	1,995,659

In addition to these seven items, PHMSA described an additional 11 items that may streamline regulatory compliance. While information gaps prevent quantification of cost savings for these items, PHMSA has determined they provide relief from unnecessary requirements or provide additional flexibility without compromising safety.

Conclusion

This final rule is not considered a significant regulatory action within the meaning of Executive Order 12866, as amended, and DOT policies and procedures. (*See* DOT Order 2100.6A.) The economic effects of this regulatory action would not have an effect on the economy that exceeds the annual monetary threshold defined by Executive Order 12866 (as amended), and that the regulatory action is not otherwise significant. PHMSA estimates a present value of quantified net cost savings of approximately $19.95 million over a perpetual time horizon and $1.99 million annualized at a two percent discount rate. Please see the RIA in the regulatory docket for additional detail and a description of PHMSA's methods and calculations.

C. Executive Order 13132

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'')[46] and the Presidential memorandum (''Preemption'').[47] Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of

[44] 58 FR 51735 (Oct. 4, 1993).

[45] 88 FR 21879 (April 11, 2023). PHMSA acknowledges that a recent update to Circular A–4 contemplates that agencies will use a different discount rate than those employed in the discussion below and the Regulatory Impact Analysis (RIA) beginning in January 2025. However, PHMSA notes that that update to Circular A–4 permits the use of those historical discount rates based on the **Federal Register** publication date of this final rule. See OMB, Circular A–4, ''Regulatory Analysis'' at 93 (Nov. 9, 2023).

[46] 64 FR 43255 (Aug. 10, 1999).

[47] 74 FR 24693 (May 22, 2009).

regulatory policies that may have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' This rulemaking does not revise any regulation that has substantial direct effects on the states; the relationship between the National Government and the states; or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Federal Hazmat Law contains a general preemption provision (49 U.S.C. 5125(a)) in the event compliance with a State, local, or Native American Tribe requirement is not possible or presents an obstacle to compliance. Additionally, Federal Hazmat Law contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Native American Tribal requirements on:

(1) The designation, description, and classification of hazardous materials.

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents.

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items above and preempts State, local, and Indian Tribe requirements not meeting the ''substantively the same'' standard. DOT has determined that this final rule would provide cost savings and regulatory flexibility to the regulated community without compromising safety.

D. Executive Order 13175

This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'') [48] and DOT Order 5301.1A (''Department of Transportation Tribal Consultation Policy and Procedures''). Executive Order 13175 requires agencies to assure meaningful and timely input from Indian Tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities, or the relationship and distribution of power between the Federal Government and Tribes.

PHMSA has determined that this rulemaking does not have substantial Tribal implications, because it will not substantially or uniquely affect Tribal communities or Indian Tribal governments. The final rule's regulatory amendments are facially neutral and will have broad, national scope; the rule will not significantly or uniquely affect Tribal communities, much less impose substantial compliance costs on Native American Tribal governments or mandate Tribal action. And insofar as PHMSA concludes that the final rule will improve safety and reduce environmental risks associated with transportation of hazardous materials, PHMSA expects it will not entail disproportionately high adverse risks for Tribal communities. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (RFA; 5 U.S.C. 601 *et seq.*), requires agencies to consider whether a rulemaking would have a ''significant economic impact on a substantial number of small entities'' to include small businesses; not-for-profit organizations that are independently owned and operated and are not dominant in their fields; and governmental jurisdictions with populations under 50,000. The RFA directs agencies to establish exceptions and differing compliance standards for small businesses, where possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') [49] requires agencies to establish procedures and policies to promote compliance with the RFA and to ''thoroughly review draft rules to assess and take appropriate account of the potential impact'' of the rules on small businesses, governmental jurisdictions, and small organizations. The DOT posts its implementing guidance on a dedicated web page.

This rulemaking has been developed in accordance with Executive Order 13272 and DOT's procedures and policies to promote compliance with the RFA and ensure that potential impacts of rulemakings on small entities are properly considered. PHMSA prepared an initial regulatory flexibility analysis within the Preliminary Regulatory Impact Analysis (PRIA) supporting the NPRM. The small entities that could be impacted by this rule include all small entities engaged in the shipment of hazardous materials that are already subject to HMR requirements. PHMSA expects this final rule to facilitate new technologies or other changes that provide safety equivalence at lower cost; streamline or reduce recordkeeping and other paperwork and reporting requirements; and address other changes to reduce the regulatory burden of the HMR. PHMSA has individually evaluated each of the regulatory amendments contained in this rulemaking using available information, and PHMSA certifies that the changes adopted in this final rule will (neither individually nor in the aggregate) have a significant economic impact on a substantial number of small businesses. PHMSA has provided a regulatory flexibility analysis for this final rule within the RIA in the docket for this proceeding.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), no person is required to respond to any information collection unless it has been approved by OMB and displays a valid OMB control number. Pursuant to 44 U.S.C. 3506(c)(2)(B) and 5 CFR 1320.8(d), PHMSA must provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests.

PHMSA has analyzed this rulemaking in accordance with the Paperwork Reduction Act. This final rule does not impose new information collection requirements. PHMSA currently has an approved information collection under OMB Control No. 2137–0051, entitled ''Rulemaking, Special Permits, and Preemption Requirements,'' expiring on November 30, 2024. This rulemaking eliminates the need for persons to renew a special permit, resulting in a decrease in burden. PHMSA estimates the reduction in information collection burden as follows:

OMB Control No. 2137–0051: Rulemaking, Special Permits, and Preemption Requirements.

[48] 65 FR 67249 (Nov. 6, 2000).

[49] 67 FR 53461 (Aug. 16, 2002).

Decrease in Annual Number of Respondents: 139.

Decrease in Annual Responses: 139.

Decrease in Annual Burden Hours: 208.5.

Decrease in Annual Burden Cost: $0.

PHMSA did not receive any comments related to the Paperwork Reduction Act in the comments to the NPRM. Please direct your requests for a copy of this information collection to Steven Andrews, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, 2nd Floor, Washington, DC 20590–0001.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. For any NPRM or final rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, or by the private sector of $100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the Federal mandate.

As explained in the RIA, available for review in the docket, this final rule does not impose unfunded mandates under the UMRA. It does not result in costs of $100 million or more in 1996 dollars to either State, local, or Tribal governments, or to the private sector, in any one year. Therefore, the analytical requirements of UMRA do not apply. A copy of the RIA is available for review in the docket.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requires that Federal agencies analyze actions to determine whether the action would have a significant impact on the human environment. The Council on Environmental Quality implementing regulations (40 CFR parts 1500 through 1508) requires Federal agencies to consider the environmental impacts of their actions in the decision-making process. NEPA requires Federal agencies to assess the environmental effects of proposed Federal actions prior to making decisions and involve the public in the decision-making process. Agencies must prepare an environmental assessment (EA) for an action for which a categorical exclusion is not applicable, and is either unlikely to have significant effects or when significance of the action is unknown. In accordance with these requirements, an EA must briefly discuss: (1) the need for the action; (2) the alternatives considered; (3) the environmental impacts of the action and alternatives; and (4) a listing of the agencies and persons consulted. If, after reviewing the EA and public comments (as applicable), in response to a draft EA (DEA), an agency determines that a proposed action will not have a significant impact on the human or natural environment, it can conclude the NEPA analysis with a finding of no significant impact (FONSI). DOT Order 5610.1C (''Procedures for Considering Environmental Impacts'') establishes departmental procedures for evaluation of environmental impacts under NEPA and its implementing regulations. PHMSA did not receive any comments related to the DEA in response to the NPRM. This final EA (FEA) adopts by reference the analysis included above in this final rule and in the NPRM.

1. Purpose and Need

In response to petitions for rulemaking submitted by the regulated community, PHMSA is amending the HMR to update, clarify, or streamline various regulatory requirements. Specifically, PHMSA amendments include—but are not limited to—the following: incorporating by reference (IBR) multiple publications from CGA, IME, and the UN; allowing for greater flexibility of packaging options in the transportation of compressed natural gas in cylinders; streamlining the approval application process for the repair of specific DOT specification cylinders; providing greater clarity regarding the filling requirements for certain cylinders used to transport hydrogen and hydrogen mixtures; streamlining hazard communication by allowing marking exceptions under certain conditions during the transportation of lithium button cell batteries; and modifying the definition of liquid to include the test for determining fluidity (penetrometer test) prescribed in the ADR.

These amendments are intended to promote safety, provide clarity, and streamline regulatory requirements. The amendments were identified in response to petitions from stakeholders affected by the HMR. These amendments clarify the HMR and enhance safety, while offering some net economic benefits.

This action: (1) fulfills our statutory directive to promote transportation safety; (2) fulfills our statutory directive under the Administrative Procedure Act that requires Federal agencies to give interested persons the right to petition an agency to issue, amend, or repeal a rule (5 U.S.C. 553(e)); (3) supports governmental efforts to eliminate unnecessary burdens on the regulated community; (4) addresses safety concerns raised by petitioners and removes identified regulatory ambiguity; and (5) simplifies and clarifies the regulations to promote understanding and compliance.

These regulatory revisions would offer more efficient and effective ways of achieving the PHMSA goal of safe and secure transportation of hazardous materials in commerce, protecting both people and the environment.

2. Alternatives Considered

In this rulemaking, PHMSA is considering the following alternatives:

Alternative #1: No Action

If PHMSA were to select the No Action Alternative, current regulations would remain in place and no provisions would be amended or added.

Alternative #2: Amend the HMR as Provided in This Final Rule

The Final Rule Alternative would adopt the HMR amendments set forth in this final rule and was previously referred to as the ''Proposed Action Alternative'' in the draft environmental assessment (DEA) that was included within the NPRM. The amendments included in this alternative are more fully discussed in the preamble and regulatory text sections of this final rule.

3. Reasonably Foreseable Environmental Impacts of the Alternatives

Alternative #1 No Action

After careful consideration of public comments to the NPRM (none of which directly addressed the DEA), and revised analyses of economic and environmental impacts of the Proposed Action Alternative, PHMSA is adopting the Proposed Action Alternative (*i.e.,* the Final Rule) as the Selected Action. If PHMSA selected the No Action Alternative, the HMR would remain unchanged, and no provisions would be amended or added. However, any economic benefits gained through the proposals, which include harmonization in updates to transport standards, lists of regulated substances, definitions, packagings, markings requirements, shipper requirements, and modal requirements, would not be realized. Foregone efficiencies in the No Action Alternative also include freeing up limited resources to concentrate on hazardous materials transportation issues of potentially much greater environmental impact. Not adopting the environmental and safety requirements

in the final rule under the ''No Action Alternative'' would result in a lost opportunity for reducing negative environmental and safety-related impacts due to the revisions in this final rule decreasing the possibility of a hazardous release. Greenhouse gas emissions would remain the same under the No Action Alternative. However, the No Action Alternative could have a modest negative impact on GHG emissions. PHMSA anticipates the provisions for the transportation of compressed natural gas/methane in UN pressure receptacles to have a minimal positive effect on greenhouse gas emissions. This would result from stricter packaging restrictions that should result in fewer failures of these packages and thus, fewer releases of materials into the environment. Therefore, by choosing the No Action Alternative, a potential reduction in GHG emissions would not be achieved.

4. Final Action Alternative

When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the risk of release and resulting environmental impact; the risk to human safety, including any risk to first responders; the longevity of the packaging; and if the regulation would be carried out in a defined geographic area using specific resources, especially any sensitive areas and how they could be impacted by any regulations. The regulatory changes in this rulemaking have been determined to be clarification, technology/design updates, harmonization, regulatory flexibility, standard incorporation, or editorial in nature. As such, these amendments have little or no impact on the risk of release and resulting environmental impact, human safety, or longevity of the packaging. None of these amendments would be carried out in a defined geographic area because this is a nationwide rulemaking.

The ''Final Action Alternative'' encompasses enhanced and clarified regulatory requirements, which would result in increased compliance and fewer negative environmental and safety impacts. This EA incorporates the safety analyses in the preamble sections of the final rule. The table and list below summarize the possible environmental benefits, greenhouse gas emissions, and any potential negative impacts for the amendments in the final rule.

SUMMARY OF PROBABLE ENVIRONMENTAL IMPACTS BY AMENDMENTS

Amendment(s) to HMR (lettered as above herein)	Type of amendment(s)	Probable anticipated environmental impact(s)	Greenhouse gas emissions
1. P–1714—Transportation of Compressed Natural Gas/Methane in UN Pressure Receptacles.	Regulatory Flexibility	Minimal positive impacts	Minimal positive impacts.
2. P–1716—Threading and repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.	Regulatory Flexibility	No impacts	No impacts.
3. P–1717/P–1725—Clarification of the requirements for non-liquefied compressed gases.	Regulatory Flexibility	No impacts	No impacts.
4. P–1718—De minimus quantities of poisonous materials.	Regulatory Flexibility—Harmonization.	No impacts	No impacts.
5. P–1736—Clarification of the marking requirements for button cell lithium batteries contained in equipment.	Regulatory Flexibility	No impacts	No impacts.
6. P–1727—IBR of CGA C–20 (2014)	Standard Incorporation	No impacts	No impacts.
7. P–1728—Gas Mixtures Containing Components Defined as Liquefied Gases.	Regulatory Flexibility	No impacts	No impacts.
8. P–1729—Incorporation by reference of CGA C–23 (2018).	Standard Incorporation	Minimal positive impacts	No impacts.
9. P–1731—IBR of IME's Safety Library Publication 23 (SLP–23).	Standard Incorporation	No impacts	No impacts.
10. P–1732—Revision of testing and marking of UN specification packagings.	Regulatory Flexibility	No impacts	No impacts.
11. P–1734—Authorizing smaller-sized combustible placard on IBCs.	Regulatory Flexibility	No impacts	No impacts.
12. P1736—IBR of IME Safety Library Publication 22 (SLP–22).	Standard Incorporation	Minimal positive impacts	No impacts.
13. P–1738—Definition of a Liquid	Regulatory Flexibility—Harmonization.	No impacts	No impacts.
14. P–1744—Incorporate by reference updated Appendix A to CGA C–7 (2020).	Standard Incorporation	No impacts	No impacts.
15. P–1746—IBR of CGA C–27 (2019)	Standard Incorporation	No impacts	No impacts.
16. P–1747—IBR of CGA C–29 (2019)	Standard Incorporation	Minimal positive impacts	No impacts.
17. P–1748—IBR of CGA V–9 (2019)	Standard Incorporation	No impacts	No impacts.

1. *P–1714*—PHMSA is implementing packaging restrictions for the transportation of CNG and methane in UN seamless steel pressure receptacles with a tensile strength greater than 950 MPa. As discussed in sections III and IV of this final rule, the packaging restrictions should result in fewer failures of these packages and thus, fewer releases of materials into the environment. Additionally, because this revision involves the transportation of GHGs, its effect on the reduction of GHGs emissions may be minimal.

2. *P–1716*—PHMSA is revising the requirements for repairing seamless DOT 3-series specification cylinders and seamless UN pressure receptacles manufactured without external threads and authorizing the performance of this work without requiring prior approval from PHMSA. This revision provides regulatory flexibility while maintaining safety. As discussed in sections III and

IV of this final rule, PHMSA has determined that this is an improvement over the previous method of using set screws to secure the tubes, which resulted in indentations being carved into the tube necks as the tube jostled during transport. This revision is intended to lower the risk of an incident since this package is expected to increase safety, so the proposal may result in positive environmental impacts due to less risk of an accident in transportation. This revision will not result in any increase to GHG emissions due to the decreased probability of an incident involving these cylinders.

3. *P–1717/P–1725*—PHMSA is amending § 173.302a(c) of the HMR to reflect the independent material construction requirements for cylinders with special filling limits for DOT specification 3A, 3AX, 3AA, and 3AAX cylinders containing Division. 2.1 (flammable) gases. As discussed in sections III and IV of this final rule, these amendments would not represent any incremental, quantifiable safety effects because PHMSA already authorizes the transportation in commerce of hydrogen and mixtures of hydrogen with helium, argon, or nitrogen in certain cylinders filled to 10 percent in excess of their marked service pressures. Therefore, this revision will not have any impacts on the environment nor GHG emissions.

4. *P–1718*—PHMSA is amending § 173.4b to harmonize the *de minimis* exceptions for Division 6.1, PG I (no inhalation hazard) materials with international regulations. The release of Division 6.1, PG I materials, including toxic substances, poisons, and irritating material, can have a negative effect on human health and the environment due to toxicity levels of the material. However, as discussed in sections III and IV of this final rule, because the revisions would authorize an existing exception for *de minimis* quantities of additional materials with appropriate safeguards, PHMSA does not anticipate any significant environmental impacts nor any effects on GHG emissions.

5. *P–1726*—PHMSA is revising § 173.185(c)(3) to clarify that lithium button cell batteries installed in equipment are excepted from the marking requirement and not subject to the quantity per package or per consignment limitation. As discussed in sections III and IV of this final rule, because this is not a new requirement and simply clarifies the current requirements in the HMR, there are no environmental impacts and no changes in GHG emissions.

6. *P–1727*—PHMSA is incorporating by reference CGA C–20 (2014), ''Requalification Standard for Metallic, DOT, and TC 3-Series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition.'' CGA C–20 provides technical specification for the ultrasonic examination of cylinders. As discussed in sections III and IV of this final rule, PHMSA expects that the use of ultrasonic examination will provide a level of safety at least equivalent to what is currently allowed under the HMR. PHMSA already allows for the ultrasonic examination of certain cylinders (*see* § 180.212 for example). Additionally, § 180.205(f) will no longer require internal visual inspection for these cylinders once they have undergone ultrasonic examination, as these actions would be duplicative. The incorporation by reference of CGC C–20 will not have any environmental impacts and will not result in any increase to GHG emissions.

7. *P–1728*—PHMSA is authorizing an alternative description of gas mixtures containing components defined as liquefied gases. This revision helps clarify confusion among stakeholders when the content of a cylinder is described as a liquefied compressed gas that resembles a non-liquefied compressed gas. As discussed in sections III and IV of this final rule, PHMSA has determined that the revision is safety neutral or slightly improves safety, and will provide regulatory flexibility to the regulated community without a reduction in safety. For these reasons, this revision will not have any environmental impacts nor result in any increase to GHG emissions.

8. *P–1729*—PHMSA is incorporating by reference CGA C–23 (2018), ''Standard for Inspection of DOT/TC 3 series and ISO 11120 Tube Neck Mounting Surfaces, Second Edition,'' into the HMR at § 171.7. As discussed in sections III and IV of this final rule, CGA C–23 provides an inspection standard that PHMSA anticipates will reduce the likelihood of a release from a DOT/TC 3 series cylinders. Thus, PHMSA anticipates this revision to have a minimal positive environmental impact. PHMSA does not anticipate an increase to GHG emissions as these revisions will not have an effect on the usage of DOT/TC 3 series cylinders.

9. *P–1731*—PHMSA is incorporating by reference an updated version of IME SLP–23 (2021), titled ''Recommendations for the Transportation of Explosives, Division 1.5; Ammonium Nitrate Emulsions, Division 5.1; and Combustible Liquids in Bulk Packaging.'' As discussed in Sections III and IV of this final rule, this updates a previously approved version of SLP–23 and provides necessary technical updates and regulatory flexibility. As part of the updated SLP–23, IME included packages designed for the safe transportation of Ammonium Nitrate Emulsions. As part of the review of the IME publication, PHMSA determined these packages were adequate for the safe transportation of Ammonium Nitrate Emulsions. Thus, this revision will not have any environmental impacts and will not result in any increase to GHG emissions.

10. *P–1732*—PHMSA is amending § 178.601(g) by allowing inner packagings of articles containing UN0012, UN0014, UN0044, and UN0055 to be assembled and transported without further testing provided that the outer packaging of a combination packaging successfully passes the tests in accordance with 49 CFR 178.603 and 178.606, and the gross mass does not exceed that of the tested type. This revision will provide regulatory flexibility to the regulated community without a reduction in safety. For these reasons, PHMSA does not anticipate this revision to have any environmental impacts nor result in any increase to GHG emissions.

11. *P–1734*—PHMSA is revising § 172.514(c)(4) by incorporating the provisions in DOT SP–16295, which would add an option for smaller placards for IBCs carrying combustible liquids. In addition, PHMSA is revising § 172.514(c)(1) to allow an option for smaller placards on portable tanks. As discussed in sections III and IV of this final rule, this revision does not change the safety requirements for the transportation or filling of an IBC. PHMSA expects that this revision will provide regulatory flexibility to the regulated community without a reduction in safety. For these reasons, PHMSA does not anticipate this revision to have any environmental impacts nor result in any increase to GHG emissions.

12. *P–1736*—PHMSA is incorporating by reference IME SLP–22 (2019), ''Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials.'' As discussed in sections III and IV of this final rule, PHMSA conducted a technical review and examined each of these revisions included in SLP–22 (2019) and asserts that these changes will either maintain or enhance safety requirements. Additionally, PHMSA expects that this revision will provide regulatory flexibility to the regulated community without a reduction in safety. The revisions may result in minor positive environmental impacts due to less

packaging failures that will increase safety. PHMSA does not anticipate this revision to result in any increase to GHG emissions.

13. *P–1738*—PHMSA is modifying the definition of liquid in § 171.8 to include the test for determining fluidity (penetrometer test), prescribed in section 2.3.4 of Annex A of the ADR. As discussed in sections III and IV of this final rule, PHMSA asserts that the revised test is more empirical in nature and provides better understanding of the properties of the tested material and thus, better hazard classification. PHMSA expects that this revision will provide regulatory flexibility to the regulated community by offering an additional test method and will not result in a reduction in safety. As a result, PHMSA does not anticipate this revision to have any environmental impacts nor result in any increase to GHG emissions.

14. *P–1744*—PHMSA is incorporating by reference the updated Appendix A of CGA publication C–7 (2020), ''Guide to Classification and Labeling of Compressed Gases, Eleventh Edition,'' into the HMR at § 171.7(n)(8). As discussed in sections III and IV of this final rule, this revision updates a previously approved version of CGA C–7 and provides necessary technical updates and regulatory flexibility. PHMSA expects that this revision will provide regulatory flexibility to the regulated community without any reduction in safety. As a result, PHMSA does not anticipate this revision to have any environmental impacts nor result in any increase to GHG emissions.

15. *P–1746*—PHMSA is incorporating by reference CGA C–27 (2019), ''Standard Procedure to Derate the Service Pressure of DOT 3-Series Seamless Steel Tubes, First Edition.'' As discussed in sections III and IV of this final rule, PHMSA has determined that the method for pressure derating of tubes is essentially the same as what is outlined in current PHMSA guidance. PHMSA expects that this revision will provide regulatory flexibility to the regulated community without a reduction in safety. Therefore, PHMSA does not anticipate this revision to have any environmental impacts nor result in any increase to GHG emissions.

16. *P–1747*—PHMSA is incorporating by reference CGA C–29 (2019), ''Standard for Design Requirements for Tube Trailers and Tube Modules, First Edition,'' which would supersede CGA TB–25 (2018), ''Design Considerations for Tube Trailers.'' As discussed in sections III and IV of this final rule, PHMSA concludes that tube trailers or modules manufactured in accordance with CGA C–29 are less likely to have separation of tubes from the trailer or bundle, resulting in the unintentional release of hazardous materials, when subjected to multidirectional forces that can occur in highway collisions, including rollover accidents. This revision will increase safety for the transportation of hazardous materials in tube trailers because it may reduce the incidence of releases of hazardous materials due to failure of tube mountings. Therefore, this revision may have minimal positive environmental impacts. PHMSA does not anticipate this revision to result in any increase to GHG emissions.

17. *P–1748*—PHMSA is incorporating by reference CGA V–9 (2019), ''Compressed Gas Association Standard for Compressed Gas Cylinder Valves, Eighth Edition.'' As discussed in sections III and IV of this final rule, this revision updates a previously approved version of CGA V–9 and provides necessary technical updates and regulatory flexibility. PHMSA expects that this revision will provide regulatory flexibility to the regulated community without a reduction in safety. PHMSA does not anticipate this revision to have any environmental impacts nor result in any increase to GHG emissions.

5. Environmental Justice

Executive Order 12898 (''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') [50] and DOT Order 5610.2C (''Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') directs Federal agencies to take appropriate and necessary steps to identify and address disproportionately high and adverse effects of Federal actions on the health or environment of minority and low-income populations ''[t]o the greatest extent practicable and permitted by law.'' DOT Order 5610.2C (''U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'') establishes departmental procedures for effectuating Executive Order 12898 by promoting and considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities—including PHMSA rulemaking.

PHMSA has evaluated this final rule under the above Executive order and DOT Order 5610.2C. PHMSA finds the final rule will not cause disproportionately high and adverse human health and environmental effects on minority, low-income, underserved, and other disadvantaged populations and communities. The rulemaking is neither directed toward a particular population, region, or community, nor is it expected to adversely impact any particular population, region, or community. And because the rulemaking would not adversely affect the safe transportation of hazardous materials generally, its revisions will not entail disproportionately high adverse risks for minority populations, low-income populations, or other underserved and other disadvantaged communities.

PHMSA submits that the final rule will in fact reduce risks to minority populations, low-income populations, or other underserved and other disadvantaged communities. Because the HMR amendments could avoid the release of hazardous materials and reduce the frequency of delays and returned/resubmitted shipments of hazardous materials resulting from conflict between the current HMR and updated international standards, the final rule will reduce risks to populations and communities—including any minority, low-income, underserved, and other disadvantaged populations and communities—in the vicinity of interim storage sites and transportation arteries and hubs. Additionally, as explained in the above discussion of NEPA, PHMSA anticipates that its HMR amendments will yield minimal GHG emissions reductions, thereby reducing the risks posed by anthropogenic climate change to minority, low-income, underserved, and other disadvantaged populations and communities.

6. Agencies Consulted

PHMSA has coordinated with the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, and the United States Coast Guard in the development of this final rule. As such, PHMSA did not receive any adverse comments on the amendments in this final rule from these or any other Federal agencies.

7. Finding of No Signifcant Impact

PHMSA finds the adoption of the Final Action Alternative's regulatory amendments will maintain the HMR's current high level of safety for shipments of hazardous materials transported by highway, rail, aircraft, and vessel, and as such finds the HMR amendments in the final rule will have

[50] 59 FR 7629 (Feb. 16, 1994).

no significant impact on the human environment. PHMSA finds that the Final Action Alternative will avoid adverse safety, environmental justice, and GHG emissions impacts of the No Action Alternative. Furthermore, based on PHMSA's analysis of these provisions described above, PHMSA finds that codification and implementation of this rule will not result in a significant impact to the human environment. This finding is consistent with Executive Order 14096 (''Revitalizing Our Nation's Commitment to Environmental Justice for All'') [51] by achieving several goals, including continuing to deepen the Biden-Harris Administration's whole of Government approach to environmental justice and to better protect overburden communities from pollution and environmental harms.

I. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform any amendments to the HMR considered in this rulemaking. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS). For information on DOT's compliance with the Privacy Act, please see *www.dot.gov/privacy.*

J. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (''Promoting International Regulatory Cooperation''),[52] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. To meet shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to the Trade Agreements Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that these standards form the basis for U.S. standards. PHMSA participates in the establishment of international standards in order to protect the safety of the American public. PHMSA has assessed the effects of this final rule and concludes that it will not cause unnecessary obstacles to foreign trade.

K. Executive Order 13211

Executive Order 13211 (''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'') [53] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' Under the Executive order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, advanced notice of proposed rulemaking (ANPRM), and NPRM) that: (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action.

This rulemaking has not been designated as a significant regulatory action and has not been designated by OIRA as a significant energy action. In addition, PHMSA has concluded that this rulemaking will not result in a significant adverse effect on the supply, distribution, or use of energy. Therefore, PHMSA has not prepared an energy impact statement.

L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA; 15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standards bodies. Consistent with the goals of the NTTAA, PHMSA has adopted a significant number of voluntary consensus standards, which are listed in 49 CFR 171.7.

M. Cybersecurity and Executive Order 14028

Executive Order 14028 (''Improving the Nation's Cybersecurity'') [54] directs the Federal Government to improve its efforts to identify, deter, and respond to ''persistent and increasingly sophisticated malicious cyber campaigns.'' PHMSA has considered the effects of the final rule and determined that its regulatory amendments will not materially affect the cybersecurity risk profile for transportation of hazardous materials.

N. Severability

The purpose of this final rule is to operate holistically and, in concert with existing HMR requirements, provide defense-in-depth to ensure safe transportation of hazardous materials. However, PHMSA recognizes that certain provisions focus on unique topics. Therefore, PHMSA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of the unique provisions of this final rule, the remaining provisions should stand, thus allowing their continued effect.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements, Definitions and abbreviations.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

[51] 88 FR 25251 (April 26, 2023).

[52] 77 FR 26413 (May 4, 2012).

[53] 66 FR 28355 (May 22, 2001).

[54] 86 FR 26633 (May 17, 2021).

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Training, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

■ 2. In § 107.117, revise paragraph (a) to read as follows:

§ 107.117 Emergency processing.

(a) An application is granted emergency processing if the Associate Administrator, on the basis of the application and any inquiry undertaken, finds that:

(1) Emergency processing is necessary to prevent significant injury to persons or property (other than the hazardous material to be transported) that could not be prevented if the application were processed on a routine basis;

(2) Emergency processing is necessary for immediate national security purposes;

(3) Emergency processing is necessary to prevent significant economic loss that could not be prevented if the application were processed on a routine basis; or

(4) Emergency processing is necessary in support of an essential governmental (domestic or foreign) function that could not be satisfied if the application were processed on a routine basis.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 3. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 701 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 4. In § 171.7:

■ a. Revise paragraphs (n) and (r);

■ b. In paragraph (dd)(4) introductory text, remove the text ''§ 171.23'' and add in its place the text ''§§ 171.8; 171.23'';

■ c. Add paragraph (dd)(5); and

■ d. In table 1 to the section, add a main entry for ''*Department of Commerce,* 1401 Constitution Ave NW, Washington, DC 20230:'' in alphabetical order followed by the sub-entry ''Federal Standard H–28, Screw-Thread Standards for Federal Services''.

The revisions and additions read as follows:

§ 171.7 Reference material.

* * * * *

(n) *Compressed Gas Association (CGA),* 8484 Westpark Drive, Suite 220, McLean, VA 22102; telephone 703–788–2700, *www.cganet.com.*

(1) CGA C–1—2016 (CGA C–1), Methods for Pressure Testing Compressed Gas Cylinders, Eleventh Edition, copyright 2016; into §§ 178.36; 178.37; 178.38; 178.39; 178.42; 178.44; 178.45; 178.46; 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.205; 180.209.

(2) CGA C–3—2005 (Reaffirmed 2011) (CGA C–3), Standards for Welding on Thin-Walled Steel Cylinders, Seventh Edition, copyright 2005; into §§ 178.47; 178.50; 178.51; 178.53; 178.55; 178.56; 178.57; 178.58; 178.59; 178.60; 178.61; 178.65; 178.68; 180.211.

(3) CGA C–5 (CGA C–5), Cylinder Service Life—Seamless Steel High Pressure Cylinders, 1991 (Reaffirmed 1995); into § 173.302a.

(4) CGA C–6—2013 (CGA C–6), Standards for Visual Inspection of Steel Compressed Gas Cylinders, Eleventh Edition, copyright 2013; into §§ 172.102; 173.3; 173.198; 180.205; 180.209; 180.211; 180.411; 180.519.

(5) CGA C–6.1—2013 (CGA C–6.1), Standards for Visual Inspection of High Pressure Aluminum Compressed Gas Cylinders, Sixth Edition, copyright 2013 (corrected 4/14/2015); into §§ 180.205; 180.209.

(6) CGA C–6.2 (CGA C–6.2), Guidelines for Visual Inspection and Requalification of Fiber Reinforced High Pressure Cylinders, Third Edition, 1996; into § 180.205.

(7) CGA C–6.3—2013 (CGA C–6.3), Standard for Visual Inspection of Low Pressure Aluminum Alloy Compressed Gas Cylinders, Third Edition, copyright 2013; into §§ 180.205; 180.209.

(8) CGA C–7—2020 (CGA C–7), Guide to Classification and Labeling of Compressed Gases; Eleventh Edition, 2020 (corrected May 6, 2020); into § 172.400a.

(9) CGA C–8 (CGA C–8), Standard for Requalification of DOT–3HT Cylinder Design, 1985; into §§ 180.205; 180.209.

(10) CGA C–11—2013 (CGA C–11), Practices for Inspection of Compressed Gas Cylinders at Time of Manufacture, Fifth Edition, copyright 2013; into § 178.35.

(11) CGA C–12 (CGA C–12), Qualification Procedure for Acetylene Cylinder Design, 1994; into §§ 173.301; 173.303; 178.59; 178.60.

(12) CGA C–13 (CGA C–13), Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders, Fourth Edition, 2000; into §§ 173.303; 180.205; 180.209.

(13) CGA C–14—2005 (Reaffirmed 2010) (CGA C–14), Procedures for Fire Testing of DOT Cylinder Pressure Relief Device Systems, Fourth Edition, copyright 2005; into §§ 173.301; 173.323.

(14) CGA C–20—2014 (CGA C–20), Requalification Standard for Metallic, DOT and TC 3-series Gas Cylinders and Tubes Using Ultrasonic Examination, Second Edition, 2014; into § 180.205.

(15) CGA C–23—2018 (CGA C–23), Standard for Inspection of DOT/TC 3 Series and ISO 11120, Tube Neck Mounting Surfaces, Second Edition, 2018; into §§ 180.205; 180.207.

(16) CGA C–27—2019 (CGA C–27), Standard Procedure to Derate the Service Pressure of DOT Series Seamless Steel Tubes, First Edition, 2019; into § 180.212.

(17) CGA C–29—2019, (Formerly TB–25) (CGA C–29), Standard for Design Requirements for Tube Trailers and Tube Modules, First Edition, 2019; into § 173.301.

(18) CGA G–1.6—2011 (CGA G–1.6), Standard for Mobile Acetylene Trailer Systems, Seventh Edition, copyright 2011; into § 173.301.

(19) CGA G–2.2 (CGA G–2.2), Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia, Second Edition, 1985 (Reaffirmed 1997); into § 173.315.

(20) CGA G–4.1 (CGA G–4.1), Cleaning Equipment for Oxygen Service, 1985; into § 178.338–15.

(21) CGA P–20 (CGA P–20), Standard for the Classification of Toxic Gas Mixtures, Third Edition, 2003; into § 173.115.

(22) CGA S–1.1—2011 (CGA S–1.1), Pressure Relief Device Standards—Part 1—Cylinders for Compressed Gases; Fourteenth Edition, copyright 2011; into §§ 173.301; 173.304a; 178.75.

(23) CGA S–1.2 (CGA S–1.2), Safety Relief Device Standards Part 2—Cargo

and Portable Tanks for Compressed Gases, 1980; into §§ 173.315; 173.318; 178.276; 178.277.

(24) CGA S–7—2013 (CGA S–7), Standard for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders, Fifth Edition, copyright 2013; into § 173.301.

(25) CGA Technical Bulletin TB–2, Guidelines for Inspection and Repair of MC–330 and MC–331 Cargo Tanks, 1980; into §§ 180.407; 180.413.

(26) CGA Technical Bulletin TB–25 (CGA TB–25), Design Considerations for Tube Trailers, 2008 Edition; into § 173.301.

(27) CGA V–9—2019, Compressed Gas Association Standard for Compressed Cylinder Valves, Eighth Edition, 2019; into § 173.301.

* * * * *

(r) *Institute of Makers of Explosives (IME),* 1212 New York Avenue NW, #650, Washington, DC 20005, Phone: 202–429–9280.

(1) IME SLP–22, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, 2019, (IME Standard 22); into §§ 173.63; 177.835.

(2) IME SLP–23, Recommendations for the Transportation of Explosives, Division 1.5, Ammonium Nitrate Emulsions, Division 5.1, Combustible Liquids, Class 3, and Corrosives, Class 8 in Bulk Packaging, March 2021, (IME Standard 23); into §§ 172.102 173.66; 173.251; 177.835.

* * * * *

(dd) * * *

(5) UN/SCETDG/55/INF.27, United Nations' Recommendations on Test Series 8: Applicability of Test Series 8(d), June 14, 2019; into § 172.102(c)(1), special provision 148.

TABLE 1 TO 49 CFR 171.7—MATERIALS NOT INCORPORATED BY REFERENCE

*	*	*	*	*	*	*
Department of Commerce, 1401 Constitution Ave. NW, Washington, DC 20230:						
Federal Standard H–28, Screw-Thread Standards for Federal Services						180.212
*	*	*	*	*	*	*

■ 5. In § 171.8, revise the definition of ''Liquid'' to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Liquid means a material, other than an elevated temperature material, with a melting point or initial melting point of 20 °C (68 °F) or lower at a standard pressure of 101.3 kPa (14.7 psia). A viscous material for which a specific melting point cannot be determined must be subjected to the procedures specified in ASTM D 4359 (IBR, see § 171.7) or to the test for determining fluidity (penetrometer test) prescribed in section 2.3.4 of Annex A of the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR) (IBR, see § 171.7).

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 6. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 7. In § 172.101, the Hazardous Materials Table is amended by revising the entries under ''[REVISE]'' to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 Hazardous Materials Table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE].												
	*		*	*		*	*		*	*			
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives*.	5.1	UN3375	II	5.1	147, 148, 163, IB2, IP16, TP48.	None	231	251	Forbidden	Forbidden	D	25, 59, 60, 66, 124
	*		*	*		*	*		*	*			
	Explosive, blasting, type E *or* Agent blasting, type E.	1.5D	UN0332		1.5D	105, 106, 148, TP48.	None	62	None	Forbidden	Forbidden	03	25, 19E
	*		*	*		*	*		*	*			
G	Oxidizing liquid, n.o.s	5.1	UN3139	I	5.1	62, 127, A2	None	201	243	Forbidden	2.5 L	D	56, 58, 138
				II	5.1	62, 127, 148, A2, IB2, TP48.	152	202	242	1 L	5 L	B	56, 58, 138
				III	5.1	62, 127, 148, A2, IB2.	152	203	241	2.5 L	30 L	B	56, 58, 138
	*		*	*		*	*		*	*			

* * * * *

■ 8. In § 172.102:
■ a. In paragraph (c)(1), revise special provision 148; and
■ b. In paragraph (c)(8)(ii), add special provision TP48 in numerical order.

The revision and addition read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

148 For domestic transportation, this entry directs to § 173.66 of this subchapter for:

a. The standards for transporting a single bulk hazardous material for blasting by cargo tank motor vehicles (CTMV); and

b. The standards for CTMVs capable of transporting multiple hazardous materials for blasting in bulk and non-bulk packagings (*i.e.,* a multipurpose bulk truck). Note: ''UN3375, Ammonium nitrate emulsion'' and ''UN0332, Explosive, blasting, type E *or* Agent blasting, type E'' are subject to the United Nations (UN) Test Series 8(d) (UN/SCETDG/55/INF.27) (IBR, see § 171.7 of this subchapter), otherwise known as the Vented Pipe Test (VPT).

* * * * *

(8) * * *

(ii) * * *

TP48 The use of IM 101 and 102 portable tanks when transported in accordance with IME Standard 23 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 9. In § 172.514, revise paragraphs (c)(1) and (4) to read as follows:

§ 172.514 Bulk packagings.

* * * * *

(c) * * *

(1) A portable tank having a capacity of less than 3,785 L (1,000 gallons). Additionally, portable tanks containing a combustible liquid may be placarded with a combustible placard that meets the label specifications for size in § 172.407(c). However, a transport vehicle containing portable tanks with a reduced-size combustible placard is still required to conform to the placarding requirements in this subpart, including the size requirements in § 172.519(c);

* * * * *

(4) For an intermediate bulk container (IBC) labeled in accordance with subpart E of this part, the IBC may display the proper shipping name and UN identification number markings in accordance with § 172.301(a)(1) in place of the UN number on an orange panel, placard, or white square-on-point configuration as prescribed in § 172.336(d). Additionally, IBCs containing a combustible liquid may be placarded with a combustible placard that meets the label specifications for size in § 172.407(c). However, a transport vehicle containing IBCs with a reduced-size combustible placard is still required to conform to the placarding requirements in this subpart, including the size requirements in § 172.519(c); and

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 10. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.81, 1.96 and 1.97.

■ 11. In § 173.4b, revise the introductory text to paragraph (a) to read as follows:

§ 173.4b De minimis exceptions.

(a) When packaged in accordance with this section, the following materials do not meet the definition of a hazardous material in § 171.8 of this subchapter and, therefore, are not subject to the requirements of this subchapter: Packing Group I materials of hazard Division 6.1 (no inhalation hazard), and Packing Group II and III materials of hazard Class 3, Division 4.1, Division 4.2, Division 4.3, Division 5.1, Division 6.1, Class 8, and Class 9.

* * * * *

■ 12. In § 173.115, revise the introductory text to paragraph (e) to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(e) *Liquefied compressed gas.* A gas, which when packaged under pressure for transportation is partially liquid at temperatures above −50 °C (−58 °F), is considered to be a liquefied compressed gas. Gas mixtures with component(s) that are liquefied gases may be described using the hazardous materials description of a compressed gas in the Hazardous Materials Table in § 172.101 of this subchapter when the partial pressure(s) of the liquefied gas component(s) in the mixture are reduced so that the mixture is entirely in the gas phase at 20 °C (68 °F). A liquefied compressed gas is further categorized as follows:

* * * * *

■ 13. In § 173.185, revise the introductory text to paragraph (c)(3) to read as follows:

§ 173.185 Lithium cells and batteries.

* * * * *

(c) * * *

(3) *Lithium battery mark.* Each package must display the lithium battery mark except when a package contains only button cell batteries contained in equipment (including circuit boards), or when a consignment contains two packages or fewer where each package contains not more than four lithium cells or two lithium batteries contained in equipment.

* * * * *

■ 14. In § 173.251, add paragraph (b) to read as follows:

§ 173.251 Bulk packaging for ammonium nitrate emulsion, suspension, or gel.

* * * * *

(b) *Portable tanks.* This section does not apply to ''UN3375, Ammonium nitrate emulsion'' when transported in IM 101 or 102 portable tanks in accordance with IME Standard 23 (IBR, see § 171.7 of this subchapter).

■ 15. In § 173.301, revise the section heading and paragraph (i)(2) to read as follows:

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles, and spherical pressure vessels.

* * * * *

(i) * * *

(2) Seamless DOT specification cylinders longer than 2 m (6.5 ft) are authorized for transportation only when horizontally mounted on a motor vehicle or in an ISO framework or other framework of equivalent structural integrity in accordance with CGA C–29 (IBR, see § 171.7 of this subchapter). Seamless DOT specification cylinders longer than 2 m (6.5 ft) manufactured prior to May 11, 2009, may continue to use CGA TB–25 (IBR, see § 171.7 of this subchapter). The pressure relief device must be arranged to discharge unobstructed to the open air. In addition, for Division 2.1 (flammable gas) material, the pressure relief devices must be arranged to discharge upward to prevent any escaping gas from contacting personnel or any adjacent cylinders.

* * * * *

■ 16. In § 173.302a:
■ a. Revise the section heading;
■ b. Remove the semicolons at the ends of paragraphs (c)(1) and (2) and add periods in their places;
■ c. Revise paragraphs (c)(3) and (4); and
■ d. Add paragraphs (c)(5) through (7).

The revisions and additions read as follows:

§ 173.302a Additional requirements for shipment of non-liquefied (permanent) compressed gases in specification cylinders.

* * * * *

(c) * * *

(3) DOT specification 3A and 3AX cylinders are limited to those having an intermediate manganese composition.

(4) Cylinders manufactured with intermediate manganese steel must have been normalized, not quenched and tempered. Quench and temper treatment of intermediate steel is not authorized.

(5) Cylinders manufactured with chrome moly steel must have been quenched and tempered, not normalized. Use of normalized chrome moly steel cylinders is not permitted.

(6) Cylinders must be equipped with pressure relief devices sized and selected as to type, location, and quantity, and tested in accordance with § 173.301(f).

(7) A plus sign (+) is added following the test date marking on the cylinder.

* * * * *

■ 17. In § 173.302b, add paragraph (f) to read as follows:

§ 173.302b Additional requirements for shipment of non-liquefied (permanent) compressed gases in UN pressure receptacles.

* * * * *

(f) *Methane, compressed, or natural gas, compressed, UN1971.* Methane, compressed, or natural gas, compressed, is authorized in a UN seamless steel pressure receptacle under the following conditions:

(1) For methane, and for natural gas with a methane content of 98.0 percent or greater—

(i) The maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 1100 MPa (159,542 psi); and

(ii) The contents are commercially free of corroding components.

(2) For natural gas with a methane content of less than 98.0 percent—

(i) The maximum tensile strength of the UN seamless steel pressure receptacle may not exceed 950 MPa (137,750 psi);

(ii) Each discharge end of a UN refillable seamless steel tube must be equipped with an internal drain tube; and

(iii) The moisture content and concentration of the corroding components must conform to the requirements in § 173.301b(a)(2).

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 18. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 19. In § 178.601:

■ a. Redesignate paragraphs (g)(6) through (8) as paragraphs (g)(7) through (9);

■ b. Add new paragraph (g)(6); and

■ c. Revise newly redesignated paragraph (g)(8).

The addition and revision read as follows:

§ 178.601 General requirements.

* * * * *

(g) * * *

(6) *Selective testing of combination packagings for articles containing small arms ammunition: Variation 6.* Variations in inner and intermediate packagings are permitted in packages for articles containing Cartridges, small arms (UN0012); Cartridges for tools, blank (UN0014); Primers, cap type (UN0044); and Cases, cartridge empty with primer (UN0055) packed in inner packages without further testing of the package under the following conditions:

(i) The package has been tested containing only the articles to be transported without intermediate containment;

(ii) The outer packaging must have passed the stacking test set forth in § 178.606 when empty, *i.e.,* without cushioning or inner or intermediate packagings, with the test mass of identical packages being the mass of the package filled with the articles;

(iii) Only articles tested without intermediate containment may be transported; however, a variety of articles tested in this fashion may be assembled in a package with intermediate containment;

(iv) No articles demonstrate a loss of material in testing; and

(v) The completed package does not exceed the marked maximum gross mass of the package.

* * * * *

(8) *Approval of selective testing.* In addition to the provisions of paragraphs (g)(1) through (7) of this section, the Associate Administrator may approve the selective testing of packagings that differ only in minor respects from a tested type.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.81 and 1.97.

■ 21. In § 180.205:

■ a. Add paragraph (c)(5);

■ b. Remove the word ''or'' at the end of paragraph (d)(4);

■ c. Redesignate paragraph (d)(5) as paragraph (d)(6) and add new paragraph (d)(5);

■ d. Revise paragraphs (e)(2) and (f);

■ e. Redesignate paragraphs (h) through (j) as paragraphs (i) through (k) and add new paragraph (h); and

■ f. Revise newly redesignated paragraphs (i)(1), (j)(2)(i)(C), and (j)(3).

The additions and revisions read as follows:

§ 180.205 General requirements for requalification of specification cylinders.

* * * * *

(c) * * *

(5) Each 3-series specification cylinder that is horizontally mounted on a motor vehicle or in a framework and that is: 12 feet or longer; has an outside diameter greater than or equal to 18 inches; and is supported by the neck mounting surface during transportation in commerce must be inspected at the time of requalification in accordance with CGA C–23 (IBR, see § 171.7 of this subchapter).

(d) * * *

(5) For a cylinder subject to paragraph (c)(5) of this section, if there is visible corrosion around the neck or under the flange/sleeve, as outlined in Section 4.2 of CGA C–23, it must be removed and examined in accordance with CGA C–23 before being returned to service; or

* * * * *

(e) * * *

(2) Requalified in accordance with this section, regardless of the date of the previous requalification. When requalification is performed using ultrasonic examination, the cylinder must be visually inspected in accordance with paragraph (e)(1) of this section;

* * * * *

(f) *Visual inspection.* Except as otherwise provided in this subpart, each time a cylinder is pressure tested, it must be given an internal and external visual inspection.

(1) The visual inspection must be performed in accordance with the following standards (all IBR, see § 171.7 of this subchapter): CGA C–6 for steel and nickel cylinders; CGA C–6.1 for seamless aluminum cylinders; CGA C–6.2 for fiber reinforced composite special permit cylinders; CGA C–6.3 for low pressure aluminum cylinders; CGA C–8 for DOT 3HT cylinders; and CGA C–13 for DOT 8 series cylinders.

(2) If a cylinder or tube is requalified by ultrasonic examination, only an external visual inspection is required.

(3) For each cylinder with a coating or attachments that would inhibit inspection of the cylinder, the coating or attachments must be removed before performing the visual inspection.

(4) Each cylinder subject to visual inspection must be approved, rejected, or condemned according to the criteria in the applicable CGA standard.

(5) In addition to other requirements prescribed in this paragraph (f), each specification cylinder manufactured of aluminum alloy 6351–T6 and used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or oxygen service must be inspected for sustained load cracking in accordance with appendix C to this part at the first scheduled five-year requalification period after January 1, 2007, and every five years thereafter.

(6) Except in association with an authorized repair, removal of wall thickness via grinding, sanding, or other means is not permitted. Removal of paint or loose material to prepare the cylinder for inspection is permitted (*i.e.,* shot blasting).

(7) Chasing of cylinder threads to clean them is permitted, but removal of metal must not occur. Re-tapping of cylinder threads is not permitted, except by the original manufacturer, as provided in § 180.212.

* * * * *

(h) *Ultrasonic examination (UE).* Requalification of cylinders and tubes using UE must be performed in accordance with CGA C–20 (IBR, see § 171.7 of this subchapter).

(i) * * *

(1) Except as provided in paragraphs (i)(3) and (4) of this section, a cylinder that is rejected may not be marked as meeting the requirements of this section.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(C) As an alternative to the stamping or labeling as described in this paragraph (j)(2), at the direction of the owner, the requalifier may render the cylinder incapable of holding pressure. If a condemned cylinder contains hazardous materials, the requalifier must stamp the cylinder ''CONDEMNED'' and affix a readily visible label on the cylinder stating: ''UN REJECTED, RETURNING TO ORIGIN FOR PROPER DISPOSITION.'' The requalifier may only transport the condemned cylinder by private motor vehicle carriage to a facility capable of safely removing the contents of the cylinder.

* * * * *

(3) No person may remove, obliterate, or alter the required condemnation communication of paragraph (j)(2) of this section.

* * * * *

■ 22. In § 180.207, revise paragraph (d)(1) to read as follows:

§ 180.207 Requirements for requalification of UN pressure receptacles.

* * * * *

(d) * * *

(1) *Seamless steel.* (i) Each seamless steel UN pressure receptacle, including pressure receptacles exceeding 150 L capacity installed in multiple-element gas containers (MEGCs) or in other service, must be requalified in accordance with ISO 6406:2005(E) (IBR, see § 171.7 of this subchapter). However, UN cylinders with a tensile strength greater than or equal to 950 MPa must be requalified by ultrasonic examination in accordance with ISO 6406:2005(E). For seamless steel cylinders and tubes, the internal inspection and hydraulic pressure test may be replaced by a procedure conforming to ISO 16148:2016(E) (IBR, see § 171.7 of this subchapter).

(ii) Each seamless steel UN pressure receptacle that is horizontally mounted on a motor vehicle or in a framework and that: is 12 feet or longer; has an outside diameter greater than or equal to 18 inches; and is supported by a neck mounting surface during transportation must be inspected at the time of requalification in accordance with CGA C–23 (IBR, see § 171.7 of this subchapter). Notwithstanding the periodic inspection, if the seamless steel UN pressure receptacle shows visible corrosion, as outlined in Section 4.2 of CGA C–23, around the neck or under the flange/sleeve, then it must be removed and examined in accordance with Section 6 of CGA C–23 prior to returning to service.

* * * * *

■ 23. In § 180.209:

■ a. Revise table 1 to paragraph (a) and paragraph (d); and

■ b. In paragraph (m), revise the introductory text and the heading of the table.

The revisions read as follows:

§ 180.209 Requirements for requalification of specification cylinders.

(a) * * *

TABLE 1 TO PARAGRAPH (a)—REQUALIFICATION OF CYLINDERS [1]

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
3	3000 psig	5.
3A, 3AA	5/3 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(b), (f), (h), and (j)).
3AL	5/3 times service pressure	5 or 12 (see § 180.209(j) and (m) [4]).
3AX, 3AAX	5/3 times service pressure	5.
3B, 3BN	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(f)).
3E	Test not required.	
3HT	5/3 times service pressure	3 (*see* §§ 180.209(k) and 180.213(c)).
3T	5/3 times service pressure or UE [3]	5.
4AA480	2 times service pressure (*see* § 180.209(g))	5 or 10 (*see* § 180.209(h)).
4B, 4BA, 4BW, 4B–240ET	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 7, 10, or 12 (*see* § 180.209(e), (f), and (j)).
4D, 4DA, 4DS	2 times service pressure	5.
4E	2 times service pressure, except non-corrosive service (*see* § 180.209(g)).	5, 10, or 12 (*see* § 180.209(e)).
4L	Test not required.	
8, 8AL		10 or 20 (*see* § 180.209(i)).
Exemption or special permit cylinder.	See current exemption or special permit, or UE [3] as allowed by CGA C–20 (2014).	See current exemption or special permit.

TABLE 1 TO PARAGRAPH (a)—REQUALIFICATION OF CYLINDERS [1]—Continued

Specification under which cylinder was made	Minimum test pressure (psig) [2]	Requalification period (years)
Foreign cylinder (*see* § 173.301(j) of this subchapter for restrictions on use).	As marked on cylinder, but not less than 5/3 of any service or working pressure marking.	5 (*see* §§ 180.209(l) and 180.213(d)(2)).

[1] Any cylinder not exceeding two inches outside diameter and less than two feet in length is excepted from volumetric expansion test.
[2] For cylinders not marked with a service pressure, see § 173.301a(b) of this subchapter.
[3] Minimum test pressure is not applicable to those cylinders and tubes requalified using ultrasonic examination.
[4] This provision does not apply to cylinders used for carbon dioxide, fire extinguisher, or other industrial gas service.

* * * * *

(d) *Cylinders 5.44 kg (12 lb) or less with service pressures of 300 psig or less.* A cylinder of 5.44 kg (12 lb) or less water capacity authorized for service pressure of 300 psig or less must be given a complete external visual inspection at the time periodic requalification becomes due. External visual inspection must be in accordance with CGA C–6 or CGA C–6.1 (IBR, see § 171.7 of this subchapter). The cylinder may be proof pressure tested. The test is successful if the cylinder, when examined under test pressure, does not display a defect described in § 180.205(j)(1)(ii) or (iii). Upon successful completion of the test and inspection, the cylinder must be marked in accordance with § 180.213.

* * * * *

(m) *DOT–3AL cylinders manufactured of 6351–T6 aluminum alloy.* In addition to the periodic requalification and marking described in § 180.205, each cylinder manufactured of aluminum alloy 6351–T6 used in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), or oxygen service must be requalified and inspected for sustained load cracking in accordance with the non-destructive examination method described in the following table. Each cylinder with sustained load cracking that has expanded into the neck threads must be condemned in accordance with § 180.205(j). This paragraph (m) does not apply to cylinders used for carbon dioxide, fire extinguisher, or other industrial gas service.

Table 4 to Paragraph (m)—Requalification and Inspection of DOT–3AL Cylinders Made of Aluminum Alloy 6351–T6

* * * * *

■ 24. In § 180.212, add paragraph (a)(4) and revise paragraph (b)(2) to read as follows:

§ 180.212 Repair of seamless DOT 3-series specification cylinders and seamless UN pressure receptacles.

(a) * * *

(4) DOT 3-series seamless steel tubes with an outside diameter greater than 9⅝ in (244.5 mm) may be processed by a repair facility for derating the marked service pressure in accordance with CGA C–27 (IBR, see § 171.7 of this subchapter).

(b) * * *

(2) External rethreading of a DOT 3AX, 3AAX, or 3T specification cylinder or a UN pressure receptacle, and external threading of a seamless DOT 3AX, 3AAX, or 3T specification cylinder or seamless UN pressure receptacle originally manufactured without external threads; or the internal rethreading of a DOT–3 series cylinder or a seamless UN pressure receptacle when performed by a cylinder manufacturer of these types of cylinders. The repair work must be performed under the supervision of an independent inspection agency. Upon completion of the rethreading or post-manufacture threading, the threads must be gauged in accordance with Federal Standard H–28 or an equivalent standard containing the same specification limits. The rethreaded cylinder or UN pressure receptacle must be stamped clearly and legibly with the words ''RETHREAD'' and a post-manufacture threaded cylinder or UN pressure receptacle must be stamped clearly and legibly with the words ''POST–THREAD'', on the shoulder, top head, or neck. No DOT specification cylinder or UN pressure receptacle may be rethreaded more than one time without approval of the Associate Administrator.

Signed in Washington, DC, on February 13, 2024, under authority delegated in 49 CFR 1.97(b).

Tristan H. Brown,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

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Partnerships With Faith-Based and Neighborhood Organizations

AGENCY: Department of Education, Department of Homeland Security, Department of Agriculture, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Labor, Department of Veterans Affairs, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the agencies listed above (the ''Agencies'') to clarify protections for beneficiaries and prospective beneficiaries of federally funded social services and the rights and obligations of organizations providing such services. In accordance with the Executive order of February 14, 2021, Establishment of the White House Office of Faith-Based and Neighborhood Partnerships, this clarification should promote maximum participation by beneficiaries and providers in the Agencies' covered programs and activities and ensure consistency in the implementation of those programs and activities.

DATES:

Effective date: This rule is effective on April 3, 2024.

Compliance date: Recipients of Federal financial assistance required by these regulations to provide written notice to beneficiaries must do so by July 2, 2024.

FOR FURTHER INFORMATION CONTACT: For information regarding each Agency's implementation of this final rule, the contact information for that Agency follows. If you use a telecommunications device for the deaf (''TDD'') or a text telephone (''TTY''), call the Telecommunications Relay Service at 7–1–1.

Department of Justice: Michael L. Alston, Director, Office for Civil Rights, Office of Justice Programs, 202–307–0690, *askOCR@ojp.usdoj.gov.*

Department of Agriculture: Samantha Joseph, Director, Center for Faith-Based and Neighborhood Partnerships, *center@usda.gov.*

Department of Labor: Elena S. Goldstein, Deputy Solicitor of Labor, Office of the Solicitor of Labor, 202–878–9471, *goldstein.elena@dol.gov.*

Department of Health and Human Services: Que English, Director, Center for Faith-Based and Neighborhood Partnerships, 202–260–6501, *partnerships@hhs.gov.*

Department of Housing and Urban Development: BJ Douglass, Director of the Center for Faith-Based and Neighborhood Partnerships, Office of the Secretary, 451 7th Street SW, Washington, DC 20410, 202–708–2404.

Department of Education: Maggie Siddiqi, Director, Center for Faith-Based and Neighborhood Partnerships, 202–453–7443, *EDpartners@ed.gov.*

Department of Veterans Affairs: Conrad Washington, Director, Center for Faith-Based and Neighborhood Partnerships, Office of Public and Intergovernmental Affairs, 202–461–7865.

Department of Homeland Security: Peter Mina, Deputy Officer for Civil Rights and Civil Liberties, Office for Civil Rights and Civil Liberties, 202–401–1474 (phone), 202–401–0470 (TTY).

Agency for International Development: Amanda Vigneaud, Acting Director, Center for Faith-Based and Neighborhood Partnerships, 202–297–8165, *avigneaud@usaid.gov.*

SUPPLEMENTARY INFORMATION: This joint final rule amends regulations of all the Agencies in a single document. The Agencies decided to publish a joint final rule because most of the comments received by the Agencies in response to their proposed regulations addressed issues that were relevant to all of the Agencies' proposals. This final rule addresses cross-cutting issues first, followed by separate Agency-specific discussions of issues particular to each of those Agencies. Following the preamble, each Agency makes final amendments to its regulations, in order to implement the requirements in Executive Order 14015, Establishment of the White House Office of Faith-Based and Neighborhood Partnerships. The **SUPPLEMENTARY INFORMATION** is broken up into four major parts, organized as follows:

I. Background

A. Prior Rulemakings

On December 12, 2002, President George W. Bush signed Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations, 67 FR 77141. Executive Order 13279 set forth the principles and policymaking criteria to guide Federal agencies in formulating and implementing policies for the delivery of social services with implications for faith-based and other community organizations, to ensure equal protection of the laws for faith-based

and community organizations, and to expand opportunities for, and strengthen the capacity of, faith-based and other community organizations to meet social needs in communities across the United States. In addition, Executive Order 13279 directed specified agency heads to review and evaluate existing policies that had implications for faith-based and community organizations relating to their eligibility for Federal financial assistance for social service programs and, where appropriate, to implement new policies that were consistent with and necessary to further the fundamental principles and policymaking criteria articulated in the Executive order.

Several of the Agencies proceeded to promulgate regulations to implement Executive Order 13279. For example:

- In 2004, the Department of Veterans Affairs (''VA'') promulgated a final rule consistent with Executive Order 13279. *See* VA Homeless Providers Grant and Per Diem Program; Religious Organizations, 69 FR 31883 (June 8, 2004).
- Also in 2004, the Department of Education (''ED'') promulgated regulations in conformance with Executive Order 13279. *See* Participation in Education Department Programs by Religious Organizations; Providing for Equal Treatment of All Education Program Participants, 69 FR 31708 (June 4, 2004).
- In 2003 and 2004, the Department of Housing and Urban Development (''HUD'') promulgated three final rules consistent with Executive Order 13279. *See* Participation in HUD's Native American Programs by Religious Organizations; Providing for Equal Treatment of All Program Participants, 69 FR 62164 (Oct. 22, 2004); Equal Participation of Faith-Based Organizations, 69 FR 41712 (July 9, 2004); and Participation in HUD Programs by Faith-Based Organizations; Providing for Equal Treatment of all HUD Program Participants, 68 FR 56396 (Sept. 30, 2003).
- In 2004, the Department of Justice (''DOJ''), Department of Agriculture (''USDA''), Department of Labor (''DOL''), Department of Health and Human Services (''HHS''), and Agency for International Development (''USAID'') issued final rules implementing Executive Order 13279. *See* Participation in Justice Department Programs by Religious Organizations; Providing for Equal Treatment of All Justice Department Program Participants, 69 FR 2832 (Jan. 21, 2004); Equal Opportunity for Religious Organizations, 69 FR 41375 (July 9, 2004); Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries, 69 FR 41882 (July 12, 2004); Participation in Department of Health and Human Services Programs by Religious Organizations; Providing for Equal Treatment of All Department of Health and Human Services Program Participants, 69 FR 42586 (July 16, 2004); and Participation by Religious Organizations in USAID Programs, 69 FR 61716 (Oct. 20, 2004).
- The Department of Homeland Security (''DHS'') issued a notice of proposed rulemaking (''NPRM'' or ''proposed rule'') related to Executive Order 13279 in 2008, *see* Nondiscrimination in Matters Pertaining to Faith-Based Organizations, 73 FR 2187 (Jan. 14, 2008); DHS did not, however, issue a final rule related to the participation of faith-based organizations in its programs prior to the 2016 rulemaking discussed in detail below.

Shortly after taking office, President Barack Obama signed Executive Order 13498, Amendments to Executive Order 13199 and Establishment of the President's Advisory Council for Faith-Based and Neighborhood Partnerships, 74 FR 6533 (Feb. 5, 2009). Executive Order 13498 changed the name of the White House Office of Faith-Based and Community Initiatives to the White House Office of Faith-Based and Neighborhood Partnerships, and it created the President's Advisory Council on Faith-Based and Neighborhood Partnerships, which subsequently submitted recommendations regarding the work of that White House office.

On November 17, 2010, President Obama signed Executive Order 13559, Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations, 75 FR 71319. Based on recommendations made by the Advisory Council, Executive Order 13559 made various changes to Executive Order 13279, including:

- requiring agencies that administer or award Federal financial assistance for social service programs to ensure the implementation of additional protections for the beneficiaries and prospective beneficiaries of those programs, including (i) referrals to alternative providers when beneficiaries objected to the religious character of the organizations providing services, and (ii) written notice to beneficiaries of that referral requirement and other protections before they enrolled in or received services from the program;
- stating that decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religious affiliation, or lack of affiliation, of recipient organizations;
- stating that the Federal Government has an obligation to monitor and enforce all standards regarding the relationship between religion and Government in ways that avoid excessive entanglement between religious bodies and governmental entities;
- providing further clarifications concerning certain requirements, including under Executive Order 13279, that organizations engaging in explicitly religious activities must (i) perform such activities and offer such services outside of programs that are supported with direct Federal financial assistance, (ii) separate those activities in time or location from programs or services supported with direct Federal financial assistance, and (iii) ensure that participation in any such activities is voluntary for the beneficiaries of social service programs supported with Federal financial assistance;
- emphasizing again that religious providers should be eligible to compete for social service funding from the Federal Government and to participate fully in social service programs supported with Federal financial assistance, and that such organizations may do so while maintaining their religious identities;
- requiring agencies that provide Federal financial assistance for social service programs to post online regulations, guidance documents, and policies that have implications for faith-based and other neighborhood organizations, and to post online a list of entities receiving such assistance; and
- clarifying that the principles set forth apply to subawards as well as prime awards.

An interagency working group was tasked with developing model regulatory changes to implement Executive Order 13279, as amended by Executive Order 13559, including provisions that clarified beneficiary protections and the prohibited uses of direct Federal financial assistance, allowed religious social service providers to maintain their religious identities, and distinguished between direct and indirect Federal financial assistance.

These efforts eventually resulted in DHS promulgating regulations and the other Agencies promulgating

amendments to their regulations. In April 2016, following notice and comment, the Agencies published a joint final rule to ensure consistency between their regulations and Executive Order 13279, as amended by Executive Order 13559. *See* Federal Agency Final Regulations Implementing Executive Order 13559: Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations, 81 FR 19355 (Apr. 4, 2016). These revised regulations—referred to hereinafter as the ''2016 Rule''—incorporated the principles from Executive Order 13559 detailed above.

On May 3, 2018, President Donald J. Trump signed Executive Order 13831, Establishment of a White House Faith and Opportunity Initiative, 83 FR 20715, amending Executive Order 13279, as amended by Executive Order 13559, and other related Executive orders. Among other things, Executive Order 13831 changed references to the White House Office of Faith-Based and Neighborhood Partnerships, established in Executive Order 13498, to the White House Faith and Opportunity Initiative; specified ways that the initiative was to operate; directed departments and agencies with Centers for Faith-Based and Community Initiatives to change the names of those centers to Centers for Faith and Opportunity Initiatives; and directed departments and agencies without a Center for Faith and Opportunity Initiatives to designate a Liaison for Faith and Opportunity Initiatives. Executive Order 13831 also eliminated the requirements to refer beneficiaries to alternative providers upon request and to notify beneficiaries of the protections in Executive Order 13559 described above.

Consistent with Executive Order 13831, in December 2020, the Agencies, following notice and comment, promulgated a final rule amending the 2016 Rule. *See* Equal Participation of Faith-Based Organizations in the Federal Agencies' Programs and Activities, 85 FR 82037 (Dec. 17, 2020). That joint final rule—referred to hereinafter as the ''2020 Rule''—made various changes to the 2016 Rule, including:

- eliminating a requirement that faith-based providers receiving direct Federal financial assistance provide notice to beneficiaries and prospective beneficiaries of certain protections, including protection from discrimination on the basis of religion;
- eliminating requirements that, if a beneficiary objected to the religious character of a faith-based provider, the provider would undertake reasonable efforts to identify and refer the beneficiary to an alternative provider, and that providers inform beneficiaries of this alternative provider requirement in the notice to them;
- eliminating a requirement that beneficiaries of indirect Federal financial assistance (such as vouchers, certificates, or other Government-funded means that the beneficiaries might use to obtain services at providers of their choosing) must have at least one adequate secular option for the use of the indirect Federal financial assistance;
- adding a provision allowing providers receiving indirect Federal financial assistance to require beneficiaries to attend ''all activities that are fundamental to the program'';
- adding a definition of the term ''religious exercise'';
- adding a requirement that notices or announcements of award opportunities and notices of awards or contracts include language regarding certain protections for faith-based organizations' independence from Government and providers' obligations not to use direct Federal financial assistance for any explicitly religious activities and not to discriminate against current or prospective program beneficiaries on the basis of religion;
- adding a provision stating that, if an awarding agency program required an applicant to show nonprofit status and the applicant has a sincerely held religious belief that it cannot apply for a determination as an entity that it is tax-exempt under section 501(c)(3) of the Internal Revenue Code, the applicant could submit evidence sufficient to establish that it otherwise qualified as a nonprofit organization;
- adding a provision stating that neither the awarding agency nor any State or local government or other pass-through entity receiving funds under any Federal awarding agency program or service shall construe the Agencies' regulations ''in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects''; and
- adding language to preexisting requirements regarding the Government's obligation to accommodate religion and regarding the religious-employer exemption from the Federal prohibition on employment discrimination on the basis of religion.

B. The Agencies' Social Service Programs

The Agencies achieve their missions in part through the administration of Federal financial assistance. Funds are distributed via a wide range of social service programs, including the following:

- *Workforce Innovation and Opportunity Act (''WIOA'') Adult and Dislocated Worker Programs:* DOL's Employment and Training Administration provides job search assistance and training to adult and dislocated workers through State formula grants authorized under WIOA, Public Law 113–128, 128 Stat. 1425. This funding area includes individualized training accounts through which program participants can choose from a statewide list of providers to access training.
- *Homeless Veterans Reintegration Program:* This grant program, administered by DOL's Veterans' Employment and Training Service, provides services that assist in reintegrating homeless veterans into meaningful employment within the labor force and supports the development of delivery systems that address the complex problems facing homeless veterans.
- *Healthy Marriage and Responsible Fatherhood Programs:* HHS's Office of Family Assistance competitively awards Healthy Marriage and Responsible Fatherhood grants to States, local governments, Tribal entities, and community-based organizations (both for profit and not-for-profit, including faith-based) that help participants build and sustain healthy relationships and marriages and strengthen positive father-child interaction.
- *Nita M. Lowey 21st Century Community Learning Centers:* This program, administered by ED's Office of Elementary and Secondary Education, supports the creation of community learning centers that provide academic enrichment opportunities during non-school hours for children, particularly students who attend high-poverty and low-performing schools. The program helps children meet State and local student standards in core academic subjects, such as reading and math; offers students a broad array of enrichment activities that can complement their regular academic programs; and provides literacy and other educational services to the families of participating children.
- *Gaining Early Awareness and Readiness for Undergraduate Programs (''GEAR UP''):* Under the GEAR UP program, ED's Office of Postsecondary Education awards discretionary grants to States and partnerships of local educational agencies and institutions of higher education, which may also include community organizations or entities as additional partners, to

provide services at high-poverty middle and high schools to increase the number of low-income students who are prepared to enter and succeed in postsecondary education.

• *Citizenship and Integration Grant Program:* Administered by DHS's U.S. Citizenship and Immigration Services (''USCIS''), the Citizenship and Integration Grant Program has helped more than 300,000 lawful permanent residents (''LPRs'') prepare for U.S. citizenship. *See* USCIS, *Fiscal Year 2023 Citizenship & Integration Grant Program* (Sept. 28, 2023), *https://www.uscis.gov/citizenship-resource-center/civic-integration/fiscal-year-2023-citizenship-and-integration-grant-program.* The program assists nonprofit organizations in providing citizenship instruction and application assistance to LPRs.

• *VA Homeless Providers Grant and Per Diem Program*: VA's Homeless Programs Office administers this program, which awards grants to community organizations providing services to veterans experiencing homelessness to ensure the availability of supportive housing and services, with the goal of helping homeless veterans achieve residential stability.

• *Supportive Services for Veteran Families:* This program, also administered by VA's Homeless Programs Office, awards grants to selected private nonprofit organizations and consumer cooperatives to assist very low-income veteran families residing in or transitioning to permanent housing. Grantees provide a range of supportive services to eligible veteran families that are designed to promote housing stability.

Under these and other federally funded social service programs, Federal funds are not distributed directly to beneficiaries, but rather are distributed to recipients—for example, State and local governments, school districts, nonprofit organizations, institutions of higher education, and other entities—that use the Federal funds to provide services to the programs' intended beneficiaries. This final rule generally refers to these recipients as ''providers'' or ''grantees,'' and to those whom they serve, either directly or through subrecipients, as ''beneficiaries.'' In administering federally funded social service programs, providers must comply both with applicable Federal law and with the terms and conditions under which they receive Federal funding from the Agencies. For example, applicants for Federal funds through the Office of Justice Programs at DOJ must certify that in administering any Federal award they will comply with all relevant Federal civil rights and nondiscrimination laws.

C. The Present Joint Rulemaking

On February 14, 2021, President Joseph R. Biden, Jr., signed Executive Order 14015, Establishment of the White House Office of Faith-Based and Neighborhood Partnerships, 86 FR 10007. Executive Order 14015 sought to ''organiz[e] more effective efforts to serve people in need across the country and around the world, in partnership with civil society, including faith-based and secular organizations.'' *Id.* at 10007. The Executive order further emphasized the importance of strengthening the ability of such organizations to deliver services in partnership with Federal, State, and local governments and with other private organizations, while adhering to all governing law. *Id.* Executive Order 14015 also revoked Executive Order 13831, *see id.* at 10008, which had prompted the 2020 Rule.

On January 13, 2023—following the issuance of Executive Order 14015 and the revocation of Executive Order 13831—the Agencies issued a joint NPRM proposing regulatory amendments to the 2020 Rule. Partnerships With Faith-Based and Neighborhood Organizations; Notice of Proposed Rulemaking, 88 FR 2395 (''Joint NPRM''). As the Joint NPRM explained, ''it is central to the Agencies' missions that federally funded services and programs . . . reach the widest possible eligible population, including historically marginalized communities.'' *Id.* at 2398. Thus, with their proposed rulemaking, the Agencies sought to ''ensure full access to and comprehensive delivery of federally funded social services, in keeping with governing law and with the policies articulated in Executive Order 14015.'' *Id.* at 2397. The Agencies also sought to advance the policies set out in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (Jan. 20, 2021), and Executive Order 14058, Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government, 86 FR 71357 (Dec. 13, 2021). 88 FR 2397. In addition, the Agencies sought to ''address and correct inconsistencies and confusion raised by the 2020 Rule.'' *Id.* at 2398.

Accordingly, the Agencies proposed the following changes in the Joint NPRM: [1]

• All Agencies that previously required organizations providing social services under Agencies' direct Federal financial assistance programs to give written notice to beneficiaries and prospective beneficiaries of certain nondiscrimination protections proposed to reinstate that requirement, and to further apply this notice requirement to all such recipients, whether they are faith-based or secular. *See id.* at 2398–99.

• All Agencies except USAID proposed a modified version of the 2016 Rule's referral procedure to encourage Agencies, or State agencies and other entities that might be administering a federally funded social service program, to provide notice, when appropriate and feasible, to beneficiaries and prospective beneficiaries regarding how to obtain information about other available federally funded service providers. *See id.* at 2399.

• All Agencies except USAID proposed changes to their definitions of ''indirect Federal financial assistance'' to clarify that the potential availability to beneficiaries of a practical option to use indirect aid for services that do not involve explicitly religious activities is a significant factor in determining whether a program affords beneficiaries of indirect aid a ''genuine and independent private choice.'' *See Zelman* v. *Simmons-Harris,* 536 U.S. 639, 652 (2002); 88 FR 2401. These revised definitions more closely track the distinction between direct and indirect aid that the Supreme Court has drawn in a series of cases culminating in *Zelman. See* 536 U.S. at 655–56.

• The Agencies proposed changes to their regulations to state more directly that they will not, in their selection of service providers, discriminate on the basis of an organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization such as one that has the same capacity to effectively provide services. *See* 88 FR 2402.

• The Agencies proposed changes to their regulations to make clear that they will continue to consider organizations' requests for accommodations, on a case-by-case basis, in accordance with the U.S. Constitution and Federal statutes, and will not disqualify any organization from participating in a program simply because that organization has indicated it may request an accommodation. *Id.*

[1] As the Agencies explained in the Joint NPRM, USAID's proposed regulations differed somewhat from those of the other Agencies because ''unique characteristics of USAID-funded programs implemented abroad in foreign countries'' made certain policies adopted by other Agencies ''unworkable and impractical'' for USAID. *See* 88 FR 2398 n.3.

• With respect to religious organizations' limited exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (''Title VII''), 42 U.S.C. 2000e–1(a), the Agencies proposed to remove regulatory language added by the 2020 Rule that could mistakenly suggest that Title VII permits religious organizations that qualify for the Title VII religious-employer exemption to insist upon tenets-based employment conditions that would otherwise violate Title VII or the particular underlying funding statute in question. *See* 88 FR 2402–03.

The Agencies also sought public comment on whether their regulations should adopt any definition of ''Federal financial assistance'' other than that in Executive Order 13279.

The Agencies received numerous public comments in response to the Joint NPRM. Following consideration of those comments, the Agencies have reached the following decisions regarding the proposed changes listed above:

• All Agencies except USAID [2] adopt the proposed requirement that organizations, whether faith-based or secular, providing social services under Agencies' direct Federal financial assistance programs give written notice to beneficiaries and prospective beneficiaries of their rights.

○ Some Agencies' final rules also require that beneficiaries and prospective beneficiaries of programs receiving indirect Federal financial assistance be provided with a written notice of certain nondiscrimination protections.

○ All Agencies administering domestic social service programs now include a model beneficiary notice as an appendix to their regulations.

○ All Agencies' beneficiary notices, or the follow-on guidance they plan to issue to providers, will specify the office that beneficiaries and prospective beneficiaries may contact if they experience discrimination.

• The Agencies that proposed language regarding the provision of notice to beneficiaries and prospective beneficiaries about how to obtain information on alternative providers adopt that language.

• The Agencies that proposed changes to their definitions of ''indirect Federal financial assistance'' generally adopt their proposed language. Some Agencies make technical edits to the text of their final regulations to better align with the policy intent expressed in the Joint NPRM and to promote consistency among the Agencies' definitions of the term.

• The Agencies generally adopt their proposed language stating that they will not, in their selection of service providers, discriminate on the basis of an organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization. Some Agencies make technical edits to their proposed language to promote consistency among the Agencies' regulatory text and model provider notices.

• The Agencies adopt their proposed language regarding organizations' requests for accommodations.

• As proposed, the Agencies remove from their regulations certain text on tenets-based employment conditions added in the 2020 Rule, thus restoring the longstanding text of those regulatory provisions.

• The Agencies adopt the definition of ''Federal financial assistance'' set forth in Executive Order 13279.

The changes listed above, as well as the Agencies' responses to the other substantive, cross-cutting issues raised in public comments, are discussed in detail in Part II of this joint preamble. Unless otherwise noted in response to a particular comment, the responses in the joint preamble are adopted by all Agencies. Comments that raised issues specific to an Agency or that required an explanation of how a cross-cutting issue affects a particular Agency are addressed in the Agency-specific preambles in Part III of this preamble.

The Agencies generally consider each of the provisions promulgated here to be severable. Were any element of any of these final regulations to be stayed or invalidated by a reviewing court, the Agencies' intent is to otherwise preserve the rules promulgated herein to the fullest possible extent. Further, the Agencies believe that the elements that remained would generally be able to function sensibly and should remain in effect.

II. Cross-Cutting Public Comments

A. Beneficiary Protections

1. Definition of ''Beneficiary''

Comments: Commenters requested that the Agencies clarify who is covered by the regulations' beneficiary protections. One commenter suggested that this could be done either by amending the definition of ''beneficiary'' to explain that it covers all actual and prospective program participants, or by expressly stating that the protections apply to ''program participants'' instead of beneficiaries.

Response: Although the precise terminology varies, each Agency's proposed regulations make clear that the beneficiary protections apply to both current and prospective beneficiaries. The Agencies believe that the use of ''beneficiary'' is sufficiently clear to encompass program participants and therefore decline to make any changes based on these comments.

Changes: None.

2. Application of Beneficiary Protections to Direct and Indirect Aid Programs

Comments: Commenters suggested that the Agencies explicitly state that all beneficiaries, whether participating in programs funded by direct or indirect Federal financial assistance, are protected from discrimination, with USDA's provision serving as a model. Commenters also requested that the Agencies eliminate any language regarding indirect aid programs that appears to require participation in religious activities as part of such programs.

Response: Both the 2016 Rule and the 2020 Rule contained provisions prohibiting providers from discriminating against a program beneficiary or prospective beneficiary ''on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.'' *See* 81 FR 19361; 85 FR 82082. As explained in the Joint NPRM, ''[t]hose prohibitions against religious discrimination apply in direct and indirect aid programs alike, and they reflect one of the fundamental principles set forth in section 2(d) of Executive Order 13279, as amended by section 1(b) of Executive Order 13559.'' 88 FR 2398 (footnote omitted). The Agencies are thus retaining those regulatory provisions. *See* 2 CFR 3474.15(f) (ED); 6 CFR 19.5 (DHS); 7 CFR 16.4(a) (USDA); 22 CFR 205.1(h) (USAID); 24 CFR 5.109(g) (HUD); 28 CFR 38.5(c) (DOJ); 29 CFR 2.33(a) (DOL); 34 CFR 75.52(e), 76.52(e) (ED); 38 CFR 50.2(d) (VA); 45 CFR 87.3(f) (HHS).

With the exception of USAID, the Agencies proposed to remove language added by the 2020 Rule stating that indirect aid providers may require attendance at all activities that are fundamental to the program. 88 FR 2399. As the Joint NPRM explained,

[2] As explained above, USAID's final regulations differ somewhat from those of the other Agencies because ''unique characteristics of USAID-funded programs implemented abroad in foreign countries'' make certain policies adopted by the other Agencies ''unworkable and impractical'' for USAID. *See* 88 FR 2398 n.3.

''[t]his additional language, which was not added by USAID in the 2020 Rule, created a confusing tension with the first sentence of the same provision and with the language of the Executive order on which it is based.'' *Id.* The Executive order provides that social service providers receiving Federal financial assistance ''should not be allowed to discriminate against current or prospective program beneficiaries on the basis of . . . a refusal to attend or participate in a religious practice.'' E.O. 13279, sec. 2(d), 67 FR 77142, as amended by E.O. 13559, sec. 1(b), 75 FR 71320. The Agencies continue to believe that the removal of this language allays unnecessary confusion and therefore are not changing course in the final rule.

Changes: None.

Comments: One comment, submitted on behalf of three organizations, endorsed the Agencies' proposed rule text continuing to protect beneficiaries and prospective beneficiaries in federally funded programs from discrimination on the basis of religion or lack of religion. The comment, however, opposed additional text in that nondiscrimination provision that the comment described as enabling beneficiaries and prospective beneficiaries to select an indirectly funded program with explicitly religious content and then refuse to participate in those portions of the program. The comment maintained that this change lacks a reasoned basis for two reasons. First, the comment submitted, the Agencies' regulations anticipate that indirectly funded programs may include religious content, which, the comment surmised, could constitute a very large part of the social services offered. Second, the comment indicated that a prospective beneficiary should be required to exercise any option to enroll in an adequate secular alternative program before enrolling in a religious one and objecting to its content. For these same reasons, the comment also recommended that the Agencies retain language added by the 2020 Rule stating that providers at which beneficiaries choose to expend indirect aid ''may require attendance at all activities that are fundamental to the program.'' *See* 88 FR 2399.

Response: As explained in the Joint NPRM, the Agencies remain committed to ensuring that all beneficiaries and prospective beneficiaries have access to federally funded services and programs without unnecessary barriers and free from discrimination, in both directly and indirectly funded programs. *See id.* at 2398. The Agencies continue to believe that protecting beneficiaries and prospective beneficiaries from discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice is consistent with this goal.

The Agencies disagree with the comment's view that prohibiting indirectly funded social service providers from discriminating on the basis of a refusal to attend or participate in a religious practice is inconsistent with allowing such providers to include explicitly religious content in their programs. Indeed, with the exception of USAID, which does not administer any indirect Federal financial assistance programs, the Agencies have retained regulatory text specifying that a provider receiving indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. *See* 2 CFR 3474.15(f) (ED); 6 CFR 19.5 (DHS); 7 CFR 16.4(a) (USDA); 24 CFR 5.109(g) (HUD); 28 CFR 38.5(c) (DOJ); 29 CFR 2.33(a) (DOL); 34 CFR 75.52(e), 76.52(e) (ED); 38 CFR 50.2(d) (VA); 45 CFR 87.3(d) (HHS).

The comment also suggested that it would be impracticable for a beneficiary to object to participating in explicitly religious activities that are a very large part of the social service that is offered. As explained above, however, beneficiaries and prospective beneficiaries may decide whether to attend religious components. And in the Agencies' experience, indirectly funded social service providers can vary considerably with respect to the proportion of their programming that may be explicitly religious.

The Agencies decline to require that beneficiaries who object to participating in a program's explicitly religious activities instead enroll in an alternative program that does not include religious content. As explained, beneficiaries who do not wish to engage in explicitly religious activities have the option not to participate in such activities. And as discussed in the Joint NPRM, if an Agency ''determines that 'genuine and independent private choice' is absent for particular beneficiaries, including because providers that offer secular programs are as a practical matter unavailable,'' the Agency would ''need to take other appropriate steps to remedy the problem.'' 88 FR 2400. Those steps may include ''expanding the universe of reasonably available providers to include secular options'' or ''requiring existing providers to observe the same conditions that the rule attaches to direct aid.'' *Id.* at 2400–01. ''These remedies would ensure that beneficiaries are not effectively required to participate in religious activities in order to receive the benefits of the federally funded program and that the Government is not responsible for the use of the aid to support explicitly religious activities.'' *Id.* at 2401. For these reasons, the Agencies decline to adopt the comment's recommendations.

Changes: None.

3. Nondiscrimination in Outreach Activities

Comments: One commenter expressed concern that the proposed nondiscrimination regulations of four of the Agencies (DOJ, HHS, HUD, and USAID) applied only to program services and not also to outreach related to those services. Those nondiscrimination rules, as proposed, would prohibit federally funded social service programs from discriminating against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice when they provide federally funded services. The commenter requested that the four Agencies revise their rules so that they also prohibit providers from engaging in such discrimination when they conduct outreach activities related to their federally funded programs. Doing so, the commenter explained, would ensure consistency with the other five Agencies' regulations, as well as with Executive Order 13279, as amended, which likewise prohibits discrimination in outreach activities. *See* E.O. 13279, sec. 2(d), 67 FR 77142, as amended by E.O. 13559, sec. 1(b), 75 FR 71320.

Response: DOJ, HHS, HUD, and USAID agree with the commenter and adopt the recommended change in this final rule. As explained in the Joint NPRM, the Agencies' regulations prohibiting religious discrimination are designed to implement Executive Order 13279, as amended. 88 FR 2398. Section 2(d) of that Executive order provides that organizations, both ''in providing services supported in whole or in part with Federal financial assistance,'' and ''in their outreach activities related to such services,'' should not be allowed to discriminate against program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. 75 FR 71320. Moreover, five of the Agencies already include similar language in their nondiscrimination provisions. Therefore, to promote consistency with Executive Order 13279 and with the other Agencies' rules, DOJ, HHS, HUD, and USAID agree that their nondiscrimination regulations should

likewise apply not only to federally funded social services, but also to outreach activities related to those services.

The Agencies have long expressed an intention to promote consistency with Executive Order 13279 and among their regulations. In 2016, for example, five of the Agencies (DOL, HHS, ED, VA, and DHS) amended their nondiscrimination provisions so that they applied to outreach activities. While the remaining four Agencies (DOJ, USDA, HUD, and USAID) did not include that phrase in their regulations, the joint preamble to the 2016 Rule stated that all of the Agencies' nondiscrimination provisions were intended to ''closely track'' Executive Order 13279, as amended. 81 FR 19361.

The Agencies likewise acknowledged in the 2020 Rule that Executive Order 13279 prohibits discrimination in outreach related to federally funded services, and concluded that the ''final rule maintains the regulatory prohibition on such religious discrimination.'' 85 FR 82044. In the 2020 Rule, USDA also amended its nondiscrimination provision to apply to outreach activities. *Id.* at 82134. In contrast, HHS removed the word ''outreach'' from its nondiscrimination regulation, *see id.* at 82146, explaining that this change was offered because, in HHS's view, the text might otherwise be read to prohibit an organization from circulating information about its programs in contexts that have primarily religious audiences, such as a church newsletter. Ensuring Equal Treatment of Faith-Based Organizations, 85 FR 2974, 2980–81 (Jan. 17, 2020). These distinctions are resolved in this final rule, which ensures greater consistency with Executive Order 13279 and among the Agencies' regulations by revising the beneficiary nondiscrimination provisions in DOJ, HHS, HUD, and USAID's rules to apply to outreach activities. *See* 22 CFR 205.1(h) (USAID); 24 CFR 5.109(g) (HUD); 28 CFR 38.5(c) (DOJ); 45 CFR 87.3(f) (HHS).

The Agencies do not believe that this change will cause federally funded social service providers to mistakenly read the nondiscrimination clauses as prohibiting them from providing information about their social service programs in contexts that have primarily religious audiences, such as a church newsletter. The Agencies are unaware of any instance in which a service provider or interested party has expressed that concern, and do not believe it follows from a plain reading of the provisions. Rather, the Agencies think it is clear that the nondiscrimination protection prohibits outreach activities that favor or disfavor prospective beneficiaries on the basis of religion, such as when a federally funded social service provider limits its outreach or advertising of the program services to target or avoid populations based on religion.

Additionally, USDA and VA have revised their nondiscrimination provisions to apply to outreach activities related to services supported in whole or in part with Federal financial assistance, irrespective of whether the outreach itself is paid for with Federal or private funds. This change, too, is consistent with Executive Order 13279, which does not limit the scope of its nondiscrimination protections to outreach that is federally funded, *see* E.O. 13279, sec. 2(d), 75 FR 71320, as well as with the regulations of the other Agencies.

Changes: DOJ, HHS, HUD, and USAID amend 28 CFR 38.5(c), 45 CFR 87.3(f), 24 CFR 5.109(g), and 22 CFR 205.1(h), respectively, to add ''outreach activities'' to the beneficiary nondiscrimination provisions of their final regulations, consistent with the regulations previously adopted by USDA, DOL, ED, VA, and DHS. USDA and VA likewise remove language from their regulations that would preclude their nondiscrimination clauses from applying to outreach activities that are paid for with non-Federal funds. *See* 7 CFR 16.4(a) (USDA); 38 CFR 50.2(d) (VA).

4. Beneficiary Notice Requirements

In this part of the joint preamble, the Agencies address comments related to the requirement that, under particular circumstances, recipients of Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain nondiscrimination protections. The Agencies recognize that recipients of Federal financial assistance may need additional time to implement any notice requirements to which they are subject under this rule. Accordingly, as indicated in the **DATES** section above, the Agencies have agreed to provide recipients with a period of 120 days in which to comply with the written beneficiary notice requirements, if applicable. The Agencies nonetheless encourage recipients to comply with those requirements as soon as possible.

Comments: Several commenters urged the Agencies to require that beneficiaries be provided notice of how they might obtain information on alternative providers. The commenters expressed concern that the Joint NPRM's approach—stating only that beneficiary notices ''may'' give beneficiaries the option to seek information on alternative providers—placed an undue burden on beneficiaries, who, the commenters said, are often not as well-positioned to find alternative providers as are the awarding Agencies or social service providers themselves. By contrast, other commenters worried that the Agencies' proposed approach improperly imposed a burden on providers to locate alternatives. Some commenters likewise contended that the Joint NPRM's proposed notice procedure would place a unique and unfair burden on faith-based organizations, in particular.

Response: The Agencies recognize that it will sometimes be appropriate and beneficial to include information in a beneficiary notice about beneficiaries' option to seek alternative providers. The Agencies believe, however, that the suitability and utility of including this information will vary across programs. For example, such information may be less helpful to beneficiaries where there is only one federally funded program in the region. In other cases, providing such information might impose an unreasonable burden on Agencies or their governmental partners. For instance, certain providers may offer social services on an emergency or one-off basis outside of normal business hours and without a fixed location, making it difficult if not impossible for the Agencies to respond to a prospective beneficiary's request for alternative provider information in a sufficiently timely fashion. Accordingly, the Agencies that state that beneficiary notices ''may'' include information about how to identify alternative providers will retain this language to allow these Agencies greater flexibility in determining when it would be appropriate to include such information in the notice. *See* 6 CFR 19.12(c) (DHS); 7 CFR 16.4(c)(2) (USDA); 24 CFR 5.109(g)(4) (HUD); 28 CFR 38.6(d) (DOJ); 38 CFR 50.3(c) (VA); 45 CFR 87.3(m) (HHS). ED will likewise retain its language from the Joint NPRM, which, although phrased slightly differently, also enables ED to make a case-by-case determination regarding the programs to which the alternative provider information requirement should apply, taking into account the specific facts and circumstances of a particular program. *See* 34 CFR 75.712(c), 76.712(c).

The Agencies emphasize that in neither the Joint NPRM nor this final rule do they require any provider, faith-based or secular, to refer beneficiaries to or provide notice about any other organizations. Instead, the regulatory

text authorizes the Agencies to require that the beneficiary notice include contact information for a Federal office, or in some instances a State agency or other governmental entity that might be administering a federally funded social service program, should a beneficiary want additional information about other federally funded programs in their area. Thus, under this rule, only governmental entities, not non-governmental providers, will be responsible for sharing information about alternative providers. The Agencies believe it is also important to highlight that whether a faith-based organization may participate in a federally funded program is not dependent on the availability of a secular entity providing the same or similar services nearby.

Changes: None.

Comments: Some commenters took issue with the regulations' requirement that service providers receiving direct Federal financial assistance must notify beneficiaries and prospective beneficiaries that providers cannot discriminate against a beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. The commenters asserted that the requirement is unnecessary and singles out and reflects animus towards faith-based providers in violation of the First Amendment. One commenter further suggested that the President and the Agencies lack legal authority to impose the underlying nondiscrimination conditions themselves.

Response: The Agencies decline to eliminate their regulations' longstanding nondiscrimination requirements or their reinstatement of the beneficiary notice requirement. Contrary to the suggestions of some commenters, the Agencies' regulations require that all direct aid recipients, whether religious or secular, must give beneficiaries and prospective beneficiaries information about their rights and protections.

In accordance with section 2(d) of Executive Order 13279, 67 FR 77142, the Agencies' regulations have long provided that an organization that participates in programs funded by Federal financial assistance may not, in providing such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. President Bush promulgated the Executive order's nondiscrimination requirement in 2002 pursuant to, among other things, the power vested in him by the Constitution as the head of the executive branch, just as many other Presidents have exercised supervisory authority over how Executive officers carry out their responsibilities. *See id.* at 77141. The nondiscrimination requirement, moreover, is appropriate to, among other things, help guarantee the equal protection of the laws, protect religious free exercise, and prevent an unconstitutional establishment of religion. *See* 88 FR 2398. Exercising their existing statutory authorities, it is entirely permissible for the Agencies to promulgate regulations implementing the Executive order and the fundamental legal principles on which it is based. *See id.* at 2395–98. That is why, as the Joint NPRM explained, both the 2016 and 2020 Rules included such nondiscrimination provisions, as had prior iterations of the Agencies' regulations. *Id.* at 2398. The Agencies believe the provisions likewise can and should be retained in their regulations here, reflecting, as they do, fundamental principles embodied in a Presidential directive. *See id.*

The Agencies also respectfully disagree that this rule's notice procedure—requiring an organization providing social services under a program supported by direct Federal financial assistance to give written notice of these and other protections to beneficiaries and prospective beneficiaries, including in some cases the right to receive information about alternative providers—should or must be eliminated. As explained in the Joint NPRM, all beneficiaries and prospective beneficiaries should have access to federally funded social services without unnecessary barriers and in a manner that is free from discrimination. *Id.* The Agencies continue to believe that the rule's notice procedure is critical to that goal because it helps ensure that beneficiaries are aware of their rights and protections, thereby removing certain barriers to their participation and facilitating access to federally funded services and programs. *Id.* at 2398–99. Indeed, in part for that reason, and as noted above, the rule applies the notice procedure to all direct aid recipients, whether secular or religious. *See id.* at 2399 (emphasizing that the requirement will be applied ''to all . . . providers'' receiving direct Federal financial assistance, ''whether they are faith-based or secular''). Nor have commenters pointed to anything else establishing that the Agencies' effort to protect beneficiaries' rights, or any other aspect of this rule, reflects an intent to discriminate against or hostility towards religious providers. To the contrary, as the Agencies emphasized in the Joint NPRM, ''it has long been Federal policy that faith-based organizations are eligible to participate in Agencies' grant-making programs on the same basis as any other organizations,'' and the Agencies remain committed to preventing discrimination against faith-based organizations in the selection and regulation of service providers. *Id.* at 2401. Just as providers should be notified about their rights and protections, so should beneficiaries.

Changes: None.

Comments: Some commenters recommended that the Agencies require providers to give written notice to beneficiaries of programs receiving indirect Federal financial assistance. The commenters recognized that such indirect aid beneficiaries are not entitled to all of the protections identified in the direct-aid-beneficiary notice. For instance, the regulations' requirement that providers separate explicitly religious activities from Government-funded programming applies only to programs supported with direct Federal financial assistance. But the commenters argued that there was no good reason why indirect aid beneficiaries should not receive notice of their particular set of protections.

Response: The Agencies agree that the rationale for adopting the beneficiary notice requirement—improving beneficiaries' access to federally funded services by informing them of their rights and protections, and thereby removing certain barriers arising from discrimination—applies equally to all beneficiaries, regardless of whether they are participating in programs receiving direct or indirect Federal financial assistance. The Agencies also note that, for most Agencies, their cost analysis in the proposed rule already calculated the annual cost of the notice requirement as if it applied to both direct and indirect aid programs, because data limitations made it impossible to differentiate direct recipients from indirect recipients in that context. Extending the beneficiary notice requirement to most indirect aid programs would, therefore, increase the expected benefits of the rule without increasing its expected costs, which the Agencies have already determined to be justified by the benefit of the notice requirement as proposed.

As the Joint NPRM indicated, however, certain Agencies' estimates did not reflect the cost of the notice requirement for subrecipients of Federal financial assistance. The Agencies also note that there may be significant administrative difficulties in providing written notice to all beneficiaries in

certain indirect aid programs. For example, as the Agencies explained in the 2016 Rule, ''there are more than a quarter million stores, farmers' markets, direct marketing farmers, homeless meal providers, treatment centers, group homes, and other participants across the nation that are authorized Supplemental Nutrition Assistance Program ('SNAP') retailers.'' 81 FR 19363. If all providers receiving indirect aid were required to give written notice to beneficiaries, these retailers would always need to have notices ready to provide to any person using SNAP benefits. *Id.* The Agencies have therefore tailored the beneficiary notice requirement to the realities of certain indirect aid programs—for example, by requiring that the notice be provided by entities that administer the indirect Federal financial assistance, or by electing not to impose the beneficiary notice requirement in certain indirect aid programs where the administrative difficulties present insurmountable obstacles. These Agency-specific decisions are explained in the Agencies' individual preambles below.

The Agencies recognize that programs receiving indirect Federal financial assistance are not subject to the requirement to separate explicitly religious activities from Government-funded ones and that this difference must be reflected in the beneficiary notices given to indirect aid beneficiaries. As elaborated in the Agency-specific preambles below, the Agencies that have indirect aid programs address this difference by specifying in their respective model beneficiary notices which protections apply only to programs supported by direct Federal financial assistance. It is important to note, moreover, that the proposed regulations of the Agencies that reinstate the beneficiary notice requirement already specify that the directive to separate explicitly religious activities applies only to programs supported by direct Federal financial assistance. *See* 6 CFR 19.4(b) (DHS) (requiring that explicitly religious activities be ''separate in time or location'' from ''activities supported by direct Federal financial assistance''); 7 CFR 16.4(c)(1)(iii) (USDA) (same); 24 CFR 5.109(g)(2)(ii) (HUD) (same); 28 CFR 38.6(b)(3) (DOJ) (same); 29 CFR 2.34(a)(3) (DOL) (same); 34 CFR 75.712(a)(3), 76.712(a)(3) (ED) (same); 38 CFR 50.3(a)(3) (VA) (same); 45 CFR 87.3(k)(1)(iii) (HHS) (same).

Changes: The Agencies that administer domestic social service programs now generally require that beneficiaries and prospective beneficiaries of such programs receiving indirect Federal financial assistance be provided with a written beneficiary notice, subject to certain variations elaborated in the Agency-specific preambles below. The regulations affected are 6 CFR 19.12(a) (DHS), 7 CFR 16.4(c) (USDA), 24 CFR 5.109(g) (HUD), 28 CFR 38.6(b) (DOJ), 29 CFR 2.34(c) (DOL), 38 CFR 50.3(a) (VA), and 45 CFR 87.3(k) (HHS).

Comments: One commenter expressed concern about the Joint NPRM's statement that the Agencies might, ''as appropriate, require providers to include [the beneficiary] notice as part of a broader and more general notice of nondiscrimination on additional grounds.'' 88 FR 2399. The commenter was particularly troubled by the phrase ''on additional grounds,'' which the commenter said was vague and potentially burdensome to providers. The commenter seemed to believe that the Joint NPRM's preamble text would enable the Agencies to require more than one notice be provided to beneficiaries—one specific notice regarding the protections under this rule, and another combined with notification of other protections.

Response: In making these statements in the Joint NPRM preamble, the Agencies' intent was to relieve potential burdens on providers, not to create them. The Agencies will allow providers to notify beneficiaries of the protections in this rule as part of a broader nondiscrimination notice, but the Agencies will not require providers to do so. This is clear on the face of many of the Agencies' regulations. For clarity and consistency with the other Agencies, however, VA has amended its relevant regulation (38 CFR 50.3) to make it clear that providers may, but need not, combine materials for beneficiary notices.

Changes: VA revises 38 CFR 50.3(a) to replace the phrase ''including by incorporating the notice into materials that are otherwise provided to beneficiaries'' with the phrase ''in a manner and form prescribed by the VA program.''

Comments: Several commenters suggested that the Agencies should, as they had previously, provide model notices to help providers comply with their obligation to notify beneficiaries and prospective beneficiaries of their rights. According to the commenters, model notices will help the Agencies ensure that beneficiaries do not encounter discrimination when accessing critical services.

Response: The Agencies administering domestic social service programs agree that providing model beneficiary notices will further the Agencies' goal of ensuring that beneficiaries are aware of their rights and protections, and thereby removing certain barriers to their participation and facilitating access to federally funded services and programs. Those Agencies have accordingly all added model beneficiary notices to their regulations in this final rule.

Changes: DOJ, USDA, DOL, HHS, HUD, ED, VA, and DHS have all added an appendix C containing model language for written notice to beneficiaries and prospective beneficiaries. Those model notices are located at 6 CFR part 19, appendix C (DHS); 7 CFR part 16, appendix C (USDA); 24 CFR part 5, subpart A, appendix C (HUD); 28 CFR part 38, appendix C (DOJ); 29 CFR part 2, subpart D, appendix C (DOL); 34 CFR part 75, appendix C (ED); 38 CFR part 50, appendix C (VA); and 45 CFR part 87, appendix C (HHS).

B. Prohibition on Using Direct Federal Financial Assistance for Explicitly Religious Activities

Comments: Several commenters suggested that, with this rule, the Agencies should repeal their longstanding regulations prohibiting organizations that receive direct Federal financial assistance from engaging in explicitly religious activities as part of the social services funded with that financial assistance and requiring that religious activities be separated in time or location from the federally funded services. According to these commenters, recent Supreme Court cases, including primarily *Carson* v. *Makin,* 596 U.S. 767 (2022), and *Trinity Lutheran Church of Columbia, Inc.* v. *Comer,* 582 U.S. 449 (2017), have established that such regulations are not only no longer required by the Establishment Clause, but also now prohibited by the Free Exercise Clause.

Response: The Agencies decline to repeal the regulatory provisions in question, which appropriately implement an Executive order and are consistent with the Supreme Court's First Amendment jurisprudence. *See* 2 CFR 3474.15(d)(1) (ED); 6 CFR 19.4(a) and (b) (DHS); 7 CFR 16.2, 16.4(b) (USDA); 22 CFR 205.1(e) (USAID); 24 CFR 5.109(e) (HUD); 28 CFR 38.5(a) and (b) (DOJ); 29 CFR 2.33(b)(1) (DOL); 34 CFR 75.52(c)(1), 76.52(c)(1) (ED); 38 CFR 50.2(b), 61.64(c), 62.62(c) (VA); 45 CFR 87.3(d) (HHS).

Executive Order 13279—which President Bush promulgated in 2002, and which, in amended form, remains operative today—specifies that Federal agencies must implement social service programs ''in accordance with the

Establishment Clause and the Free Exercise Clause of the First Amendment to the Constitution'' and that, ''[t]herefore, organizations that engage in explicitly religious activities, such as worship, religious instruction, and proselytization, must offer those services separately in time or location from any programs or services supported with direct Federal financial assistance.'' E.O. 13279, sec. 2(e), 67 FR 77142, as amended by E.O. 13559, sec. 1(b), 75 FR 71320; *see also* E.O. 13279, sec. 3(b), 67 FR 77143 (requiring specified agency heads to ensure that all agency policies with implications for faith-based and community organizations are consistent with the aforementioned policy and the other ''fundamental principles'' articulated in section 2 of the order).

The Agencies' regulations have long implemented this directive. Most of the Agencies have imposed such conditions since shortly after President Bush promulgated Executive Order 13279 in 2002, *see* 88 FR 2399–2400, and all of the Agencies maintained the conditions in connection with the 2020 Rule, 85 FR 82041–43, 82109.

The regulations, moreover, are consistent with the Supreme Court's First Amendment caselaw. As explained in the Joint NPRM, 88 FR 2401 n.8, the Court has unanimously held—in the context of direct governmental aid to private organizations to perform social service programming or engage in social welfare activities—that although the Establishment Clause does not preclude religious organizations from receiving such funds, they may not use aid they receive directly from a government to advance '' 'specifically religious activit[ies] in an otherwise substantially secular setting.' '' *Bowen* v. *Kendrick,* 487 U.S. 589, 621 (1988) (quoting *Hunt* v. *McNair,* 413 U.S. 734, 743 (1973)); *see also Mitchell* v. *Helms,* 530 U.S. 793, 840, 865 (2000) (O'Connor, J., concurring in the judgment) (controlling opinion explaining that the Court's decisions emphasizing religious neutrality ''provide no precedent for the use of public funds to finance religious activities'' and reaffirming that the principle that ''any use of public funds to promote religious doctrines violates the Establishment Clause'' ''of course remains good law'' (quotation marks and emphasis omitted)). That longstanding Supreme Court doctrine informed President Bush's inclusion of section 2(e) in Executive Order 13279, 67 FR 77142, which in turn compelled the promulgation and repromulgation of the relevant provisions of the Agencies' regulations.

The Supreme Court's more recent decisions have not overruled *Bowen* v. *Kendrick, Mitchell v. Helms,* or any of the other cases in which the Court has affirmed the 'no religious uses of direct aid' Establishment Clause rule. It is true that the Court in *Carson* wrote that discrimination on the basis of a school's religious activities was no ''less offensive to the Free Exercise Clause'' than discrimination on the basis of a school's religious character. 596 U.S. at 787. The Court, however, made that statement in the context of a ''neutral benefit program in which public funds flow[ed] to religious organizations *through the independent choices of private benefit recipients.*'' *Id.* at 781 (emphasis added); *see also* Me. Rev. Stat. Ann. tit. 20–a, sec. 5204(4) (2008) (providing that the State of Maine would ''pay the tuition . . . at the public school or the approved private school of the parent's choice at which the student is accepted''). The school aid program in *Carson,* in other words, was a voucher-like program, *i.e.,* what the Agencies' regulations here refer to as providing indirect aid. The Court noted that there was no Establishment Clause problem with respect to beneficiaries using government aid for religious education in such a program. 596 U.S. at 781 (citing *Zelman,* 536 U.S. at 652–53).

This rule makes clear that the Agencies' regulatory restrictions regarding explicitly religious activities do not apply in such indirect aid cases, where governmental financial assistance flows to private organizations wholly as a result of a genuinely independent and private choice of the beneficiary. *See, e.g.,* 88 FR 2423 (citing proposed rule 38 CFR 50.2(b), stating that ''[t]he use of indirect Federal financial assistance is not subject to'' VA's explicitly-religious-activity restrictions). Nothing in *Carson,* however, affects the Court's well-established doctrine that the Establishment Clause generally prohibits the use of financial aid received directly from a government for ''specifically'' or ''inherently'' religious activities, particularly in the context of aid to private organizations to provide social services to beneficiaries, as in *Kendrick.* Nor did the Court in *Carson* hold that statutory and regulatory restrictions on such religious uses of direct aid violate the Free Exercise Clause.

Contrary to commenters' suggestions, the Court's decision in *Trinity Lutheran* does not require amendment of the Agencies' regulations either. *Trinity Lutheran* involved a program in which a Missouri agency provided grants directly to entities for playground resurfacing. Although the Court in *Trinity Lutheran* held that Missouri could not disqualify a church from eligibility for the grant on the basis of its religious identity, the Court did not address a separate condition under Missouri law mandating that the grants not be used for sectarian purposes. *See* 582 U.S. at 465 n.3. Indeed, the Court specifically noted that ''[t]his case involves express discrimination based on religious identity with respect to playground resurfacing,'' and the Court ''d[id] not address religious uses of funding.'' *Id.* The Court in *Trinity Lutheran* did not purport to overrule Establishment Clause precedents such as *Kendrick* and *Mitchell,* and no President has amended section 2(e) of Executive Order 13279 after *Trinity Lutheran,* nor did the Agencies eliminate the restriction on religious uses of direct aid from their regulations as part of the 2020 Rule.

The Supreme Court has counseled that ''it is th[e] Court's prerogative alone to overrule one of its precedents,'' *United States* v. *Hatter,* 532 U.S. 557, 567 (2001) (quotation marks omitted), and has emphasized that its ''decisions remain binding precedent until [the Court] see[s] fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality,'' *Hohn* v. *United States,* 524 U.S. 236, 252–53 (1998); *see also Agostini* v. *Felton,* 521 U.S. 203, 237 (1997) (''We reaffirm that '[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.' '' (quoting *Rodriguez de Quijas* v. *Shearson/Am. Exp., Inc.,* 490 U.S. 477, 484 (1989))). The Agencies must follow the Court's existing precedents rather than try to predict whether the Court might overturn them in a future case.

In short, neither section 2(e) of Executive Order 13279 nor the Agencies' regulations implementing that extant Presidential directive are unconstitutional. The Agencies therefore maintain their regulations prohibiting organizations that receive direct Federal financial assistance from engaging in explicitly religious activities as part of the social services funded with that financial assistance and requiring that religious activities be separated in time or location from the federally funded services.

Changes: None.

C. Definition of ''Indirect Federal Financial Assistance''

Comments: Various commenters weighed in on the rule's definition of ''indirect Federal financial assistance.'' Numerous commenters strongly supported the Agencies' approach to the term. A few commenters, however, contended that under current Supreme Court caselaw it is inappropriate for the Agencies to distinguish between direct and indirect Federal aid. Commenters also raised concerns about specific language in the definition, including primarily the rule's statement that the availability of adequate secular alternatives is a significant factor in determining whether a program qualifies as indirect. For example, one commenter asserted that Federal financial assistance may qualify as indirect, even where particular beneficiaries lack any practical secular alternatives, so long as the Government itself is not responsible for the lack of such alternatives. Relatedly, some commenters took issue with the possibility that the absence of a ''genuine and independent private choice'' to participate in religious programs might require an Agency to impose some of the conditions on a recipient of indirect aid that would normally be associated with direct Federal financial assistance programs.

Response: The Agencies decline to eliminate the rule's distinction between direct and indirect aid or to revise its general approach to defining ''indirect Federal financial assistance.'' Nevertheless, as elaborated below, a few of the Agencies have made some technical edits to their regulations to promote consistency among the Agencies' definitions of the term.

As explained above in Part II.A.4 of this joint preamble, the Agencies' regulations have long provided that their restrictions on explicitly religious activities in federally funded social service programs apply only where the governmental aid is given to private organizations ''directly.'' The Joint NPRM proposed to amend the regulations' definition of indirect aid programs—*i.e.,* those that are not subject to such conditions—to clarify that they are limited to cases in which a service provider receives assistance ''wholly as a result of'' a ''genuine and independent private choice'' of the beneficiary, ''not a choice of the Government.'' 88 FR 2401 (quotation marks omitted). As noted in the Joint NPRM, such language or its equivalent has appeared in at least some of the Agencies' regulations as far back as 2004. *Id.* at 2399. The rule here further provides that ''the availability of adequate secular alternatives is a significant factor in determining whether a program affords'' a genuinely independent and private choice to beneficiaries and prospective beneficiaries. *Id.* at 2401. These amendments are designed to more closely track the distinction between direct and indirect aid that the Supreme Court has drawn in a series of cases culminating in *Zelman* v. *Simmons-Harris,* 536 U.S. 639 (2002). *See* 88 FR 2401.

Contrary to some commenters' suggestions, the Supreme Court has not abandoned the distinction between direct and indirect aid that has been central to many of its Establishment Clause decisions. Indeed, in *Carson,* the Court specifically noted, citing *Zelman,* that because the Maine program there was ''a neutral benefit program in which public funds flow to religious organizations through the independent choices of private benefit recipients,'' it ''d[id] not offend the Establishment Clause.'' *Carson,* 142 S. Ct. at 1997. It thus remains the case that, for Federal financial assistance to qualify as indirect under the Court's jurisprudence, a service provider must receive the assistance as a result of a genuine and independent private choice of the beneficiary. *See* 88 FR 2401.

The Agencies also decline to amend the rule's statement that the ''availability of adequate secular alternatives'' is a ''significant factor'' in determining whether a program affords beneficiaries genuinely independent and private choices. The vast majority of commenters who weighed in on the statement agreed that the availability of such alternatives is relevant to the distinction between direct and indirect aid. That is consistent with the Supreme Court's jurisprudence on this subject. As the Court explained in *Zelman,* the Establishment Clause determination of whether aid is direct or indirect ''must be answered by evaluating *all* options,'' religious or secular, available to beneficiaries in a Government-funded social service program. 536 U.S. at 655–56. The inquiry, in other words, is a holistic one, in which courts comprehensively consider the nature of and factual backdrop for the program in question. Moreover, contrary to the suggestions of one commenter, it is both permissible and administrable for an agency to conduct that inquiry, including by considering the availability of adequate secular alternatives. In fact, that is precisely what the Supreme Court itself did in *Zelman* and what lower courts have done in applying *Zelman*'s distinction between direct and indirect aid to various factual scenarios. Therefore, it is appropriate for the Agencies to do likewise when taking actions that might implicate constitutional concerns.

Nor do the Agencies agree that a lack of secular alternatives is relevant only where the Government is responsible for their absence. As just noted, *Zelman* makes clear that the ultimate question requires an assessment of ''*all* options'' available to beneficiaries. *See id.* at 656. And the Agencies do not believe it is necessary for the regulations to address any hypothetical cases.

As noted, some commenters also took issue with certain statements in the Joint NPRM preamble regarding what a governmental entity offering aid can or must do where beneficiaries are, as a practical matter, unable to make an independent choice to use the aid in a program that does not include specifically religious elements. *See* 88 FR 2400–01. The Joint NPRM's preamble explained that if an Agency responsible for selecting service providers determines that a limited array of federally funded programs in a particular area precludes beneficiaries' practical ability to make a ''genuine and independent private choice,'' *Zelman* would not require the Agency to terminate the indirect aid program or disallow beneficiaries from redeeming their vouchers or certificates at religious providers; the Agency could instead take other appropriate steps to remedy the problem, such as expanding the universe of reasonably available providers to include secular options or requiring existing providers to observe the same conditions that the regulations attach to direct aid. *Id.* The Agencies need not take any action with respect to these comments because the regulatory text itself does not address what, if any, steps the Government should or must take in such circumstances. Because such cases may be very rare and will likely differ widely in terms of their facts and contexts, the Agencies do not believe that their regulations ought to specifically address any hypothetical remedial choices. Nevertheless, the Agencies continue to believe that the possibilities mentioned in the Joint NPRM preamble will be legally available in some or all such cases. For example, it is unlikely that an Agency's efforts to identify and recruit secular providers in order to guarantee genuine beneficiary choice would be subject to heightened constitutional scrutiny—and even if they were, that scrutiny would likely be satisfied because such efforts would be undertaken in order to satisfy the Establishment Clause's requirements and because such recruiting would not

disqualify or disfavor the participation of any religious providers.

Further, the Agencies decline to amend the rule to treat the availability of secular alternatives as a necessary condition (as opposed to merely a significant factor) to a determination that the program affords beneficiaries a genuinely independent and private choice of providers. It may be the case that, under certain facts and circumstances, *Zelman* would require a secular choice be available for the governmental aid program to qualify as indirect. But indirect aid programs can and do vary widely, and it is possible that in some contexts a court could deem a beneficiary's decision to use financial assistance in a program that includes religious elements to be genuinely independent even where there are few or no secular options in a given area. For example, a particular beneficiary might be indifferent to whether a provider or a program is in some respects religious, or might prefer a religious provider.

Finally, although the Agencies decline to change their overall approach to defining ''indirect Federal financial assistance,'' certain of the Agencies have made technical edits to their definitions of the term, so as to more closely track the language of *Zelman,* as discussed in the Joint NPRM, and to promote consistency among the nine Agencies' regulations. Also, previously, some Agencies referred to the plural ''adequate secular alternatives,'' while others referred to the singular ''adequate secular alternative.'' To advance consistency among the Agencies' regulations, the Agencies have now uniformly adopted the plural construction. In doing so, they do not express any view as to whether one secular alternative could be adequate in some circumstances, which would depend on the specific facts at issue.

Changes: The Agencies have made the aforementioned technical changes in the relevant regulations in accordance with *Zelman* and the Joint NPRM and to promote consistency among the Agencies' regulatory text. The regulations modified are 6 CFR 19.2 (DHS); 7 CFR 16.2 (USDA); 24 CFR 5.109(b) (HUD); 28 CFR 38.3(c)(2) (DOJ); 29 CFR 2.31(a)(2)(ii) (DOL); 34 CFR 75.52(c)(3)(ii)(B) and 76.52(c)(3)(ii)(B) (ED); 38 CFR 50.1(b)(2), 61.64(b)(2), and 62.62(b)(2) (VA); and 45 CFR 87.1(c)(2) (HHS).

D. Eligibility of Faith-Based Organizations and Availability of Accommodations

1. Religious Motives

Comments: In the Joint NPRM, the Agencies made clear that their proposed regulations would preserve the Agencies' longstanding policy of prohibiting discrimination against an organization on the basis of religion. 88 FR 2402. But, rather than keeping the 2020 Rule's formulation of that principle, the Agencies proposed rewording their regulations for clarity and to state the prohibition more plainly. *Id.* In particular, the Joint NPRM expressed that the Agencies' regulations would provide that the Agencies would not, in their selection of service providers, discriminate ''on the basis of an organization's religious character, motives, or affiliation, or lack thereof.'' *Id.* Commenters pointed out, however, that some of the Agencies (namely, DOJ, DOL, HHS, HUD, VA, DHS, and USAID) had, in certain of their proposed regulations, retained the ''motivated or influenced by religious faith'' language of the 2020 Rule, rather than the ''motives'' language set out in the Joint NPRM's preamble. The commenters urged those Agencies to change their regulatory text to consistently adopt the ''motives'' formulation prescribed in the Joint NPRM preamble and used elsewhere in the proposed regulations.

Response: The Agencies agree that their regulations should consistently prohibit discrimination on the basis of an organization's ''religious character, motives, or affiliation, or lack thereof,'' instead of preserving the religious-motivation phrasing used in the 2020 Rule. As explained in the Joint NPRM, the ''motives'' language maintains the Agencies' longstanding prohibition on such discrimination, but ''states it more plainly'' and ''would further guarantee that the Agencies will not discriminate against providers on grounds that would violate the First Amendment.'' *Id.* The Agencies, moreover, believe there is value in ensuring that their regulations are consistent in describing the prohibition on discriminating against an organization based on its religion. Accordingly, in this final rule, the Agencies have uniformly adopted the ''motives'' language in all of the relevant regulatory provisions.

This and the other wording changes regarding the protections the law affords to faith-based organizations and others do not substantively alter the Agencies' longstanding commitment to ensuring that faith-based organizations are not discriminated against in the selection of service providers. Instead, the changes simply address confusion introduced by the 2020 Rule regarding protections the law affords to faith-based organizations and others.

Changes: DOJ, DOL, HHS, HUD, VA, DHS, and USAID have revised their regulations and associated appendices in order to align their regulatory text with that appearing elsewhere in the relevant regulations. The final regulations reflecting these revisions are 6 CFR 19.3(b), 19.4(c), and appendix A to part 19 (DHS); 22 CFR 205.1(b) (USAID); 24 CFR 5.109(c) and appendix A to subpart A of part 5 (HUD); 28 CFR 38.4(a), 38.5(d), and appendix A to part 38 (DOJ); 29 CFR 2.32(a)(1) and appendix A to subpart D of part 2 (DOL); 38 CFR 50.2(a) and appendix A to part 50 (VA); and 45 CFR 87.3(a) and appendix B to part 87 (HHS).

2. Religious Accommodations

Comments: In the Joint NPRM, the Agencies stated that they would continue to consider requests for accommodations on a case-by-case basis in accordance with the U.S. Constitution and other Federal law. 88 FR 2402. Some commenters generally supported this approach, but urged the Agencies to provide further information about how such determinations would be made. For instance, one commenter requested that the Agencies explain how they will decide requests for accommodations and who will make those determinations. The commenter also argued that the Agencies should institute an expedited procedure for appealing accommodation denials, before the provider-selection process is completed, so as to ensure that religious organizations are provided appropriate accommodations and are not excluded from participating in the Agencies' programs. And another commenter urged the Agencies to make clear that their case-by-case determinations would consider, among other factors, the potential impacts of proposed accommodations on beneficiaries or other third parties.

Response: As explained in the Joint NPRM, the Agencies remain committed to considering providers' requests for accommodations on a case-by-case basis in accordance with all Federal law, and to ensuring faith-based and other organizations are not dissuaded from participating in the Agencies' programs. Consistent with the Agencies' commitment to taking a case-by-case approach, the Agencies do not establish in this final rule precisely how or by whom such case-by-case determinations will be made because such details are beyond the scope of this rulemaking and

could vary depending on the particular program implicated or the facts and circumstances of a particular request for accommodation.

Changes: None.

Comments: Several commenters supported the Agencies' ongoing commitment to considering requests for accommodations on a case-by-case basis in accordance with the U.S. Constitution and Federal statutes, as reflected in standalone provisions of the Agencies' regulations. At the same time, however, the commenters suggested that the Agencies remove similar language from the regulations' provisions describing program requirements. According to the commenters, because the exemption language in those provisions immediately follows the constitutionally required prohibition on using direct governmental funding for explicitly religious activities, that language could be misread to suggest that a religious exemption could be given to that requirement. In the commenters' view, including such language in the program requirement provisions could thus engender confusion.

Responses: The Agencies have carefully reviewed the language regarding accommodations included throughout this rule, and they do not believe it suggests, regardless of its placement, that unconstitutional accommodations can or should be made. The Agencies agree, however, that the accommodation language is clearer and easier to find if it appears as a standalone statement in each Agency's regulations, rather than if it is subsumed in more general provisions.

Changes: The Agencies that did not already include a standalone provision in their proposed regulations have accordingly revised their regulations to do so. The provisions that have been revised or added are 6 CFR 19.3(c) (DHS); 7 CFR 16.3(h) (USDA); 22 CFR 205.1(c) (USAID); 24 CFR 5.109(c) (HUD); 28 CFR 38.4(b) (DOJ); 29 CFR 2.32(e)(1) (DOL); 38 CFR 50.2(e) (VA); and 45 CFR 87.3(b) (HHS).

Comments: One commenter faulted the Joint NPRM for supposedly adopting an ''accommodation-denying position'' that could result in violations of the Religious Freedom Restoration Act (''RFRA''), in particular. The commenter pointed out, for example, that the Joint NPRM's discussion of Title VII did not address the impact of RFRA on the application of that statute, and argued that there are instances where RFRA compels accommodations to the requirements of nondiscrimination laws.

Response: The Agencies disagree that, either in the Joint NPRM or this final rule, they are taking an ''accommodation-denying position.'' To the contrary, in both documents, the Agencies have specifically reaffirmed that they will continue to consider faith-based and other organizations' requests for accommodations on a case-by-case basis in accordance with the U.S. Constitution and Federal statutes. RFRA is one Federal law that may require the Agencies to grant such an accommodation in an appropriate case. Specifically, where a provider shows that application of a regulatory requirement ''substantially burden[s]'' its exercise of religion, RFRA states that the Agency may impose the requirement only if it demonstrates that application of the burden to the organization ''is in furtherance of a compelling governmental interest'' and ''is the least restrictive means'' of furthering that interest. 42 U.S.C. 2000bb–1(a) through (b).

Changes: None.

3. Provider Notices

Comments: The regulations of all the Agencies except USAID include appendices containing language for provider notices—that is, notices or announcements of award opportunities and notices of award or contracts—stating that faith-based organizations are eligible for the awards on the same basis as any other organization and are subject to relevant protections and requirements of Federal law. (While USAID's regulations do not include this appendix, they do require that notices or announcements of funding opportunities include such language. *See* 22 CFR 205.1(b).) The Agencies proposed certain changes to these provider notice appendices in order to conform the appendices to proposed changes to other parts of their regulations. As some commenters pointed out, however, several of the Agencies' proposed provider notice appendices did not incorporate all of the changes described elsewhere in the Joint NPRM. For example, the Joint NPRM asserted that this rule was intended to state more clearly that Agencies would not, in selecting service providers, discriminate on the basis of an organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization. 88 FR 2402. But, in an oversight, several Agencies (USDA, DOL, HUD, VA, and DHS) did not fully incorporate the intended new language in their provider notice appendices, although they generally did so elsewhere in their proposed regulations. Commenters recommended that the Agencies revise their provider notice appendices to be consistent both with the remainder of the proposed regulatory text and with one another.

One particular set of proposed changes to the provider notice appendices drew both support and criticism, namely, the removal of a list of examples of religious freedom and conscience protection laws, along with a sentence stating that religious accommodations may be sought under many of those laws. The proposal sought to clarify the nature of the protections for faith-based organizations by decoupling the rule's religious nondiscrimination protections from the question of accommodations. *See id.* Although the NPRM preamble indicated that such changes would be made throughout the rule, the proposed changes were inadvertently omitted from USDA and DOL's proposals. A commenter that supported the proposed changes urged USDA and DOL to join the other Agencies in eliminating the illustrative list of Federal laws. Some other commenters, by contrast, recommended that all of the Agencies restore the language, because, in the commenters' view, it makes clear which laws require an accommodation.

Response: The Agencies agree that all of their provider notice appendices should be revised as necessary to reflect fully the changes proposed elsewhere in the rule. Doing so will help ensure that faith-based and other organizations are accurately informed of their eligibility, protections, and requirements. The Agencies also agree that the provider notice appendices should be consistent with one another except where Agency-specific language is required. To accomplish these goals, in this final rule, the Agencies have generally adopted the language of the provider notice appendices in DOJ's proposed regulation, which most thoroughly incorporated the intended changes. As explained in the Joint NPRM, 88 FR 2402, these changes do not substantively change providers' rights, but rather make clearer that the Agencies will not discriminate against providers in violation of the U.S. Constitution or Federal statutes, and that the Agencies will continue to consider providers' requests for accommodations on a case-by-case basis in accordance with all applicable Federal law. These changes also avoid any unintended implications introduced by citing to some, but not all, statutes containing religious freedom protections.

Changes:

DOJ—28 CFR part 38, appendix A: amend paragraph (c) for consistency with proposed 28 CFR part 38; appendix B: amend paragraph (b) for consistency with proposed 28 CFR part 38

Other Agencies—

DHS—6 CFR part 19, appendices A and B: revise language to match DOJ's revised 28 CFR part 38, appendices A and B

USDA—7 CFR part 16, appendices A and B: revise language to match DOJ's revised 28 CFR part 38, appendices A and B

HUD—24 CFR part 5, subpart A, appendix A: revise language to match DOJ's revised 28 CFR part 38, appendix A (except retain heading ''Notice of Funding Opportunity''); add new appendix B modeled on revised 28 CFR part 38, appendix B

DOL—29 CFR part 2, subpart D, appendices A and B: revise language to match DOJ's revised 28 CFR part 38, appendices A and B

ED—34 CFR part 75, appendices A and B: revise language to match DOJ's revised 28 CFR part 38, appendices A and B

VA—38 CFR part 50, appendices A and B: revise language to match DOJ's revised 28 CFR part 38, appendices A and B

HHS—45 CFR part 87, appendices A and B: revise language to match DOJ's revised 28 CFR part 38, appendices A and B

4. Merit-Based Considerations in Grant-Making

Comments: One commenter requested that the Agencies include language in their regulations ensuring that Agency decisions about awards of Federal financial assistance will be made on the basis of merit, and stating that such merit-based decisionmaking will include objective consideration of whether an organization will serve all beneficiaries and perform all services that are necessary to fulfill the program's objectives.

Response: The Agencies agree that decisions about awards of Federal financial assistance must be free from political interference or the appearance of such interference, and must be made on the basis of merit, not on the basis of religion or lack thereof. The Agencies do not, however, adopt the commenter's suggestion that they elaborate upon the merit-based decisionmaking processes in their regulations. Such additional details are beyond the scope of this rulemaking. The Agencies therefore decline to make any changes to their regulations based on these comments.

Changes: None.

5. Burdens on Faith-Based Grantees

Comments: According to some commenters, certain of the rule's notice requirements are, but should not be, imposed exclusively on faith-based providers. Other commenters similarly contended that the regulations' requirement that a provider's explicitly religious activities, if any, be separated from ones supported by direct Federal financial assistance is unduly burdensome for religious service providers. And another commenter contended that the rule discriminates against faith-based organizations based on their religious status, due to certain of the rule's beneficiary protections.

Response: Neither the Joint NPRM nor this final rule imposes any requirements exclusively on faith-based providers. Rather, the regulations apply equally to both faith-based and secular organizations. As explained above in Part II.B of this joint preamble, the Agencies likewise decline to repeal their regulatory provisions requiring the separation of explicitly religious activities from those supported by direct Federal financial assistance. That requirement applies to all types of providers, not just religious organizations, and it appropriately implements an Executive order and is consistent with the Supreme Court's First Amendment jurisprudence. Nor does this final rule discriminate against faith-based providers in any other way. To the contrary, the rule is designed, in significant part, to protect providers from discrimination based on religion.

Changes: None.

E. Title VII

Comments: Section 703(a) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2(a), generally prohibits employers from engaging in employment discrimination on the basis of an individual's race, color, religion, sex, or national origin. Another subsection of Title VII, however, exempts certain religious organizations with respect to a particular application of that prohibition. Specifically, section 702(a) of Title VII, 42 U.S.C. 2000e–1(a), provides that ''[t]his subchapter shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.'' Most of the Agencies' regulations have long provided that a religious organization that qualifies for that Title VII religious-employer exemption is not precluded from invoking it even in programs funded by Federal financial assistance. In the 2020 Rule, VA joined the other Agencies by adding such language. 88 FR 2402. Also in 2020, five of the Agencies (DOL, HHS, ED, VA, and USAID) added text to their regulations indicating that the Title VII religious-employer exemption allows a qualifying organization to hire persons on the basis of their ''acceptance of or adherence to religious tenets of the organization.'' *Id.* (quotation marks omitted). HUD did not add a similar employment-related tenets sentence to its regulation, but another provision in HUD's rules (24 CFR 5.109(d)(2)) already stated that ''a faith-based organization participating in a HUD program or activity . . . may . . . select its . . . employees on the basis of their acceptance of or adherence to the religious tenets of the organization consistent with'' the Title VII religious-employer exemption.

The Joint NPRM proposed to remove the sentence about tenets-based employment conditions added by the 2020 Rule from DOL, HHS, ED, VA, and USAID's regulations on the ground that the sentence is unnecessary and potentially misleading. 88 FR 2402. As the Joint NPRM explained, the sentence could mistakenly be read to suggest that Title VII permits religious organizations that qualify for the Title VII religious-employer exemption to insist upon tenets-based employment conditions that would otherwise violate Title VII or the particular underlying funding statute in question. *Id.*

Several commenters argued that the Agencies should not remove the tenets-based employment conditions sentence because, they said, the scope of the Title VII religious-employer exemption permits a qualifying organization to require employees to conform to religious tenets even where application of such a requirement would consist of another form of discrimination (*e.g.,* sex discrimination) that Title VII prohibits. Some of those commenters also contended that the sentence reflects what the First Amendment requires.

Other commenters, by contrast, urged HUD to remove the sentence in its regulation about tenets-based employment conditions in order to conform to the regulatory text of the other eight Agencies. And other commenters suggested that the Agencies should repeal the provisions in their regulations stating that qualifying organizations retain their Title VII religious-employer exemption with respect to federally funded programs, because, the commenters argued,

application of the exemption in such cases would violate the Establishment Clause.

Response: The Agencies decline to remove the longstanding provisions in their regulations about the continued application of the Title VII religious-employer exemption for religious organizations that qualify for it. DOJ's Office of Legal Counsel has concluded that the Title VII exemption is a permissible religious accommodation for qualifying religious organizations even in the context of at least some Government-funded social service programs. *See Direct Aid to Faith-Based Organizations Under the Charitable Choice Provisions of the Community Solutions Act of 2001,* 25 Op. O.L.C. 129, 131–33 (2001) (''*Direct Aid to Faith-Based Organizations*''); *see also* Memorandum for William P. Marshall, Deputy Counsel to the President, from Randolph D. Moss, Assistant Attorney General, Office of Legal Counsel, *Re: Application of the Coreligionists Exemption in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), to Religious Organizations That Would Directly Receive Substance Abuse and Mental Health Services Administration Funds Pursuant to Section 704 of H.R. 4923, the* ''*Community Renewal and New Markets Act of 2000*'', at 26–30 (Oct. 12, 2000) (''2000 OLC Opinion''); *but cf. id.* at 22–25 (explaining that there might be as-applied situations in which a constitutional issue could be raised if and when an agency knowingly chooses to provide aid to fund employment positions for which the employer applies a religious test).

While recognizing that the Title VII religious-employer exemption may apply, DOL, HHS, ED, VA, and USAID disagree that the language added to their regulations in 2020 about tenets-based employment conditions is necessary or clarifying, given the limiting principles on the Title VII exemption that courts have recognized.

Specifically, Federal courts of appeals have long held that the Title VII religious-employer exemption allows a qualifying religious organization generally to require employees to conform their conduct to the organization's religious tenets. Nevertheless, as DOL recently explained in another rulemaking, *see* Rescission of Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption Rule, 88 FR 12842, 12848–54 (Mar. 1, 2023), the weight of Title VII case law has determined that qualifying religious employers may only impose such a requirement where the employment condition does not violate the other nondiscrimination provisions of Title VII, apart from the prohibition on religious discrimination. *See, e.g., Kennedy* v. *St. Joseph's Ministries, Inc.,* 657 F.3d 189, 192 (4th Cir. 2011) (Title VII religious-employer exemption ''does not exempt religious organizations from Title VII's provisions barring discrimination on the basis of race, gender, or national origin''); *Boyd* v. *Harding Acad. of Memphis, Inc.,* 88 F.3d 410, 413 (6th Cir. 1996) (the exemption ''does not . . . exempt'' religious institutions ''with respect to all discrimination'' and ''Title VII still applies'' to, for example, ''a religious institution charged with sex discrimination''); *see also* 2000 OLC Opinion at 30–31 (explaining that Congress did not intend to afford qualifying religious organizations an exemption from such other forms of discrimination, even where the discrimination is a function of their sincere religious tenets); *Direct Aid to Faith-Based Organizations,* 25 Op. O.L.C. at 131 n.4 (same). For example, even if a qualifying religious organization had a religious tenet prohibiting interracial marriage, it could not invoke the Title VII religious-employer exemption to refuse to employ an applicant with a spouse of a different race. Likewise, an organization that believes a husband is the head of a household and should provide for his family but that a woman's place is in the home could not refuse to hire women or offer higher benefits to male employees. *See, e.g., EEOC* v. *Fremont Christian Sch.,* 781 F.2d 1362 (9th Cir. 1986).

The Agencies recognize that a few judges have recently suggested otherwise. *See* 88 FR 12852. As the Joint NPRM made clear, however, the applicability of the Title VII exemption in any given case will be ''governed by the text of that statute, any other applicable laws . . . , and the caselaw interpreting these authorities.'' 88 FR 2402. This rule does not purport to alter or otherwise affect the scope of the statutory exemption. The Agencies' goal with respect to the tenets-based employment condition regulatory text is simply to avoid any language that might be misconstrued as resolving that question against the weight of judicial and executive branch authority. Accordingly, as proposed, ED, DOL, HHS, VA, and USAID are, in this final rule, removing the sentence about tenets-based employment conditions that they added in 2020. And for the same reasons, HUD is removing language regarding the Title VII religious-employer exemption from its regulations.

As noted in the Joint NPRM, the Agencies reemphasize that constitutional doctrines might also be implicated in some cases. *See id.* at 2402–03. For example, antidiscrimination laws, including Title VII, are subject to constitutional limitations as applied to certain decisions by some religious organizations concerning a subset of their employees, under what is known as the ''ministerial exception.'' *See, e.g., Our Lady of Guadalupe Sch.* v. *Morrissey-Berru,* 140 S. Ct. 2049 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch.* v. *EEOC,* 565 U.S. 171 (2012). And the Agencies must be careful not to unduly interrogate the plausibility of a religious justification in assessing whether a religious-tenets claim is a pretext for some other, impermissible form of employment discrimination. In addition, as the Supreme Court recently recognized, ''how these doctrines protecting religious liberty interact with Title VII are questions for future cases.'' *Bostock* v. *Clayton Cnty.,* 140 S. Ct. 1731, 1754 (2020).

Changes: HUD has removed the phrase ''and employees'' from the revised version of 24 CFR 5.109(d)(2).

F. Definition of ''*Federal Financial Assistance*''

Comments: In the Joint NPRM, the Agencies sought public comment on whether and how they should define the term ''Federal financial assistance'' in their regulations. 88 FR 2403–04. In particular, the Agencies asked whether an Agency that adopts a definition of ''Federal financial assistance'' in its regulations should use the definition set out in Executive Order 13279. *Id.* at 2403. The Agencies also inquired about the impact of provisions adopted by some Agencies in the 2020 Rule specifying that certain forms of assistance are not ''Federal financial assistance,'' such that the Agencies' definitions of that term ''might be read to be materially different from the definition in Executive Order 13279.'' *Id.* One commenter urged the Agencies to consistently adopt the definition of ''Federal financial assistance'' set forth in Executive Order 13279, explaining that doing so would promote uniformity and avoid confusion. Another commenter contended that the term should not include indirect aid, and that the Agencies should specify that the term does not encompass mere nonprofit or tax-exempt status. And another commenter argued that the request for comments was insufficiently specific and so the Agencies must provide a separate notice with

additional opportunity for public comment before adopting or reformulating a definition of ''Federal financial assistance.''

Response: The Agencies conclude that their regulations should expressly adopt the definition of ''Federal financial assistance'' articulated in Executive Order 13279. The regulations seek to implement that Executive order and, as the Joint NPRM explained, the provisions of the Order ''at issue in this rulemaking[ ] turn on the conveyance or receipt of 'Federal financial assistance.' '' 88 FR 2403. To ensure consistency and prevent misunderstandings, the Agencies are thus amending their regulations to uniformly adopt the definition of the term set forth in Executive Order 13279, which encompasses both direct and indirect aid. (The Agencies have explained elsewhere why they are declining to depart from their proposed treatment of indirect aid in this rulemaking. *See* Part II.C of the joint preamble.) Consistent with section 1(a) of Executive Order 13279, the Agencies will therefore all define ''Federal financial assistance'' to mean ''assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.'' *See* 67 FR 77141. Importantly, this definition encompasses the Agency-specific forms of assistance that certain Agencies expressly referenced in their prior definitions of the term. A tax exemption, whether or not on the basis of nonprofit status, however, does not qualify as Federal financial assistance under this definition.

The Agencies disagree that further notice and an additional opportunity to comment are required. The Joint NPRM's presentation of this issue provided more than ''fair notice'' of the changes adopted here. *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 174 (2007). The Joint NPRM stated expressly that the Agencies were considering whether to adopt the definition of the term ''Federal financial assistance'' established in Executive Order 13279. The Joint NPRM also described the Agencies' prior and current approaches to defining the term, and specifically requested input on whether the Agencies should adopt a different definition than the Executive order did. 88 FR 2403–04. It was thus entirely foreseeable that the Agencies would adopt that definition in this final rule. As a result, the Agencies need not institute a separate notice-and-comment process to adopt the definition of ''Federal financial assistance'' found in Executive Order 13279.

Changes: All of the Agencies have included in their final regulations the definition of ''Federal financial assistance'' set forth in Executive Order 13279. The provisions to be modified or added are 6 CFR 19.2 (DHS); 7 CFR 16.2 (USDA); 22 CFR 205.1(a) (USAID); 28 CFR 38.3(a) (DOJ); 29 CFR 2.31(a) (DOL); 34 CFR 75.52(c) and 76.52(c) (ED); 38 CFR 50.1(c) (VA); and 45 CFR 87.1(d) (HHS).

G. Other Issues

1. Monitoring Requirements

Comments: Commenters suggested that, in the final rule, the Agencies adopt or clarify their procedures for monitoring grantees' compliance with these regulations. To further this goal, some commenters requested that the rule provide that Federal staff will be trained on how to oversee and enforce the regulations, and that grantees will be trained on their rights and responsibilities under the rule. Specifically, one commenter suggested that the Agencies should clarify how they will meet their obligations to monitor constitutional, statutory, and regulatory requirements. Another commenter similarly requested that the Agencies take additional steps to monitor and enforce their regulations.

Response: These concerns were also expressed with respect to the 2016 Rule, and the Agencies agreed with them at that time. *See* 81 FR 19370. As the Agencies then explained, the Agencies must guard against inappropriate uses of Federal financial assistance by monitoring and enforcing all constitutional, statutory, and regulatory standards governing such assistance, particularly in light of the monitoring obligations in Executive Order 13279, as amended by Executive Order 13559. *Id.*

The Agencies agree with the commenters that organizations that receive Federal financial assistance need to be aware of these new regulatory requirements, and that Agencies must train appropriate individuals on applicable regulations and vigorously monitor and enforce those regulatory requirements. The specific procedures to be adopted, however, are beyond the scope of this rulemaking. In addition, those procedures will vary among the Agencies and their programs because each Agency has its own organizational structure, available resources, legal authority, and statutory enforcement requirements. Moreover, experience implementing these regulations and seeing them in operation may provide insights that aid development of appropriate training, monitoring, and oversight mechanisms. Consequently, the Agencies have decided not to prescribe a single uniform approach to these issues in the present rule. Instead, each Agency will adopt its own measures to train staff and grantees, and will monitor projects in a manner that is appropriate for each program and award that is subject to this rule. Appropriate training and oversight measures may include, for example, Federal staff or grantee conferences or workshops, site visits, monitoring phone calls, and reviews of grant documents, audits, and progress reports. Each Agency will devote appropriate resources to ensure that its program staff understand their responsibilities to ensure that grantees, subgrantees, and contractors that provide social services to beneficiaries under programs of Federal financial assistance comply with these final regulations.

Changes: None.

2. Data Collection

Comments: Several commenters suggested that the Agencies should implement and improve their existing data collection processes to understand whether the safeguards in the regulations are sufficient and to inform how Agencies can improve award outcomes and delivery of services. Commenters stated that doing this will ensure fidelity to constitutional principles and programmatic goals, and ultimately, to serving beneficiaries in the most equitable, effective, and efficient way.

Response: The Agencies are committed to using data to monitor compliance with all award conditions, and they will comply with all applicable requirements regarding data collection, including Government-wide standards such as Office of Management and Budget (''OMB'') Memorandum M–14–06, *Guidance for Providing and Using Administrative Data for Statistical Purposes.* Modifying the Agencies' data collection processes or imposing additional requirements for such collection, however, is beyond the scope of this rulemaking. Moreover, because of the unique organizational structure and context of each Federal financial assistance program, mandating a single data collection approach would be infeasible. The Agencies thus decline to make any changes to their regulations in response to the comments about data collection.

Changes: None.

3. Point of Contact for Complaints

Comments: Commenters requested that the Agencies modify their regulations to include a point of contact for beneficiaries of federally funded social service programs should they need to report any complaints of discrimination. Several of these commenters provided DOJ and DOL's regulations as potential models because DOJ designates its Office for Civil Rights as the office with which beneficiaries may file complaints and DOL's regulations provide specific contact information for reporting violations. Three commenters recommended that all the Agencies designate their Offices for Civil Rights, or an equivalent entity, to receive any complaints because, in the commenters' view, those offices are best equipped to investigate and respond to reports of discrimination.

Response: The Agencies understand the need for beneficiaries of Federal financial assistance to have an avenue for enforcement of their rights enumerated in the beneficiary notice. Because of differences in Agency structures, however, it is best left to each Agency to determine which of its offices will handle complaints. Some Agencies (HUD and VA) do not have an Office for Civil Rights. And other Agencies may have some other office better placed to receive reports of violations of this rule. Additionally, for federally funded social service programs operated by intermediaries, the intermediary may be the entity best positioned to receive and act on complaints of discrimination from beneficiaries.

Similarly, each Agency is best poised to determine whether putting specific contact information for filing complaints in the Agency regulation text would serve the interests of beneficiaries of federally funded social service programs. For instance, DOL has a longstanding, single point of contact whose information can be placed in its regulation text without significant risk of becoming outdated. For other Agencies without a static point of contact, placing a specific person's contact information in regulation text is not feasible and could result in beneficiaries attempting to use outdated contact information to file complaints.

In acknowledgement that beneficiaries of federally funded social service programs need clarity about what office to contact if they experience discrimination in violation of these regulations, the Agencies agree that, at minimum, either their regulatory texts or follow-on guidance should specify whom a beneficiary may contact if they experience discrimination.

Changes: USDA amends its regulation text to specify that its Office of the Assistant Secretary for Civil Rights will receive reports of violations of this rule. DHS amends its regulation text to state that beneficiaries should report such violations to its Office for Civil Rights and Civil Liberties. The other Agencies make no changes to their regulatory text in the Joint NPRM. Those other Agencies, with the exception of USAID, have, however, agreed to include a model beneficiary notice as an appendix to their regulations, and the model notices include a space for the awarding entity to include contact information for the appropriate office to which beneficiaries may direct complaints.

4. Need for Rulemaking

Comments: One commenter stated that the Agencies had insufficiently established the need for this rulemaking. According to the commenter, the Agencies failed to provide evidence of inconsistencies or confusion raised by the 2020 Rule. The commenter also contended that the Agencies did not explain how the 2020 Rule limited the reach of federally funded services and programs, or how the proposed rule would better achieve the Agencies' stated goal of reaching the widest possible eligible population, including historically marginalized communities.

Response: The Agencies disagree that the Joint NPRM contained inadequate justification for the proposed changes and, furthermore, note that numerous commenters agreed that this rulemaking is necessary. For example, two commenters stated that they found the 2020 Rule confusing because it contained language suggesting that the Agencies would grant religious exemptions to providers even when the exemptions were not justified or required by Federal law. Another commenter agreed with the Agencies that the 2020 Rule's language allowing indirect aid providers to require beneficiaries to attend all activities that are fundamental to the program created a confusing tension with the prohibition on discriminating against beneficiaries because they refuse to attend or participate in religious practices. The commenter explained that eliminating this language is an important step to protect the religious freedom of beneficiaries of Government-funded social services. For the reasons stated in the Joint NPRM, and having considered these and other comments, the Agencies have determined that the 2020 Rule did, in fact, create confusion, thus necessitating the current rulemaking.

Many commenters also agreed with the Agencies that this rulemaking is necessary to ensure that federally funded services and programs reach the widest possible eligible population, including historically marginalized communities. For example, one commenter stated that the 2020 Rule removed protections for populations that are at particular risk of being economically insecure and are discriminated against, such as LGBTQI+ people, single mothers and their children, and immigrants. The commenter stated that strong protections are needed to ensure that members of these vulnerable populations are not purposefully or inadvertently excluded from federally funded social services. Another commenter provided evidence that women, people of color, LGBTQI+ people, people with disabilities, immigrants, people living with HIV, religious minorities, and other marginalized populations are particularly vulnerable to discrimination when seeking such services. These and other comments support the Agencies' conclusion that changes to their regulations are necessary for federally funded services and programs to reach the widest possible eligible population.

For the reasons explained both in the Joint NPRM and in this final rule, and in light of the public comments supporting the Agencies' proposals, the Agencies believe that the need for this rulemaking is well established.

Changes: None.

5. Executive Orders 13985 and 14058

Comments: One commenter expressed concern that this rule deprioritizes the funding of faith-based groups. As the purported basis for that worry, the commenter referred to the Agencies' reliance on Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (Jan. 20, 2021), and Executive Order 14058, Transforming Federal Customer Experience and Service Delivery To Rebuild Trust in Government, 86 FR 71357 (Dec. 13, 2021).

Response: As indicated in the Joint NPRM, the primary goal of this rulemaking is to ensure full access to and comprehensive delivery of federally funded social services, in keeping with governing law and with the policies articulated in Executive Order 14015. The Joint NPRM also acknowledged that the rulemaking sought to advance the policies set out in Executive Orders

13985 and 14058. In neither the Joint NPRM nor this final rule, however, do any of the Agencies' regulations set forth any requirements unique to those Executive orders, and the Agencies have not deprioritized funding for faith-based organizations. To the contrary, as the Agencies emphasized in the Joint NPRM preamble, it is important to strengthen the ability of both faith-based and secular organizations to deliver services in partnership with Federal, State, and local governments and with other private organizations, while adhering to all governing law. 88 FR 2397. Indeed, ''it has long been Federal policy that faith-based organizations are eligible to participate in Agencies' grant-making programs on the same basis as any other organizations,'' and the Agencies remain committed to preventing discrimination against faith-based organizations in the selection and regulation of service providers. *Id.* at 2401.

Changes: None.

6. Regulatory Impact Analysis

Comments: Several commenters suggested that the Agencies had not adequately assessed the potential burdens of this rule on faith-based providers and therefore on beneficiaries who rely on those providers' services. In particular, one commenter urged the Agencies to analyze the regulations' effect on faith-based providers leaving the Agencies' programs or not joining them in the future; the availability of alternative providers to fill any gaps in service; the harms to beneficiaries who are unable to receive services from a provider; any irreparable harm associated with the loss of First Amendment and religious free exercise rights due to an incorrectly denied accommodation or lack of appeal process; and any distributional effects of Federal funds transferring from faith-based providers that leave the program under the regulations to new providers. Another commenter expressed concern that the regulations would likely disproportionately burden service providers in regions where alternatives are scarcest, and thus most needed, resulting in fewer service providers in those underserved regions and greater barriers to access for beneficiaries.

Response: The Agencies believe that this final rule will not have any impact on existing faith-based providers' decisions to participate in federally funded social service programs or discourage new faith-based providers from joining such programs in the future. As indicated in the Joint NPRM, the rule's compliance cost per covered provider is minimal, however figured: the ''upper bound'' estimate cited in the Joint NPRM was $240 per year, and the ''central estimate'' was $211.25 per year plus a one-time cost of $17.72; the Agencies have updated the ''central estimate'' to $223.03 plus a one-time cost of $18. *See id.* at 2405–06 & tbls. 1 & 3; Part IV.A.1 of the joint preamble. All of these estimates are modest. The Agencies do not expect this insignificant cost burden to affect existing faith-based providers' participation or to discourage new faith-based providers from joining in the future. Accordingly, the Agencies do not anticipate that the rule's regulatory requirements will reduce the participation of faith-based providers, nor do they expect that the rule will have disproportionate effects in underserved regions. Finally, as the final rule makes clear, the Agencies remain committed to providing any religious accommodations required by applicable Federal law, including the First Amendment.

Changes: None.

Comments: One commenter stated that the Joint NPRM's regulatory impact analysis (''RIA'') failed to properly assess the benefits of faith-based providers and the burdens on them and ignored the economic as well as qualitative costs of the rule's proposed changes.

Response: The Agencies believe that the Joint NPRM's RIA was appropriate and sufficient. The commenter, moreover, did not specify which impacts supposedly were not properly assessed or provide any data or analysis to allow for quantification of such impacts. The Agencies have appropriately assessed the potential costs, cost savings, and benefits, both quantitative and qualitative, of this regulatory action.

Changes: None.

Comments: One commenter stated that it supports the proposal to withdraw and replace the 2020 Rule because the 2020 Rule's mandatory cost-benefit analysis improperly assessed the costs and other harms to beneficiaries to be negligible, despite what the commenter viewed as ample evidence of religion-based denials of service, discrimination, and other harmful treatment of LGBTQI+ people, people of color, people of other faiths, and others by service providers.

Response: The Agencies agree that the 2020 Rule's analysis did not adequately consider the costs it imposed on beneficiaries. In the present rulemaking, the Agencies believe that they have properly assessed both the costs and benefits of the regulations, and they have qualitatively shown the benefits to beneficiaries in several important ways. Specifically, the final notice requirement will improve beneficiaries' access to federally funded services by informing them of their rights and thus removing certain barriers arising from discrimination. Additionally, the final referral option will make it more likely that beneficiaries who object to receiving services from one provider will be able to learn about alternative providers.

Changes: None.

III. Agency-Specific Issues [3]

A. Department of Agriculture

In sections (1) through (4) below, USDA addresses the few USDA-specific comments not addressed in Part II of the joint preamble. In section (5) below, USDA provides its specific response to comments discussed in Part II.A.4 of the joint preamble recommending that the Agencies generally require that a written notice of rights be provided to beneficiaries of programs receiving indirect Federal financial assistance. All other comments received by USDA or otherwise affecting USDA's regulations are addressed fully in Part II of the joint preamble, and USDA adopts those responses.

1. Unnecessary Definition

Comments: Two commenters recommended that USDA delete the definition of the phrase ''[d]iscriminate against an organization on the basis of the organization's religious exercise'' found in its proposed rule. According to the commenters, the definition is not necessary, since the phrase does not appear anywhere else in USDA's regulations and changes elsewhere in the rule spell out the prohibition contained in the definition.

Response: USDA agrees that the definition is not necessary because this phrase does not appear elsewhere in USDA's regulations. Moreover, USDA's obligation not to discriminate for or against organizations on the basis of enumerated religious considerations is explicitly set forth in 7 CFR 16.3(a) and in appendix A to 7 CFR part 16. In this final rule, USDA has accordingly deleted the definition in question from 7 CFR 16.2.

Changes: The regulation at 7 CFR 16.2 is amended by deleting the definition of the phrase ''[d]iscriminate against an organization on the basis of the organization's religious exercise.''

[3] All of the comments that were directed to DOJ or that affect DOJ's regulations were adequately addressed in the joint preamble above. DOJ accordingly does not include an Agency-specific preamble in this final rule.

2. Unnecessary Citations

Comments: One commenter recommended that USDA, in its appendices A and B, follow the lead of other Agencies and eliminate the list of citations to Federal laws that provide for religious exemptions.

Response: USDA agrees that the list of citations in its Appendices A and B in the proposed rule is unnecessary. USDA remains committed to ensuring that faith-based organizations retain their independence from the Government and enjoy all the religious freedom and conscience protections to which they are entitled under the U.S. Constitution and Federal statutes. The removal of the list of citations, providing examples of such Federal laws, will have no substantive effect. Moreover, this approach aligns with that of the other Agencies, so USDA's making this change will promote consistency among the Agencies' regulations.

Changes: In this final rule, USDA amends appendices A and B to 7 CFR part 16 by removing the illustrative citations to Federal laws.

3. Handling of Complaints

Comments: As discussed in Part II of the joint preamble, various commenters urged the Agencies to designate a point of contact for receiving civil rights complaints. In a similar vein, one commenter also specifically recommended that USDA's provision on written notice to beneficiaries include information on where complaints of religious discrimination, in particular, can be filed.

Response: USDA agrees with this recommendation, and the final rule provides for the filing of written complaints by beneficiaries in programs supported by direct Federal financial assistance from USDA, and also for written notice to be given to such beneficiaries on how and where to file complaints. Given the structure and particular context of the Federal financial assistance programs it administers, USDA agrees with commenters that beneficiaries' religious freedom protections would be strengthened by more clearly notifying beneficiaries of their right to file complaints and of how to exercise that right. To achieve that purpose, USDA has made revisions both in its regulatory text and in its model beneficiary notice. In addition, in the final rule, USDA has added language to the regulatory text in 7 CFR 16.4(d) to make clear that beneficiaries and prospective beneficiaries in programs supported by indirect Federal financial assistance from USDA may file written complaints with USDA alleging violations of the rule's religious freedom protections. USDA's inclusion of the language about the right to file complaints is also consistent with other Agencies' regulations, as explained above in Part II.G.3 of the joint preamble. Further, USDA's added language on how and where to file complaints mirrors USDA's existing processes for filing program discrimination complaints.

Changes: In this final rule, USDA amends 7 CFR 16.4(c) and appendix C to 7 CFR part 16 by adding language to reflect the right of beneficiaries in programs supported by direct Federal financial assistance to file complaints; adds a new 7 CFR 16.4(d) to reflect the right of beneficiaries in programs supported by indirect Federal financial assistance to file complaints; and redesignates the current 7 CFR 16.4(d) as 7 CFR 16.4(e).

4. Consistency Between Regulatory Text and Appendices

Comments: One commenter observed that USDA's model provider notice in appendix A did not match USDA's regulatory text, because the notice did not reflect the regulation's statement that USDA may not favor or disfavor religious organizations for receipt of Federal financial assistance.

Response: USDA agrees that it is important to include regulatory language making plain that an Agency may not favor or disfavor religious organizations for the receipt of Federal financial assistance. In the final rule, USDA likewise adds language to its provider notice found at 7 CFR part 16, appendix A, consistent with USDA's regulatory text, making express that USDA may not favor or disfavor religious organizations for receipt of Federal financial assistance.

Changes: Appendix A to 7 CFR part 16 is amended by adding explicit language about the prohibition on favoring or disfavoring organizations on the basis of religious affiliation in disbursing Federal financial assistance.

5. Notice to Beneficiaries of Indirect Federal Financial Assistance

Comments: As explained in Part II.A.4 of the joint preamble, some comments urged the Agencies to adopt notice requirements for beneficiaries of indirect Federal financial assistance.

Response: USDA funds several programs through indirect Federal financial assistance, including SNAP, the Special Supplemental Nutrition Program for Women, Infants, and Children, the Farmers Market Nutrition Program, the Seniors Farmers Market Nutrition Program, and the Rural Development Voucher Program. USDA, like the other Agencies, recognizes the importance of indirect aid beneficiaries being protected against religious and other forms of discrimination. For example, USDA requires that State agencies that distribute program benefits or services in the SNAP program provide notice of the right to be free from discrimination, including religious discrimination, by displaying And Justice for All posters in their facilities where the poster can be viewed by program applicants and participants. The poster includes the prohibition against discrimination based on ''religious creed,'' information on how to file a discrimination complaint, and is available in English, Spanish, and a number of other languages. Moreover, USDA has added into this final rule, at 7 CFR 16.4(d), language affirming that beneficiaries in USDA programs supported by indirect Federal financial assistance have the right to file a complaint of religious discrimination.

Nevertheless, USDA has determined that its regulations should not require that beneficiaries of all indirect aid programs be provided a notice about religious nondiscrimination rights, because requiring such a notice would not be administratively feasible. Due to the vast number of participants and provider locations in USDA's indirect aid programs, there would be significant administrative burdens in requiring written notice to all beneficiaries. As explained in the 2016 Rule, ''there are more than a quarter million stores, farmers' markets, direct marketing farmers, homeless meal providers, treatment centers, group homes, and other participants across the nation that are authorized [SNAP] retailers.'' 81 FR 19363. If providers receiving indirect aid were required to give written notice to beneficiaries, all of these retailers, for example, would have to have the notices ready at all times to provide to any person using SNAP benefits.

Instead of requiring that notice be provided to beneficiaries in all indirect aid programs, USDA intends to utilize a more flexible and program-specific approach to providing such notice. Based on program-specific assessments, USDA will, when warranted, require notice in programs consistent with risk and programmatic experience. For example, USDA may require notice in programs or specific program activities if there is a history of findings of religious discrimination, of government unduly limiting provider choices, or of beneficiaries' choices for using indirect aid being limited for some other reason.

For the reasons previously explained in Part II.A.4 of the joint preamble,

USDA will not revise its regulatory language to require that notice of rights be provided to beneficiaries in all programs supported by indirect USDA financial assistance. As described above, however, in certain circumstances, USDA may determine that providing such notice is appropriate and administratively feasible and require that notice of protections to indirect aid beneficiaries be provided.

Changes: None.

B. Department of Labor

In Part III.B.1 below, DOL explains additional changes it is making to one provision of its regulations in response to comments discussed above in Part II.D.1 of the joint preamble. In Part III.B.2 below, DOL provides its specific response to comments addressed in Part II.A.4 of the joint preamble recommending that the Agencies require that a written notice of rights be provided to beneficiaries of programs receiving indirect Federal financial assistance. All other comments received by DOL or otherwise affecting DOL's regulations are addressed fully in Part II of the joint preamble above, and DOL adopts those responses.

1. Revision and Reorganization of 29 CFR 2.32

Comments: As discussed above, the Agencies received comments suggesting that they revise or reorganize the religious accommodations language in their program requirements provisions, as well as in the provisions that bar disqualification of providers based on religious character, motives, or affiliation, or lack thereof. These provisions appear in DOL's regulations at 29 CFR 2.32.

Response: In addition to prompting the changes to 29 CFR 2.32 described above in Part II.D.1 of the joint preamble, the suggestions from these commenters indicated to DOL that the organization of 29 CFR 2.32 made the provision as a whole difficult to follow. For instance, some elements (such as the accommodations language noted by the commenters) were unintentionally repeated, and other elements that were similar to one another were separated into different paragraphs.

Changes: In the final rule, DOL revises and reorganizes 29 CFR 2.32 to make it easier to understand. The contents of the section are now ordered so that each paragraph addresses only one subject, as follows: paragraph (a) contains the prohibition on discriminating for or against organizations based on religious character, motives, or affiliation, or lack thereof; paragraph (b) sets forth requirements regarding grant documents, agreements, covenants, memoranda of understanding, policies, and regulations; paragraph (c) describes rights retained by faith-based organizations that are DOL social service providers; paragraph (d) lists restrictions on the use of Federal financial assistance; and paragraph (e) makes clear that accommodations for organizations will be considered on a case-by-case basis and explains the effect of an accommodation on an eligible organization's qualification to participate in a DOL program. These revisions are made only for clarity and do not alter the substance of DOL's regulations.

2. Notice to Beneficiaries of Indirect Aid

Comments: As described in Part II.A.4 of the joint preamble, several commenters recommended that the Agencies require that a written notice of rights be provided to beneficiaries of programs receiving indirect Federal financial assistance.

Response: DOL incorporates all of the reasons previously explained above in Part II.A.4 of the joint preamble for expanding its notice requirement to cover beneficiaries and prospective beneficiaries of indirect Federal financial assistance. DOL has determined that, in the context of its programs, most of which are subject to similar written beneficiary notice requirements regardless of whether they are funded by what this rule defines as direct or indirect aid, providing written notice to all beneficiaries and prospective beneficiaries of programs receiving indirect Federal financial assistance is feasible and appropriate.

Changes: DOL revises 29 CFR 2.34 to require that beneficiaries and prospective beneficiaries of programs receiving indirect Federal financial assistance from DOL be provided with the written beneficiary notice that appears in appendix C to subpart D of 29 CFR part 2. As revised, 29 CFR 2.34 states that notice to these beneficiaries will be provided by the entity that disburses the Federal funds to the beneficiary's chosen provider. For example, in the case of WIOA programs, the Local Workforce Development Board will be responsible for providing the notice to beneficiaries and prospective beneficiaries of programs receiving indirect Federal financial assistance. DOL also adds subheadings to 29 CFR 2.34 to make the components of the revised paragraph easier to understand. Finally, DOL revises the heading of the written beneficiary notice to include a designation of the type of Federal financial assistance (direct or indirect) the program receives.

C. Department of Health and Human Services

In Part III.C.1 below, HHS provides its Agency-specific response to a cross-cutting public comment identified in Part II.A.4 of the joint preamble, recommending that the Agencies require written notice be provided not only to beneficiaries of programs receiving direct Federal financial assistance but also to beneficiaries of indirect aid programs. In Part III.C.2 below, HHS provides its Agency-specific response to a comment recommending that DHS, HUD, and HHS remove language from their proposed regulations stating that faith-based organizations are eligible to participate in federally funded programs ''on the same basis as any other organization and considering a religious accommodation.'' In Part III.C.3 below, HHS responds to a comment that concerns language in HHS's proposed regulation referencing the application of the Americans with Disabilities Act to religious organizations receiving Federal financial assistance. In Part III.C.4 below, HHS responds to a comment about HHS's procedures for receiving complaints of alleged violations of its regulations and for otherwise enforcing this rule. All other comments received by HHS, or that affect HHS's regulations, are addressed fully in Part II of the joint preamble, and HHS adopts those responses.[4]

1. Notice to Beneficiaries of Indirect Aid

Comments: As described in Part II.A.4 of the joint preamble, a cross-cutting public comment recommended that the Agencies require written notice be provided not only to beneficiaries of programs receiving direct Federal financial assistance but also to beneficiaries of indirect aid programs.

Response: For the reasons explained in Part II.A.4 of the joint preamble, and as elaborated here, HHS revises the beneficiary notice requirement that was proposed in 45 CFR 87.3(k) by removing the term ''direct'' from the phrase ''direct Federal financial assistance.'' With this change, HHS's regulation will require that the notice to beneficiaries and prospective beneficiaries be provided in covered social services

[4] HHS also corrects a technical error that appeared in the Joint NPRM. In the listing of agency headings, HHS's regulations at 45 CFR part 87 are mistakenly identified with a Regulation Identifier Number (''RIN'') of ''0991–AC13.'' *See* 88 FR 2395. The correct RIN is ''0991–AA31.'' This correction is of no substantive effect.

programs whether they receive Federal funding directly or indirectly.[5]

While the change to 45 CFR 87.3(k) could potentially affect any future indirectly funded HHS program that Congress authorizes, HHS notes the impact of this change on an existing HHS program that explicitly authorizes indirect funding, known as the Chafee Educational and Training Vouchers (''ETV'') program. In the ETV program, authorized in section 677(i) of the Social Security Act, 42 U.S.C. 677(i), HHS awards grants to States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and participating Tribes (known as ''pass-through entities'') to help young adults who have experienced foster care after age 14 meet their postsecondary education and training needs. By requiring that a beneficiary notice be provided in indirect aid programs, this final rule will ensure that ETV program voucher holders applying for or attending any educational institution that receives ETV vouchers are informed of prohibitions on their being discriminated against on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice, as provided in 45 CFR 87.3(f) of the final rule.

Because any indirectly funded programs that are subject to this rule may vary in significant respects, HHS will consider how certain protections identified in the beneficiary notice should apply in the context of each specific indirect aid program. For example, HHS may consider the proportion of explicitly religious programming involved in each program's federally funded projects in deciding whether to allow recipients of indirect Federal financial assistance to refrain from modifying their program activities to accommodate a beneficiary who chooses to expend the indirect aid on their organization's program. Pass-through entities that administer indirectly funded HHS programs will have the discretion to tailor the notice of beneficiary protections to address such matters on a program-specific basis, as provided in § 87.3(k) as revised in this final rule, and HHS intends to provide pass-through entities that administer ETV program funds with guidance on developing that program's notice. When administering indirectly funded programs, HHS will work to ensure that beneficiaries have a genuine and independent choice of providers—for example, where necessary and appropriate, by making an adequate secular alternative reasonably available or by requiring each existing provider to comply with the same conditions that apply to direct aid programs. *See* 88 FR 2400–01; Part II.4.C of the joint preamble.

The final rule also identifies protections that must be included in the notice when it is provided in an indirectly funded program context, thereby ensuring that the notice addresses cross-cutting rights that apply to both directly and indirectly funded services. Specifically, the notice must address the protections that concern nondiscrimination on the basis of religion in 45 CFR 87.3(f), attendance or participation in any explicitly religious activities in 45 CFR 87.3(k)(1)(ii), and complaints in 45 CFR 87.3(k)(1)(iv). The notice must also identify the HHS awarding entity or the pass-through entity to which any complaints may be directed.

In addition, in HHS mandatory formula, block, or entitlement grant programs (such as the ETV program), 45 CFR 87.3(k) of the final rule provides that the pass-through entity that receives HHS funds, rather than the service provider, is obligated to ensure that beneficiaries and prospective beneficiaries receive the written notice of beneficiary protections. This clause enables the pass-through entity to identify the public or private sector organization that will incur the obligation to provide the notice. This discretion is consistent with the role of pass-through entities as primary administrators of HHS mandatory formula, block, or entitlement grant programs, and enables those entities to identify the public or private sector organization that can most efficiently and effectively provide the notice in view of the way in which the program is administered.

HHS notes that while the text of 45 CFR 87.3(k)(1) requires that the notice of beneficiary protections in directly funded programs identify certain protections in a manner that is ''substantially similar'' to the model in its appendix A to part 87, some HHS programs will make changes to the model notice to ensure that social service providers may continue to provide explicitly religious activities that are lawfully part of the program services. These changes will be consistent with the discretion retained by HHS under 45 CFR 87.3(d), as redesignated by this rule. That subsection provides that ''[n]othing in this part restricts HHS' authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.'' As the Agencies recognized in the 2016 Rule, there may be limited instances in which religious activities in some federally funded program contexts are not subject to certain restrictions in these rules, such as the requirement that explicitly religious activity be separate in time or location from activities supported with direct Federal financial assistance. 81 FR 19359–60. HHS will determine on a case-by-case basis whether religious activities in specific program contexts should be subject to this restriction. *See id.* For example, care provider facilities in the HHS-funded Unaccompanied Children (''UC'') Program, *see* 6 U.S.C. 279, may lawfully provide religious services to unaccompanied children to meet their obligations to the children receiving services in that program. HHS anticipates that in the UC Program and other similar program contexts, HHS will revise the model notice to remove any inconsistency between the care providers' obligation to provide an unaccompanied child with access to religious services of the child's choice whenever possible, and the model notice's provision that explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) be separate from activities supported with direct Federal financial assistance.

Changes: HHS amends 45 CFR 87.3(k) to remove text limiting the beneficiary notice to directly funded social service programs, and to require that the pass-through entities administering mandatory formula, block, or entitlement grant programs ensure that the notice is provided. A new § 87.3(k)(1) is also added to require that the notice in directly funded programs be substantially similar to that set forth in appendix A. And a new § 87.3(k)(2) is added to require that the notice in indirectly funded programs address beneficiary protections identified in that section, while giving pass-through entities discretion to tailor certain other aspects of the requisite notice as appropriate.

[5] This final rule also includes technical corrections to the Applicability section at § 87.2(a) of the proposed rule and § 87.2(b) of the 2020 Rule that provide that the written notice to beneficiaries in § 87.3(k) through (m), and the requirement that funding decisions be free from political interference in § 87.3(o) as redesignated, apply to discretionary and block grants governed by the Community Services Block Grant (''CSBG'') Charitable Choice regulations at 45 CFR part 1050. The sections of the rule that addressed those subjects applied to discretionary and block grants governed by the CSBG Charitable Choice regulations prior to the 2020 Rule, but the 2020 Rule did not revise the Applicability section to accurately identify those paragraphs as removed or redesignated. This final rule corrects those technical errors.

2. Religious Accommodations

Comments: As alluded to above in Part II.D.1 of the joint preamble, commenters requested that HHS remove language from its regulation stating that faith-based organizations are eligible to participate in Federally funded programs ''on the same basis as any other organization and considering a religious accommodation.'' The commenter suggested that HHS do so in order to promote consistency among the Agencies' regulations.

Response: In this final rule, HHS deletes the clause ''and considering any permissible accommodation'' from 45 CFR 87.3(a). HHS believes that this change promotes clarity and avoids redundancy in the regulatory text. In addition, HHS makes this change to ensure consistency with other Agencies' rule texts, as recommended by the commenter.

This clause was added in the 2020 Rule and retained in the Joint NPRM. Upon reflection, however, HHS believes the clause is now unnecessary because the obligation to consider religious accommodations consistent with applicable Federal law is already separately addressed in the final rule at 45 CFR 87.3(b), (c), and (g), as well as in its appendices B and C.

HHS emphasizes that the removal of the clause in question is not a substantive change. Nor does it represent any departure from HHS's strong commitment to its obligations to comply with the Free Speech and Free Exercise Clauses of the First Amendment to the U.S. Constitution and with Federal laws that support and protect religious exercise and freedom of conscience, including RFRA. HHS remains fully committed to thoroughly considering any organization's assertion that an obligation imposed upon it conflicts with its rights under those authorities, and will provide any accommodations required by Federal law.

At the same time, HHS disagrees with the recommendation that it rescind the clause ''on the same basis as any other organization'' from 45 CFR 87.3(a). That clause has long been a part of HHS's regulation and reflects HHS's deep-seated dedication to ensuring that faith-based organizations are not discriminated against in HHS's selection of service providers. Moreover, that clause is not redundant in the full context of the final rule and remains consistent with other Agencies' final regulations.

Changes: HHS deletes the clause ''and considering any permissible accommodation'' from the regulatory text that was proposed in 45 CFR 87.3(a).

3. The Americans With Disabilities Act

Comments: Three commenters requested that HHS strike a reference to the Americans with Disabilities Act (''ADA'') from HHS's proposed rule at 45 CFR 87.3(h) so that the clause is consistent with those of the other Agencies. All of the Agencies' proposed rules, including HHS's, include a parallel clause stating that faith-based organizations do not forfeit their religious exemptions under Title VII of the Civil Rights Act of 1964 when participating in Federal programs. HHS's clause is unique in including an additional reference to an exemption in the ADA. All three commenters recommended that HHS remove the reference to the ADA to promote consistency with the other Agencies. Two of the commenters also based their recommendation on a belief that religious exemptions to nondiscrimination laws should not apply to faith-based organizations that are federally funded social service providers.

Response: HHS agrees that it should remove the reference to the ADA from HHS's employment discrimination provision, because that reference is inaccurate and confusing in the way it describes the ADA. HHS added the ADA reference in 45 CFR 87.3(h) (previously found at 45 CFR 87.3(f)) in the 2020 Rule. That provision refers to a faith-based organization's right to retain its exemption from the Federal prohibition on employment discrimination ''on the basis of religion.'' The ADA preserves religious organizations' right to engage in hiring on the basis of religion by limiting its disability-discrimination provisions. But the ADA does not authorize hiring on the basis of religion; the Civil Rights Act of 1964 does that. Consequently, HHS believes its regulation would be clearer if it removed the ADA reference. By removing the ADA reference, HHS will also help ensure that its rule is consistent with the other Agencies' regulations.

This change does not alter the substantive effect of the ADA or any other nondiscrimination statute. As noted above, HHS remains committed to ensuring that faith-based organizations are not discriminated against in HHS's selection of service providers, and to affording faith-based and other organizations accommodations from program requirements in accordance with Federal law.

Changes: HHS removes the phrase ''and the Americans with Disabilities Act, 42 U.S.C. 12113(d)(2)'' from 45 CFR 87.3(h).

4. Complaint and Enforcement Procedures

Comments: As discussed in Part II.G.3 of the joint preamble, various commenters recommended that the proposed rule be revised to identify a point of contact for complaints in the regulatory text. One commenter additionally suggested that HHS, in particular, specify its enforcement procedures in its regulation. The commenter also maintained that the HHS Office for Civil Rights (''OCR'') may not know how to investigate complaints and verify compliance with the regulation, and accordingly recommended that, in the final rule, HHS clarify how complaints for violations of its regulation may be filed and specify the procedures for enforcement as well as consequences for violations.

Response: HHS declines to change 45 CFR 87.3(k)(4) to identify the process for filing complaints concerning violations of the rule and to make clear HHS's enforcement procedures. Supplementing the proposed rule language with greater detail on those topics is beyond the scope of this rulemaking. Doing so is also unnecessary because HHS enforcement procedures for violations of applicable civil rights statutes are already set forth elsewhere in 45 CFR part 80, and enforcement procedures for any other violations of this rule are set forth in 45 CFR part 75. Further, 45 CFR 87.3(k)(4) already makes clear that any complaint concerning violations of this rule may be filed with ''either the HHS awarding entity or the pass-through entity that awarded funds to the organization, which must promptly report the complaint to the HHS awarding entity.'' The provision adds that the HHS awarding entity will address the complaint in consultation with HHS's OCR.

This process is consistent with HHS's organizational structure and delegations of authority. On January 15, 2021, the Secretary delegated to OCR the authority to investigate allegations of violations of the nondiscrimination provisions in this rule. Also, the individual program offices that administer each grant program (''awarding entities'') have authority to review and enforce other kinds of potential violations of this rule, among other regulations and award terms and conditions that are applicable to the specific grant program at issue.

The enforcement remedies that OCR and the awarding entities may adopt in

the event of any violation of these rules vary according to several factors, such as the facts underlying the alleged violation, any prior corrective action opportunities, and any other applicable program authorities. For example, while awarding entities that administer a given program may be bound by a program-specific authority that addresses enforcement of program requirements, most HHS programs are governed by HHS-wide regulations that address enforcement of program requirements at 45 CFR 75.371 (''Remedies for noncompliance'') and 75.372 (''Termination''). HHS believes that integrating these enforcement remedies into this rule text would be unnecessary and, in any event, is beyond the scope of this rulemaking.

As indicated in Part II.G.3 of the joint preamble above, all of the Agencies, including HHS, acknowledge that beneficiaries of federally funded social service programs need clarity about what office to contact if they experience discrimination in violation of these regulations. At the same time, HHS has determined that it is not feasible to identify a single address or phone number to which all complaints concerning this rule may be directed because the awarding entity will vary according to the program. Consequently, consistent with the approach of other Agencies, as described in Part II.A.4 of the joint preamble, HHS revises the model notice of beneficiary protections proposed in the Joint NPRM to require the awarding entity to identify a point of contact to which complaints can be directed. To help ensure that this information is included in notices to beneficiaries, HHS includes a requirement at 45 CFR 87.3(k)(1) of this final rule that the notice of beneficiary protections in directly funded programs be substantially similar to the model notice in its appendix A. As to indirectly funded social service programs, a new 45 CFR 87.3(k)(2) of this final rule requires that the notice of beneficiary protections in indirectly funded programs include similar contact information. That notice must also identify the protections regarding nondiscrimination on the basis of religion in 45 CFR 87.3(f), and attendance or participation in any explicitly religious activities in 45 CFR 87.3(k)(1)(ii). With these changes, the notice to beneficiaries will serve as a resource, in both direct and indirect funding contexts, in which a point of contact for any complaints can be found. Finally, HHS notes that the name of the HHS program office that has awarded a project, and contact information for that office, is also typically made available on HHS's website.

Changes: The regulation at 45 CFR 87.3(k)(1) is revised to require that the notice of beneficiary protections in directly funded programs adopt language that is substantially similar to that in appendix A, which includes a point of contact for any complaints. A new § 87.3(k)(2) is added to require that beneficiaries and prospective beneficiaries in indirectly funded programs receive a notice of protections that also includes a point of contact for complaints. Section 87.3(k)(4) is unchanged.

D. Department of Housing and Urban Development

Unless specified below, all comments received by HUD are addressed fully in the discussion of cross-cutting issues in Part II of the joint preamble, and those responses are adopted by HUD. HUD here provides additional HUD-specific responses to comments. This Agency-specific discussion is organized in the same manner as the joint preamble.

1. Handling Complaints

Comments: A commenter recommended that HUD charge its Office of Fair Housing and Equal Opportunity (''FHEO'') with handling complaints implicating this rule's beneficiary protections. The commenter expressed that doing so would be consistent with HUD's current practice for handling complaints under its HUD-wide Equal Access Rule, as well as complaints under the Violence Against Women Act's (''VAWA's'') housing protections.

Response: HUD recipients must comply with all applicable programmatic requirements and Federal civil rights laws and their implementing regulations. Program violations will likewise be handled in accordance with applicable statutes and regulations. Individuals who believe they have experienced—or are about to experience—a program violation while accessing or attempting to access programs and activities assisted by HUD may complain to the responsible program office or to HUD's Center for Faith-Based and Neighborhood Partnerships (''CFBNP''). CFBNP has the resources and technical assistance experience to work with faith-based and community partners and HUD's program offices in ensuring equal participation of faith-based organizations in HUD programs and activities. Furthermore, because a complaint may allege violations of multiple authorities, CFBNP will work with FHEO when a complaint alleges discrimination that is potentially cognizable under the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act, VAWA, the Age Discrimination Act of 1975, or any of the other civil rights requirements enforced by FHEO. In addition, if a person believes that they are the victim of discrimination prohibited under a different Federal civil rights statute or requirement enforced by HUD other than those discussed in this rule, they may also file a complaint with FHEO. To the extent a recipient is found to have violated a program requirement or an applicable civil rights statute, they may be subject to sanctions and penalties for such violations as provided for under the applicable statutes or regulations.

Changes: None.

2. Removal of the Reference to Tenets

Comments: One commenter objected to the extension of the Title VII religious-employer exemption to Government-funded positions, and said that the 2020 Rule exacerbated this problem by suggesting that Title VII permits religious organizations that qualify for the Title VII religious-employer exemption to insist upon tenets-based employment conditions that would otherwise violate Title VII or the particular underlying funding statute in question. The commenter noted that while most of the Agencies proposed removing the ''tenets'' related language in their proposed regulations, HUD did not. The commenter urged HUD to likewise remove the reference to tenets-based employment conditions in its regulations.

Response: For the reasons elaborated in Part II.E of the joint preamble, and for consistency with the other Agencies, HUD will remove the text on tenets-based employment conditions from its regulations as it is unnecessary and potentially misleading.

Changes: HUD removes language stating that organizations may select their employees on the basis of their acceptance of or adherence to religious tenets in 24 CFR 5.109(d)(2).

3. Eligibility and Program Requirements

Comments: One commenter supported the Agencies' proposal to remove the phrase ''on the same basis as any other organization and considering a religious accommodation'' from their regulations' provisions regarding organizations' eligibility for program participation. The commenter contended, however, that HUD had failed to remove that language from its

proposed regulation and so should do so in the final rule.

Response: In this final rule, HUD deletes the clause ''and considering any permissible accommodation on a case-by-case basis in accordance with the Constitution and laws of the United States'' from 24 CFR 5.109(c)(1). HUD believes that this change promotes clarity and avoids redundancy in the regulatory text. In addition, HUD makes this change to promote consistency with other Agencies' rule texts, as recommended by the commenter.

HUD emphasizes that the removal of the clause in question is not a substantive change, nor does it represent any departure from HUD's strong commitment to its obligations to comply with the Free Speech and Free Exercise Clauses of the First Amendment to the U.S. Constitution and Federal laws that support and protect religious exercise and freedom of conscience, including RFRA. HUD remains fully committed to thoroughly considering any organization's assertion that an obligation imposed upon it conflicts with its rights under those authorities, and will provide such accommodations in accordance with Federal law.

At the same time, HUD disagrees with the recommendation that it rescind the clause ''on the same basis as any other organization'' from 24 CFR 5.109(c)(1). That clause has long been a part of HUD's regulation and reflects HUD's dedication to ensuring that faith-based organizations are not discriminated against in HUD's selection of service providers. Moreover, HUD has decided to keep that clause so that it remains consistent with other Agencies' final regulations.

Changes: HUD deletes the clause ''and considering any permissible accommodation on a case-by-case basis in accordance with the Constitution and laws of the United States'' from 24 CFR 5.109(c)(1) as proposed.

4. Beneficiary Notice for Indirect Aid Recipients

Comments: As described in Part II.A.4 of the joint preamble, some commenters recommended that the Agencies require that written notice be provided to beneficiaries of programs receiving indirect Federal financial assistance. While recognizing that those beneficiaries are not entitled to all of the protections identified in the notice—in particular, the requirement to separate explicitly religious activities applies only to activities supported with direct Federal financial assistance—the commenters asserted that beneficiaries of indirectly funded programs should be notified of the rights to which they are entitled.

Response: HUD agrees with the other Agencies that the rationale for adopting the beneficiary notice requirement—improving beneficiaries' access to federally funded services by informing them of their rights, and thereby removing certain barriers arising from discrimination—applies equally to all beneficiaries, regardless of whether they are participating in programs receiving direct or indirect Federal financial assistance. HUD provides indirect Federal financial assistance through various programs, including its Housing Choice Voucher (''HCV'') program, Project-Based Voucher (''PBV'') program, Section 8 Moderate Rehabilitation programs, Housing Opportunities for Persons with AIDS (''HOPWA'') program, Continuum of Care (''CoC'') program, and Emergency Solution Grants (''ESG'') program.

Due to the structure of HUD's programs, HUD has determined that the indirect aid beneficiary notice will be provided by Public Housing Agencies (''PHAs'') for the HCV, PBV, and Section 8 Moderate Rehabilitation programs, by the grantees or project sponsors responsible for making eligibility determinations for the HOPWA program, and the recipients or subrecipients that are responsible for determining the eligibility of each family or individual for the CoC and ESG programs. The final rule further clarifies that the entities that receive indirect Federal financial assistance are not responsible for providing the beneficiary notice, to ensure that this requirement does not impose a burden that negatively affects private provider participation in HUD-funded programs.

Changes: HUD revises its regulations to add 24 CFR 5.109(g)(2)(ii).

5. Model Written Notice

Comments: A commenter suggested that HUD follow the example of DOL and HHS by providing a model written beneficiary notice as an appendix to ensure beneficiaries consistently receive adequate notice of their rights. The commenter opined that a model notice will not only help ensure beneficiary rights are respected, but also assist Federal awardees and minimize administrative burdens. Further, the commenter stated that by offering a model notice, the Agencies can help ensure the nondiscrimination and noncoercion requirements of the rule are effective in minimizing the risk that beneficiaries will encounter discrimination when accessing critical services.

Response: HUD agrees with the commenter that providing a model beneficiary notice will ensure that beneficiaries are aware of their rights and that the notice will minimize the risk that beneficiaries will encounter discrimination. Under the final rule, the model written notice will ensure beneficiaries consistently receive adequate notice and will provide clarity for beneficiaries regarding protections for them. Accordingly, HUD incorporates a model beneficiary notice in this final rule.

Changes: HUD adds a model beneficiary notice to accompany this final rule in 24 CFR part 5, appendix C.

E. Department of Education

Unless otherwise specified, all comments received by ED are addressed fully in the discussion of cross-cutting issues in Part II of the joint preamble, and those responses are adopted by ED. ED addresses in this part of the preamble the ED-specific comments not fully addressed in Part II of this preamble. ED does not discuss in this part of the preamble minor or technical changes that were made to provide greater consistency or simplify the language in its regulations.

1. Beneficiary Protections

Comments: One commenter recommended that ED charge its Office for Civil Rights (''OCR'') with responsibility for addressing complaints regarding compliance with the beneficiary protections set forth in this rule.

Response: ED does not address in this rule which of its components will handle complaints regarding compliance with the rule's beneficiary protections because the ED components involved in addressing any alleged violation of the rule could vary according to multiple factors, such as the facts underlying the alleged violation or the existence of a dispute resolution system under the applicable program.

Changes: None.

Comments: As described in Part II.A.4 of the joint preamble, some commenters recommended that, in addition to requiring that the written notice of beneficiary rights be provided to beneficiaries of programs receiving direct Federal financial assistance, the Agencies should require that the notice be provided to beneficiaries of indirect Federal financial assistance.

Response: ED declines to extend its beneficiary notice requirement to programs involving indirect Federal financial assistance. Currently, ED operates only one such program, the

District of Columbia Opportunity Scholarship Program authorized under the Scholarships for Opportunity and Results (''SOAR'') Act, which provides scholarships to enable students from low-income families in the District of Columbia to attend a participating private elementary or secondary school of their choice. Under this program, a student's family must apply and gain admission to a participating private school while separately applying for the scholarship. Participating private schools from which a student's family may choose include both religious and secular schools.

The SOAR Act includes independent requirements governing religious discrimination and participation of religiously affiliated schools. Specifically, Congress prohibited a participating private school from discriminating against program participants or applicants on the basis of religion, as well as race, color, national, origin, or sex. D.C. Code 38–1853.08(a). ED's grantee administering the program provides a notice of these nondiscrimination requirements as part of the scholarship application that parents complete.

Given the structure of ED's sole indirect aid program and considering that a notice of nondiscrimination, including religious nondiscrimination, is already provided to applicants for that program, ED believes it is unnecessary to adopt additional notice requirements for programs providing indirect Federal financial assistance at this time.

Changes: None.

2. Eligibility of Faith-Based Organizations

Comments: One commenter noted that, unlike most other Agencies, ED does not include in its provider notice appendices (appendices A and B to 34 CFR part 75) language indicating that an organization may not use direct Federal financial assistance to ''support or engage in explicitly religious activities.'' The commenter recommended that ED add this language to its appendices.

Response: ED agrees with the commenter that inclusion of this language would be helpful to maintain consistency with other Agencies' corresponding appendices.

Changes: ED has revised appendices A and B to 34 CFR part 75 to make clear that an organization may not use direct Federal financial assistance to ''support or engage in explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements.''

F. Department of Veterans Affairs

In this section, VA addresses the few VA-specific comments not addressed in the joint preamble above. All other comments received by VA or otherwise affecting VA's regulations are addressed fully in Part II of the joint preamble, and VA adopts those responses.

1. Religion or Religious Belief

Comments: One commenter suggested that VA update two of its nondiscrimination provisions, 38 CFR 61.64(e) and 62.62(e), to replace ''religion or religious belief'' with ''religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.'' The commenter explained that the inclusion of this language would further strengthen VA's commitment to ensuring that all beneficiaries and prospective beneficiaries have access to federally funded services and programs without unnecessary barriers and free from discrimination.

Response: VA agrees with the commenter's suggestion. VA's proposed regulation text at 38 CFR 50.2(d) already stated that ''[a]ny organization that participates in programs funded by Federal financial assistance from the department shall not . . . discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.'' In an oversight, however, VA used different phrasing in the proposed versions of 38 CFR 61.64(e) and 62.62(e). For consistency within its own regulations and with those of the other Agencies, VA has revised the text in 38 CFR 61.64(e) and 62.62(e) of this final rule to likewise use the phrase ''religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.''

Changes: VA revises 38 CFR 61.64(e) and 62.62(e) to incorporate the phrase ''religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.''

2. Participation in VA Programs or Services

Comments: The regulation at 38 CFR 50.2(e) prohibits several forms of discrimination against providers participating in VA programs or services. One commenter suggested deleting the first sentence of that provision, which reads as follows: ''A faith-based organization is not rendered ineligible by its religious exercise or affiliation to access and participate in Department programs.'' The commenter suggested that the sentence is repetitive of the substantive prohibitions stated elsewhere in 38 CFR 50.2(e), and urged that deleting it would avoid confusion and advance consistency.

Response: VA agrees that the first sentence of 38 CFR 50.2(e) is repetitive of the other language in that provision guaranteeing equal access to VA programming for faith-based organizations and so removes that sentence in this final rule.

Changes: VA revises 38 CFR 50.2(e) to remove the first sentence.

G. Department of Homeland Security

DHS received several public comments that specifically addressed DHS's proposed regulatory changes. The majority of the comments requested that DHS revise its regulations for consistency in regulatory language with the other Agencies, and several commenters also suggested specific revisions to provide clarity and avoid confusion. DHS addresses these comments below. All other comments received by DHS, or that affect DHS's regulations, are addressed in Part II of the joint preamble, and DHS adopts those responses.

Comments: One commenter recommended that DHS amend its definition of ''indirect Federal financial assistance'' in 6 CFR 19.2 to be consistent with the language used by the majority of the Agencies. Specifically, the commenter recommended that DHS add ''not a choice of the Government'' after ''genuinely independent and private choice of a beneficiary.''

Response: DHS agrees that its omitting this additional phrase could be confusing and would hinder the goal of maximizing consistency across the Agencies' regulations. Accordingly, DHS amends the text of 6 CFR 19.2 to add that phrase, and thereby to maintain consistency of language among the Agencies.

Changes: DHS amends 6 CFR 19.2 by adding the phrase ''and not a choice of the Government'' to the definition of ''indirect Federal financial assistance.''

Comments: Several commenters suggested that DHS amend 6 CFR 19.3 and 19.4 and its appendix A to clarify DHS's regulatory language prohibiting discrimination against religious organizations. In particular, commenters suggested that DHS change the phrase ''because such organization is motivated or influenced by religious faith to provide social services'' to ''because of such organization's religious character, motives, or affiliation, or lack thereof,''

which the commenter asserts is much clearer. Finally, another commenter recommended that DHS amend its appendix A to add ''or lack thereof'' after ''religious character, motives, or affiliation'' in § 19.3.

Response: DHS agrees with the commenters that it should amend 6 CFR 19.3 and 19.4 and its appendix A in the manner suggested. As explained in Part II.D.1 of the joint preamble, the suggested formulation makes the scope of the prohibition on discrimination clearer. This change will also promote consistency among the Agencies' regulations.

Changes: DHS amends the text of 6 CFR 19.3(g)(1) and 19.4(c) and appendix A to 6 CFR part 19 as suggested by commenters.

Comments: Commenters observed that DHS and a couple of other Agencies proposed rule text in the Joint NPRM that included a religious accommodations clause not found in the remaining Agencies' rule text. Specifically, the commenters noted that DHS proposed that 6 CFR 19.3 state: ''Faith-based organizations are eligible, on the same basis as any other organization, and considering any permissible accommodation appropriate under the Constitution and other provisions of Federal law, to seek and receive direct financial assistance from DHS for social service programs or to participate in social service programs administered or financed by DHS.'' *See* 88 FR 2412. By contrast, other Agencies omitted the reference to ''any permissible accommodation'' in their nondiscrimination provisions. Apart from language consistency, the commenters also asserted that the accommodations clause in DHS's regulations is confusing.

Response: DHS agrees with the commenters' suggestion and removes the ''any permissible accommodation'' language from its final regulations. That language was not intended to have any substantive effect, so its removal likewise effects no substantive change. DHS is fully committed to granting constitutionally and statutorily required accommodations, as it must, irrespective of whether that commitment is restated in this context. DHS recognizes, however, that including such accommodations language, in deviation from other Agencies' regulatory text, could invite readers to infer a substantive difference in meaning, contrary to DHS's regulatory intent. DHS therefore deletes the ''any permissible accommodation'' language in this final rule.

Changes: DHS removes the phrase ''any permissible accommodation'' from 6 CFR 19.3(a).

H. Agency for International Development

Unless otherwise specified, those comments received by USAID or affecting USAID's regulations are addressed fully in Part II of the joint preamble, and USAID adopts those responses except where noted. In the Joint NPRM, USAID inadvertently removed its existing regulatory language related to accommodations without replacing it with the intended new language. USAID adopts the discussion of accommodations in Part II of the joint preamble and has updated its amendatory text accordingly. USAID addresses in this part of the preamble the USAID-specific comments not addressed in the joint preamble and provides USAID-specific findings and certifications. USAID does not discuss in this part of the preamble minor or technical changes that were made to provide greater consistency or simplify the language in the regulations.

1. Beneficiary Notice Requirement

As explained in the Joint NPRM, and in footnotes 1 and 2 of the joint preamble, as a result of several distinctive characteristics of its programs, USAID does not adopt the discussion of the cross-cutting comments related to the beneficiary notice requirements in Part II.A.4 of the joint preamble. Instead, USAID addresses the comments it received on that topic in the following discussion.

Comments: USAID received three comments regarding its proposal to refrain from adopting a written beneficiary notice requirement. One commenter urged USAID to require written notice to beneficiaries of their right to be free from religious discrimination in all relevant local languages, arguing that, if USAID failed to do so, beneficiaries of USAID-funded programs would have fewer protections than beneficiaries of other federally funded programs. Another commenter acknowledged that the unique international context in which USAID operates may warrant some adjustment to the beneficiary notices provided by other Agencies, but argued that some form of notice should still be required. Another commenter, by contrast, contended that while the beneficiary notice should be universally required by domestic agencies, it should not apply to USAID's programs.

Response: At this time, USAID declines to adopt a requirement that all beneficiaries of USAID-funded programs receive written notice of a right to be free from religious discrimination. USAID is, however, exploring ways to effectively address current challenges associated with written notices in order to potentially disseminate information about beneficiary protections more broadly in the future.

USAID acknowledges commenters' suggestions that the value of religious nondiscrimination protections for beneficiaries is strengthened when beneficiaries are aware that they have such protections. As another commenter explained, however, USAID's global programming means USAID operates under different circumstances than the eight other domestically focused Agencies. USAID funds assistance in more than 100 countries, many of which have multiple official or national languages, often in addition to countless local languages that are the actual primary language of USAID beneficiaries. *See* USAID, *Fiscal Year 2023 Agency Financial Report* at iii (Nov. 14, 2023), *https://www.usaid.gov/sites/default/files/2023-11/USAID_2023AFR_508.pdf.* USAID-funded assistance also often targets some of the most vulnerable populations in the world, and many of these communities have varying degrees of literacy, making other-than-written forms of communication necessary. While language and literacy obstacles can also affect U.S. domestic programs administered by the other Agencies, these issues affect USAID programs on a much wider scale and highlight some of the challenges that impede meaningful dissemination of a written beneficiary notice throughout USAID-funded programs.

USAID does not concur with the comment that the Agency lacks adequate religious nondiscrimination protections for beneficiaries. USAID's existing regulations and award terms make explicit that an organization that participates in programs funded by financial assistance from USAID, including through an award or subaward, must not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Changes: None.

2. Alternative Provider Requirements

USAID does not adopt the discussion of the cross-cutting comments related to the alternative provider requirements in Part II.A.4 of the joint preamble. Instead, USAID addresses the comments it

received on that topic in the following discussion.

Comments: USAID received two comments regarding its proposal to refrain from adopting an alternative provider referral requirement. The first commenter urged USAID to adopt an alternative provider referral requirement akin to what the other Agencies adopted in the 2016 Rule. In the alternative, the commenter encouraged USAID to consider adopting the modified referral requirement that the rest of the domestically focused Agencies proposed in the Joint NPRM, under which USAID would attempt to identify an alternative provider if a beneficiary were to object to the nature of a service provider, regardless of whether that provider was religious or secular. The second commenter, in contrast, argued that USAID should not adopt an alternative provider requirement due to the different circumstances in which USAID operates.

Response: USAID declines to adopt an alternative provider referral requirement at this time. USAID agrees with the second commenter that it operates under different circumstances than the other eight domestically focused agencies. As explained above, USAID funds activities in more than 100 countries, often in some of the hardest-to-reach places on earth, where social services are often not readily available. Furthermore, it may be difficult to locate alternatives depending on the cultural and religious context of the country in which USAID is operating. USAID also notes that it communicates and promotes important religious freedom messages through separate, targeted programs, such as its democracy, rights, and government initiatives.

Changes: None.

3. Appendices A and B

Comments: USAID received one comment urging it to adopt an appendix A (Notice or Announcement of Award Opportunities) and an appendix B (Notice of Award or Contract).

Response: USAID declines to adopt model language similar to that found in other Agencies' appendix A or B. USAID already includes this information in its notices of funding opportunities and awards through inclusion or incorporation by reference of USAID's standard award provisions.

Changes: None.

IV. General Regulatory Certifications

A. Regulatory Planning and Review (Executive Order 12866); Improving Regulation and Regulatory Review (Executive Order 13563); Modernizing Regulatory Review (Executive Order 14094)

Under section 6(a) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993), the Office of Management and Budget (''OMB'') Office of Information and Regulatory Affairs (''OIRA'') determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive order and review by OMB. Section 3(f) of Executive Order 12866, as amended by section 1(b) of Executive Order 14094, Modernizing Regulatory Review, 88 FR 21879 (Apr. 6, 2023), defines a ''significant regulatory action'' as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more, 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 legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive order. OIRA has determined that this final rule is a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011), directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The Agencies are issuing this final rule upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, the Agencies selected those approaches that maximize net benefits. Based on the analysis that follows, the Agencies believe that this final rule is consistent with the principles in Executive Order 13563. The Agencies also have determined that this regulatory action does not unduly interfere with State, local, or Tribal governments in the exercise of their governmental functions.

In accordance with Executive Orders 12866 and 13563, the Agencies have assessed the potential costs, cost savings, and benefits, both quantitative and qualitative, of this final rule.

1. Costs

The potential costs of this final rule are those resulting from implementing the beneficiary notice requirements and regulatory familiarization. DOL previously estimated the cost of imposing a similar beneficiary notice requirement, reporting an upper-bound estimate of $200 per organization per year (in 2013 dollars). 81 FR 19395. This cost estimate was based on the expectation that it would take up to $100 in annual material costs and no more than two annual burden hours for a Training and Development Specialist to print, duplicate, and distribute notices to beneficiaries. *Id.*

For this final rule, the Agencies adjusted the estimate to $251.22 (in 2022) to produce an upper-bound estimate, and also replicated this methodology to generate a central estimate of the cost per organization per year. For the replication, the Agencies adjusted the annual materials cost to $125.61 (in 2022 dollars) using the consumer price index (''CPI'').[6] The Agencies calculated the cost of labor by multiplying the estimated time burden by the hourly compensation of a Training and Development Specialist (SOC Code 13–1151). According to the Bureau of Labor Statistics (''BLS''), the mean hourly wage rate for a Training and Development Specialist in May 2022 was $33.59.[7] For this analysis, the Agencies used a fringe benefits rate of

[6] To calculate this figure, as well as the adjusted upper-bound estimate, the Agencies used the data on annual averages of the CPI available at BLS, CPI Inflation Calculator, *https://www.bls.gov/data/inflation_calculator.htm.* The average CPI for 2013 was $232.957; the average CPI for 2022 was $292.613. Using this ratio, the materials cost of $100 in 2013 dollars became $125.61 in 2022 dollars [= $100 × (292.613/232.957)].

[7] BLS, Occupational Employment and Wage Statistics, May 2022, *https://www.bls.gov/oes/current/oes131151.htm.*

45 percent,[8] resulting in a fully loaded hourly compensation rate for Training and Development Specialists of $48.71 [= $33.59 + ($33.59 × 0.45)]. The Agencies estimated that a Training and Development Specialist will spend on average two hours ($97.42) printing, duplicating, and distributing notices to beneficiaries. The Agencies combined these estimates to generate a primary cost per organization of the beneficiary notice requirement of $223.03 [= $125.61 + $97.42]. As shown in Table 1, the Agencies estimated the total annual cost resulting from the beneficiary notice requirement by multiplying the number of covered providers of social service programs receiving Federal financial assistance by the annual compliance cost of the notice requirement, namely their potential central estimate of $223.03. All providers receiving direct Federal financial assistance, as well as some providers receiving indirect Federal financial assistance, are subject to the beneficiary notice requirement in this final rule. The Agencies could not, however, differentiate direct recipients from indirect recipients in calculating the annual cost of the notice requirement, and thus the cost is overstated to the extent that it includes indirect recipients who may not be subject to the notice requirement, depending on each Agency's determination under its revised regulations. On the other hand, for some Agencies, the number of providers of social service programs does not include subrecipients due to data limitations. This results in an underestimation of the annual cost of the beneficiary notice requirement. Overall, the annual cost of the final notice requirement is likely to be underestimated in this analysis, but not enough to change the determination of the Agencies that the benefits justify the costs.

TABLE 1—ANNUAL COST OF FINAL BENEFICIARY NOTICE REQUIREMENT BY AGENCY

Agencies	Number of social service providers receiving federal financial assistance (A)[9]	Cost per entity (B)[10]	Annual cost (C = A × B)
DOJ	[11] 18,152	$223.03	$4,048,441
USDA	[12] 240,810	223.03	53,707,854
DOL	[13] 39,981	223.03	8,916,962
HHS	[14] 10,287	223.03	2,294,310
HUD	[15] 45,321	223.03	10,107,943
ED	[16] 10,941	223.03	2,440,171
VA	[17] 1,027	223.03	229,052
DHS	[18] 10,648	223.03	2,374,823
USAID	[19] 1,251	0	[20] 0
Total			84,119,556

The process of regulatory familiarization, or reviewing the final rule to determine how it applies, will impose a one-time direct cost on all covered providers of social service programs in the first year. The Agencies calculated this cost by multiplying the estimated time to review the rule by the hourly compensation of a Community and Social Service Specialist (SOC Code 21–1099). According to the BLS, the mean hourly wage rate for a Community and Social Service Specialist in May 2022 was $24.82.[21] For this analysis, the Agencies used a fringe benefits rate of 45 percent,[22] resulting in a fully loaded hourly compensation rate for Community and Social Service

[8] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $28.31 per hour worked in June 2022, while benefit costs averaged $12.72, which is a benefits rate of 45 percent. BLS, Employer Costs for Employee Compensation Archived News Releases, *https://www.bls.gov/bls/news-release/ecec.htm#2022.*

[9] Most Agencies provided their numbers of recipients of financial assistance, and the averages over three years (fiscal year (''FY'') 2019 to FY2021), where available, are presented in Table 1.

[10] See the discussion preceding Table 1 for the derivation of a $223.03 estimate.

[11] Average number of recipients of DOJ financial assistance from the Office on Violence Against Women and Office of Justice Programs in FY2019, FY2020, and FY2021.

[12] Average number of recipients of USDA financial assistance from the National Institute of Food and Agriculture Program, Community Facilities Program, Single Family Housing Preservation Grant Program, Multifamily Housing Programs, and nutrition assistance programs in FY2019, FY2020, and FY2021. All other USDA programs, including via State partners, States and territories of the United States, and Tribal organizations, are estimates for the current fiscal year.

[13] Number of recipients of DOL financial assistance under various programs authorized by title I of the Workforce Innovation and Opportunity Act in FY2019, FY2020, or FY2021.

[14] Average number of prime recipients of HHS financial assistance in affected programs in FY2019, FY2020, and FY2021.

[15] Average number of recipients of HUD financial assistance from the Community Development Block Grant Program, HOME Investment Partnerships, Public Housing Agency, Office of Native American Programs, Office of Special Needs, Multifamily Assisted Property Owners Program, Office of Rural Housing and Economic Development, and Comprehensive Housing Counseling Grant Program in FY2019, FY2020, and FY2021.

[16] Average number of recipients of ED financial assistance from discretionary grant programs and formula grant programs in FY2019, FY2020, and FY2021.

[17] Average number of recipients of VA financial assistance from the Supportive Services for Veteran Families and Grant and Per Diem Programs in FY2019, FY2020, and FY2021. In addition, at the time of the proposed rule, VA estimated that the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program would fund 90 grantees in each of FY2022 and FY2023. The Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program has awarded funding to 80 grantees in each of FY2022 and FY2023, resulting in a lower annual cost than estimated.

[18] Average number of recipients of DHS financial assistance from USCIS's Citizenship and Integration Grant Program and the Federal Emergency Management Agency's Disaster Case Management, Crisis Counseling Assistance and Training Program and Emergency Food and Shelter Program in FY2019, FY2020, and FY2021.

[19] Average number of prime recipients of USAID financial assistance in FY2019, FY2020, and FY2021.

[20] USAID is not adopting the beneficiary notice requirement, so this final rule will not result in any cost to recipients of financial assistance from USAID.

[21] BLS, Occupational Employment and Wage Statistics, May 2022, *https://www.bls.gov/oes/current/oes211099.htm.*

[22] BLS, Employer Costs for Employee Compensation, *https://www.bls.gov/ncs/data.htm.* Wages and salaries averaged $26.22 per hour worked in 2020, while benefit costs averaged $11.99, which is a benefits rate of 46 percent.

Specialists of $35.99 [= $24.82 + ($24.82 × 0.45)]. The Agencies estimated that a Community and Social Service Specialist will spend on average 30 minutes reviewing the rule ($18). Table 2 shows the one-time regulatory familiarization cost by Agency in the first year.

TABLE 2—ONE-TIME REGULATORY FAMILIARIZATION COST BY AGENCY

Agencies	Number of social service providers (A)	Cost per entity (B)	Cost in the first year (C = A × B)
DOJ	18,152	$18	$326,736
USDA	240,810	18	4,334,580
DOL	39,981	18	719,658
HHS	10,287	18	185,166
HUD	45,321	18	815,778
ED	10,941	18	196,938
VA	1,027	18	18,486
DHS	10,648	18	191,664
USAID	1,251	18	22,518
Total			6,811,524

Table 3 shows the total annualized cost at a seven percent and a three percent discounting for the final beneficiary notice requirement and the one-time regulatory familiarization cost. For example, the annualized cost for DOL-regulated entities is $9,018,626 at a seven percent discounting. The total annualized cost for all nine Agencies is $85,081,821 at a seven percent discounting. This total cost estimate is likely to be understated because some subrecipients are not included in the analysis, but not enough to change the determination of the Agencies that the benefits of the beneficiary notice requirement justify its costs.

TABLE 3—TOTAL COST OF FINAL BENEFICIARY NOTICE REQUIREMENT AND REGULATORY FAMILIARIZATION BY AGENCY

Agencies	Annual cost of final beneficiary notice requirement	The one-time regulatory familiarization cost	Total annualized cost at a 7 percent discounting	Total annualized cost at a 3 percent discounting
DOJ	$4,048,078	$326,736	$4,094,597	$4,086,381
USDA	53,703,038	4,334,580	54,320,185	54,211,183
DOL	8,916,163	719,658	9,018,626	9,000,529
HHS	2,294,104	185,166	2,320,467	2,315,811
HUD	10,107,036	815,778	10,223,185	10,202,670
ED	2,439,952	196,938	2,467,992	2,463,040
VA	229,031	18,486	231,663	231,198
DHS	2,374,610	191,664	2,401,899	2,397,079
USAID	0	22,518	3,206	2,640
Total			85,081,821	84,910,532

2. Cost Savings

The final beneficiary notice requirement could provide some cost savings to beneficiaries who may be able to receive free information about alternative providers in their area and therefore may no longer need to investigate alternative providers on their own. While the Agencies cannot quantify this cost savings with a reasonable degree of confidence, the Agencies expect this cost savings to be insignificant because the number of beneficiaries who incur costs to identify alternative providers is likely very small.

3. Benefits

As noted above, section 1(c) of Executive Order 13563 recognizes that some benefits and costs are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, and distributive impacts. 76 FR 3821. The Agencies recognize a non-quantified benefit to social service providers in the form of increased clarity, consistency, and fairness that will result from imposing uniform notice requirements on faith-based and secular organizations alike, in accordance with the longstanding Federal policy that faith-based organizations are eligible to participate in grant-making programs on the same basis as other organizations. The final rule may also benefit providers in that it would provide information, where the Agencies determine appropriate, that could ultimately connect them with beneficiaries who are in need of their services. Additionally, in situations in which beneficiaries lack true private choice, the final rule will benefit faith-based organizations by enabling them to continue operating indirect aid programs, consistent with Executive Order 14015's recognition that faith-based organizations are essential to the delivery of social services.

The final rule will also benefit beneficiaries in several important ways. Specifically, the final beneficiary notice requirement will result both in tangible benefits for beneficiaries, as the reduction of certain barriers due to discrimination improves access to federally funded services, and in unquantifiable dignitary benefits associated with avoiding discrimination. Additionally, the final referral option will make it easier for

beneficiaries who object to receiving services from one provider to learn about alternative providers. And, where such alternatives are unavailable as a practical matter, the final rule will allow an Agency to ensure that beneficiaries are not effectively required to participate in religious activities in order to receive the benefits of federally funded programs. Finally, the final rule will benefit all beneficiaries, including those who would freely choose faith-based providers, by expanding the universe of providers reasonably available to them.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (''RFA''), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, tit. II, 110 Stat. 847, 857, requires Federal agencies engaged in rulemaking to assess the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 604.

The Agencies believe that the ''central estimate'' cost of $241.03 per provider in the first year is far less than one percent of the annual revenue of even the smallest providers of social services. Therefore, the Agencies certify that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Civil Justice Reform (Executive Order 12988)

Executive Order 12988, Civil Justice Reform, 61 FR 4729 (Feb. 5, 1996), provides that agencies shall draft regulations that meet applicable standards to avoid drafting errors and ambiguity, minimize litigation, provide clear legal standards for affecting conduct, and promote simplification and burden reduction. This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4731–32.

D. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

The Agencies have reviewed this final rule in accordance with Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000). Tribal sovereignty and self-governance will not be affected by this final rule, consistent with existing protections for Indian Tribes under Federal law, including the Indian Civil Rights Act. As nothing in this rule affects the existing prerogatives and authority of Indian Tribes, no interagency consultation with Indian Tribes was conducted regarding the rule. The Agencies may, however, conduct Agency-specific Tribal consultations should the implementation of an Agency's particular program merit further Tribal consultation or coordination.

E. Federalism

Section 6 of Executive Order 13132, Federalism, 64 FR 43255, 43257–58 (Aug. 4, 1999), requires Federal agencies to consult with State entities when a regulation or policy will have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government within the meaning of the Executive order. Section 3(b) of the Executive order further provides that Federal agencies may implement a regulation limiting the policymaking discretion of the States only if constitutional or statutory authority permits the regulation and the regulation is appropriate in light of the presence of a problem of national significance. *Id.* at 43256. The final rule does not have a substantial direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of Executive Order 13132. Furthermore, relevant constitutional and statutory authority supports the final rule, and it is appropriate in light of the presence of a problem of national significance.

F. Paperwork Reduction Act

This final rule does not contain any new or revised ''collection[s] of information'' as defined by the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3502(3). The Agencies have determined in consultation with OIRA that the requirement to provide written notice to beneficiaries of certain nondiscrimination protections is not a collection of information subject to the PRA because the Federal Government has provided or will provide the information that a provider must use. *See* 5 CFR 1320.3(c)(2).

G. Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (''UMRA''), 2 U.S.C. 1532(a), requires that a Federal agency determine whether a regulation proposes a Federal mandate that may result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more in a single year (adjusted annually for inflation). The inflation-adjusted value of $100 million in 1995 was approximately $178 million in 2021 based on the CPI for All Urban Consumers.[23] If a Federal mandate would result in expenditures in excess of the threshold, UMRA requires the agency to prepare a written statement containing, among other things, a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate. 2 U.S.C. 1532(a). The Agencies have reviewed this final rule in accordance with UMRA and determined that the total cost to implement the rule in any one year will not meet or exceed the threshold. The final rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than the threshold, or increased expenditures by the private sector of more than the threshold.[24] Accordingly, UMRA does not require any further action.

H. Assessment of Educational Impact

In the Joint NPRM, the Secretary of Education requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. Based on the responses to the Joint NPRM and the Agencies' review, the Agencies have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

[23] The Agencies again derived this figure from the data on annual averages of the CPI available at BLS, CPI Inflation Calculator, *https://www.bls.gov/data/inflation_calculator.htm.* The average CPI for 1995 was $152.40; the average CPI for 2021 was $270.97. Using this ratio, $100 million in 1995 dollars became $178 million in 2021 dollars [= $100,000,000 × (270.970/152.40)].

[24] *See also* 2 U.S.C. 1503 (excluding from UMRA's ambit any provision in a proposed or final regulation that, among other things, enforces constitutional rights of individuals; establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability; or provides for emergency assistance or relief at the request of any State, local, or Tribal government or any official of a State, local, or Tribal government).

List of Subjects

2 CFR Part 3474

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grants administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians—education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

6 CFR Part 19

Civil rights, Government contracts, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

7 CFR Part 16

Administrative practice and procedure, Grant programs.

22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

28 CFR Part 38

Administrative practice and procedure, Grant programs, Reporting and recordkeeping requirements.

29 CFR Part 2

Administrative practice and procedure, Grant programs, Religious discrimination, Reporting and recordkeeping requirements.

34 CFR Part 75

Accounting, Copyright, Education, Grant programs—education, Indemnity payments, Inventions and patents, Private schools, Reporting and recordkeeping requirements, Youth organizations.

34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Prisons, Private schools, Reporting and recordkeeping requirements, Virgin Islands, Youth organizations.

38 CFR Part 50

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per diem program, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

38 CFR Part 62

Administrative practice and procedure, Day care, Disability benefits, Government contracts, Grant programs—health, Grant programs—housing and community development, Grant programs—Veterans, Health care, Homeless, Housing, Indians—lands, Individuals with disabilities, Low and moderate income housing, Manpower training programs, Medicaid, Medicare, Public assistance programs, Public housing, Relocation assistance, Rent subsidies, Reporting and recordkeeping requirements, Rural areas, Social security, Supplemental Security Income (SSI), Travel and transportation expenses, Unemployment compensation.

45 CFR Part 87

Administrative practice and procedure, Grant programs—social programs, Nonprofit organizations, Public assistance programs.

DEPARTMENT OF EDUCATION

For the reasons set forth in the preamble, the Secretary of Education amends part 3474 of title 2 of the CFR and parts 75 and 76 of title 34 of the CFR, respectively, as follows:

Title 2—Grants and Agreements

PART 3474—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. Revise the authority citation for part 3474 to read as follows:

Authority: 20 U.S.C. 1221e–3, 3474; 42 U.S.C. 2000bb *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; and 2 CFR part 200, unless otherwise noted.

■ 2. Amend § 3474.15 by:
■ a. Revising paragraph (b).
■ b. Removing note 1 to paragraph (e)(1).
■ c. Revising paragraph (f).
■ d. In paragraph (g), removing the second sentence.

The revisions read as follows:

§ 3474.15 Contracting with faith-based organizations and nondiscrimination.

* * * * *

(b)(1) A faith-based organization is eligible to contract with grantees and subgrantees, including States, on the same basis as any other private organization.

(2)(i) In selecting providers of goods and services, grantees and subgrantees, including States—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack

thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization; and

(B) Must ensure that the award of contracts is free from political interference, or even the appearance of such interference, and is done on the basis of merit, not on the basis of religion or religious belief, or lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee in administering Federal financial services from the Department may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of grant funds must apply equally to faith-based and non-faith-based organizations. All organizations that participate in Department programs or services, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a grantee or subgrantee may disqualify faith-based organizations from participating in Department-funded programs or services on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) Neither a State nor the Department may disqualify an organization from participating in any Department program for which it is otherwise eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

(f) A private organization that contracts with a grantee or subgrantee, including a State, may not discriminate against a beneficiary or prospective beneficiary in the provision of program goods or services, or in outreach activities related to such goods or services, on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

Title 34—Education

PART 75—DIRECT GRANT PROGRAMS

■ 3. Revise the authority citation for part 75 to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; and E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806, unless otherwise noted.

§ 75.51 [Amended]

■ 4. Amend § 75.51 by:

■ a. In paragraph (b)(3), adding ''or'' at the end of the paragraph.

■ b. In paragraph (b)(4), removing ''; or'' and adding, in its place, a period.

■ c. Removing paragraph (b)(5).

■ 5. Amend § 75.52 by:

■ a. Revising paragraphs (a), (c)(3) introductory text, (c)(3)(ii)(B), and (c)(3)(iii).

■ b. Removing paragraph (c)(3)(vi) and note 1 to paragraph (d)(1).

■ c. In paragraph (d)(2)(iv), removing the words ''and employees.''

■ d. Revising paragraph (e).

■ e. In paragraph (g), removing the second sentence.

The revisions read as follows:

§ 75.52 Eligibility of faith-based organizations for a grant and nondiscrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a grant under a program of the Department on the same basis as any other private organization.

(2)(i) In the selection of grantees, the Department—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization; and

(B) Must ensure that all decisions about grant awards are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or the lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to this part.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of grant funds must apply equally to faith-based and non-faith-based organizations. All organizations that receive grants under a Department program, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department may disqualify faith-based organizations from applying for or receiving grants under a Department program on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program

requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) The Department may not disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

(c) * * *

(3) For purposes of 2 CFR 3474.15, this section, §§ 75.712 and 75.714, and appendices A and B to this part, the following definitions apply:

(ii) * * *

(B) The organization receives the assistance wholly as the result of the genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuinely independent and private choice.

(iii) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

* * * * *

(e) An organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services, or in outreach activities related to such services, on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

■ 6. Add § 75.712 to read as follows:

§ 75.712 Beneficiary protections: Written notice.

(a) An organization providing social services to beneficiaries under a Department program supported by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain protections. Such notice must be given in the manner and form prescribed by the Department. This notice must state that—

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must provide the notice at the earliest available opportunity.

(c) The Department may determine that the notice described in paragraph (a) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from the Department as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(d) The notice that an organization uses to notify beneficiaries or prospective beneficiaries of the rights under paragraphs (a) through (c) of this section must include language substantially similar to that in appendix C to this part.

■ 7. Revise appendix A to part 75 to read as follows:

Appendix A to Part 75—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other private organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* The Department will not, in the selection of grantees, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from the Department to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 8. Revise appendix B to part 75 to read as follows:

Appendix B to Part 75—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from the Department to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 9. Add appendix C to part 75 to read as follows:

Appendix C to Part 75—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the U.S. Department of Education, we are required to provide you the following information:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary.

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance.

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Education at [insert applicable contact information].

[When required by the Department, the notice must also state:] (5) If you would like information about whether there are any other federally funded organizations that provide the services available under this program in your area, please contact the awarding agency.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

PART 76—STATE-ADMINISTERED PROGRAMS

■ 10. Revise the authority citation for part 76 to read as follows:

Authority: 20 U.S.C. 1221e–3 and 3474; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; and E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806, unless otherwise noted.

■ 11. Amend § 76.52 by:
■ a. Revising paragraphs (a), (c)(3) introductory text, (c)(3)(ii)(B), and (c)(3)(iii).
■ b. Removing paragraph (c)(3)(vi) and note 1 to paragraph (d)(1).
■ c. In paragraph (d)(2)(iv), removing the words ''and employees.''
■ d. Revising paragraph (e).
■ e. In paragraph (g), removing the second sentence.

The revisions read as follows:

§ 76.52 Eligibility of faith-based organizations for a subgrant and nondiscrimination against those organizations.

(a)(1) A faith-based organization is eligible to apply for and to receive a subgrant under a program of the Department on the same basis as any other private organization.

(2)(i) In the selection of subgrantees, States—

(A) May not discriminate for or against a private organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization; and

(B) Must ensure that all decisions about subgrants are free from political interference, or even the appearance of such interference, and are made on the basis of merit, not on the basis of religion or religious belief, or a lack thereof.

(ii) Notices or announcements of award opportunities and notices of award or contracts must include language substantially similar to that in appendices A and B, respectively, to 34 CFR part 75.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by States in administering a Department program may require faith-based organizations to provide assurances or notices if they are not required of non-faith-based organizations. Any restrictions on the use of subgrant funds must apply equally to faith-based and non-faith-based organizations. All organizations that receive a subgrant from a State under a State-Administered Formula Grant program of the Department, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(4) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by States may disqualify faith-based organizations from applying for or receiving subgrants under a State-Administered Formula Grant program of the Department on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(5) Nothing in this section may be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(6) Neither a State nor the Department may disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

* * * * *

(c) * * *

(3) For purposes of 2 CFR 3474.15, this section, and §§ 76.712 and 76.714, the following definitions apply:

(ii) * * *

(B) The organization receives the assistance wholly as the result of the genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuinely independent and private choice.

(iii) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

* * * * *

(e) An organization that receives any Federal financial assistance under a program of the Department shall not discriminate against a beneficiary or prospective beneficiary in the provision of program services, or in outreach activities related to such services, on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

■ 12. Add § 76.712 to read as follows:

§ 76.712 Beneficiary protections: Written notice.

(a) An organization providing social services to beneficiaries under a Department program supported by direct Federal financial assistance must give written notice to a beneficiary or prospective beneficiary of certain

protections. Such notice must be given in the manner and form prescribed by the Department. This notice must state that—

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must provide the notice at the earliest available opportunity.

(c) The Department may determine that the notice described in paragraph (a) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from the Department, or a State agency or other entity administering the applicable program, as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(d) The notice that an organization uses to notify beneficiaries or prospective beneficiaries of the rights under paragraphs (a) through (c) of this section must include language substantially similar to that in appendix C to 34 CFR part 75.

DEPARTMENT OF HOMELAND SECURITY

For the reasons set forth in the preamble, DHS amends part 19 of title 6 of the CFR as follows:

Title 6—Domestic Security

PART 19—NONDISCRIMINATION IN MATTERS PERTAINING TO FAITH-BASED ORGANIZATIONS

■ 13. Revise the authority citation for part 19 to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 101 *et seq.;* 8 U.S.C. 1101 *et seq.;* 42 U.S.C. 5164, 5183, 5189d; 42 U.S.C. 2000bb *et seq.;* 42 U.S.C. 11331 *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13403, 71 FR 28543, 3 CFR, 2006 Comp., p. 228; E.O. 13498, 74 FR 6533, 3 CFR, 2009 Comp., p. 219; and E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273.

■ 14. Revise § 19.1 to read as follows:

§ 19.1 Purpose.

It is the policy of the Department of Homeland Security (DHS) to ensure the equal treatment of faith-based and other organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. The equal treatment policies and requirements contained in this part are generally applicable to faith-based and other organizations participating or seeking to participate in any such programs. More specific policies and requirements regarding the participation of faith-based and other organizations in individual programs may be provided in the statutes, regulations, or guidance governing those programs, such as regulations in title 44 of the Code of Federal Regulations. DHS or its components may issue policy guidance and reference materials at a future time with respect to the applicability of this policy and this part to particular programs.

■ 15. Amend § 19.2 by:

■ a. Adding a definition of ''Federal financial assistance'' in alphabetical order.

■ b. Removing the definition of ''Financial assistance''.

■ c. In the definition of ''Indirect Federal financial assistance or Federal financial assistance provided indirectly'', revising paragraph (2).

■ d. Revising the definition of ''Intermediary''.

The addition and revisions read as follows:

§ 19.2 Definitions.

* * * * *

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

* * * * *

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* * * *

(2) The organization receives the assistance wholly as a result of a genuinely independent and private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government, that accepts Federal financial assistance and distributes that assistance to other organizations that, in turn, provide government-funded social services. If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services supported by the Federal Government, the intermediary must ensure compliance with the provisions of this part by the recipient of a contract, grant, or agreement. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

* * * * *

■ 16. Revise § 19.3 to read as follows:

§ 19.3 Equal ability for faith-based organizations to seek and receive financial assistance through DHS social service programs.

(a) Faith-based organizations are eligible on the same basis as any other organization to seek and receive direct financial assistance from DHS for social service programs or to participate in social service programs administered or financed by DHS.

(b) Neither DHS, nor a State or local government, nor any other entity that administers any social service program supported by direct financial assistance from DHS, shall discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(c) Nothing in this part shall be construed to preclude DHS from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(d) DHS shall not disqualify an organization from participating in any DHS program for which it is otherwise eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and DHS has determined that it would deny the accommodation.

(e) Decisions about awards of Federal financial assistance must be free from political interference, or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof, or on the basis of religious or political affiliation.

(f) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.

(g) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or an intermediary in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs:

(1) On the basis of such organization's religious character, motives, or affiliation, or lack thereof; or

(2) On the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(h) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by DHS or an intermediary in administering financial assistance from DHS shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations.

■ 17. Amend § 19.4 by revising paragraph (c) and adding paragraph (f) to read as follows:

§ 19.4 Explicitly religious activities.

* * * * *

(c) All organizations that participate in DHS social service programs, including faith-based organizations, must carry out eligible activities in accordance with all program requirements, and in accordance with all other applicable requirements governing the conduct of DHS-funded activities, including those prohibiting the use of direct financial assistance from DHS to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by DHS or a State or local government in administering financial assistance from DHS shall disqualify a faith-based organization from participating in DHS's social service programs because of such organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

* * * * *

(f) To the extent that any provision of this part is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

■ 18. Revise § 19.5 to read as follows:

§ 19.5 Nondiscrimination requirements.

An organization that receives financial assistance from DHS for a social service program shall not, in providing services or in outreach activities related to such services, favor or discriminate against a beneficiary of said program or activity on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. Organizations that favor or discriminate against a beneficiary will be subject to applicable sanctions and penalties, as established by the requirements of the particular DHS social service program or activity. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

■ 19. Amend § 19.6 by revising paragraph (e) to read as follows:

§ 19.6 How to prove nonprofit status.

* * * * *

(e) Evidence that the DHS awarding agency determines to be sufficient to establish that the entity would otherwise qualify as a nonprofit organization.

■ 20. Amend § 19.9 by revising paragraph (b) to read as follows:

§ 19.9 Exemption from Title VII employment discrimination requirements.

* * * * *

(b) Where a DHS program contains independent statutory or regulatory provisions that impose nondiscrimination requirements on all grantees, those provisions are not waived or mitigated by this part. In this case, grantees should consult with the appropriate DHS program office to determine the scope of any applicable requirements.

■ 21. Add § 19.12 to read as follows:

§ 19.12 Notifications to beneficiaries and applicants.

(a) Organizations providing social services to beneficiaries under a program supported by direct Federal financial assistance from DHS must give written notice to beneficiaries and prospective beneficiaries of certain protections. Such notice must be given in a manner and form prescribed by DHS's Office for Civil Rights and Civil Liberties, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This written notice shall include language substantially similar to that in appendix C to this part.

(b) The written notice described in paragraph (a) of this section must be given to prospective beneficiaries prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, organizations must advise beneficiaries of their protections at the earliest available opportunity.

(c) DHS may determine that the notice described in paragraph (a) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from DHS, or a State agency or other entity administering the program, as to whether there are any other federally funded organizations in the area that provide the services available under the applicable program.

(d) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in

appendices A and B, respectively, to this part.

■ 22. Revise appendix A to part 19 to read as follows:

Appendix A to Part 19—Notice or Announcement of Award Opportunity

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* DHS will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DHS, or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 23. Revise appendix B to part 19 to read as follows:

Appendix B to Part 19—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from DHS to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DHS, or in outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 24. Add appendix C to part 19 to read as follows:

Appendix C to Part 19—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department of Homeland Security's Office for Civil Rights and Civil Liberties, [address]; and

[When required by DHS, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please use the contact information set forth above.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

DEPARTMENT OF AGRICULTURE

For the reasons set forth in the preamble, USDA amends part 16 of title 7 of the CFR as follows:

Title 7—Agriculture

PART 16—EQUAL OPPORTUNITY FOR FAITH-BASED ORGANIZATIONS

■ 25. Revise the authority citation for part 16 to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13280, 67 FR 77145, 3 CFR, 2002 Comp., p. 262; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 26. Revise § 16.1 to read as follows:

§ 16.1 Purpose and applicability.

(a) The purpose of this part is to set forth Department of Agriculture (USDA) policy regarding equal opportunity for faith-based organizations to participate in USDA assistance programs for which other private organizations are eligible.

(b) Except as otherwise specifically provided in this part, the policy outlined in this part applies to all recipients and subrecipients of USDA assistance to which 2 CFR part 400 applies, and to recipients and subrecipients of Commodity Credit Corporation assistance that is administered by agencies of USDA.

■ 27. Amend § 16.2 by:

■ a. Removing the definition of ''Discriminate against an organization on the basis of the organization's religious exercise.''

■ b. Revising the definitions of ''Federal financial assistance'' and ''Indirect Federal financial assistance or Federal financial assistance provided indirectly.''

The revisions read as follows:

§ 16.2 Definitions.

* * * * *

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption. Federal financial assistance may be direct or indirect.

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* refers to situations where the service provider receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuine and independent private choice.

* * * * *

■ 28. Amend § 16.3 by:

■ a. Revising the section heading and paragraph (a).

■ b. In paragraph (b) introductory text, removing ''or religious'' wherever it appears.

■ c. Revising paragraphs (c), (d), and (f).

■ d. Adding paragraph (h).

The revisions and addition read as follows:

§ 16.3 Faith-based organizations and Federal financial assistance.

(a) A faith-based organization is eligible, on the same basis as any other organization, to access and participate

in any USDA assistance programs for which it is otherwise eligible. Neither the USDA awarding agency nor any State or local government or other intermediary receiving funds under any USDA awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization. Decisions about awards of USDA direct assistance or USDA indirect assistance must also be free from political interference, or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religion or religious belief, or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B to this part.

* * * * *

(c) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when an organization participates in a USDA assistance program.

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a USDA awarding agency or a State or local government in administering Federal financial assistance from the USDA awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations.

(1) Any restrictions on the use of grant funds shall apply equally to faith-based organizations and non-faith-based organizations.

(2) All organizations that participate in USDA awarding agency programs or services, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USDA awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the USDA awarding agency or a State or local government in administering financial assistance from the USDA awarding agency shall disqualify faith-based organizations from participating in the USDA awarding agency's programs or services on the basis of the organizations' religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

* * * * *

(f) USDA direct financial assistance may be used for the acquisition, construction, or rehabilitation of structures to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and ineligible purposes, USDA direct financial assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during the term of the grant is subject to government-wide regulations governing real property disposition (see 2 CFR part 400).

(1) Any use of USDA direct financial assistance for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any ineligible purposes by the faith-based organization in accordance with applicable laws, regulations, and guidance.

(2) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.

* * * * *

(h) Nothing in this part shall be construed to preclude a USDA awarding agency or any State or local government or other intermediary from accommodating religion or making an accommodation for religious exercise with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States. A USDA awarding agency, State or local government, or other intermediary shall not disqualify an organization from participating in any USDA assistance program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the USDA awarding agency, State or local government, or other intermediary has determined that it would deny the accommodation.

■ 29. Amend § 16.4 by:
■ a. Revising paragraph (a).
■ b. Redesignating paragraph (c) as paragraph (e).
■ c. Adding new paragraphs (c) and (d).
■ d. Revising newly redesignated paragraph (e).

The revisions and additions read as follows:

§ 16.4 Responsibilities of participating organizations.

(a) Any organization that receives direct or indirect Federal financial assistance shall not, with respect to services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

* * * * *

(c)(1) All organizations that receive USDA direct assistance under any domestic USDA program must give written notice to all beneficiaries and prospective beneficiaries of certain protections in a manner and form prescribed by USDA. The required language for this written notice to beneficiaries is set forth in appendix C to this part. This notice must include the following information:

(i) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries or prospective

beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries or prospective beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(iv) Beneficiaries or prospective beneficiaries may report violations of these protections (including denials of services or benefits) by an organization by contacting or filing a written complaint with USDA's Office of the Assistant Secretary for Civil Rights.

(2) The USDA awarding agency may determine that this written notice must also inform beneficiaries and prospective beneficiaries about how to obtain information from the awarding agency about other federally funded service providers in their area that provide the services available under the applicable program.

(3) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(d) A beneficiary or prospective beneficiary in a program supported by indirect Federal financial assistance may report an organization's violation of the religious protections in this part, including any denials of services or benefits by an organization, by contacting or filing a written complaint with USDA's Office of the Assistant Secretary for Civil Rights.

(e) Nothing in paragraphs (a) through (c) of this section shall be construed to prevent faith-based organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.,* the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.,* or USDA international school feeding programs from considering religion in their admissions practices or from imposing religious attendance or curricular requirements at their schools.

■ 30. Add § 16.6 to read as follows:

§ 16.6 Compliance.

USDA agencies will monitor compliance with this part in the course of regular oversight of USDA programs.

■ 31. Revise appendix A to part 16 to read as follows:

Appendix A to Part 16—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq*. USDA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 32. Revise appendix B to part 16 to read as follows:

Appendix B to Part 16—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(b) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 33. Add appendix C to part 16 to read as follows:

Appendix C to Part 16—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance; and

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, Executive Director, Center for Civil Rights Enforcement, 1400 Independence Avenue SW, Washington, DC 20250–9410, or by email to *program.intake@usda.gov*.

[When required by the Department, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please contact [insert appropriate point of contact].

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

AGENCY FOR INTERNATIONAL DEVELOPMENT

For the reasons set forth in the preamble, USAID amends part 205 of title 22 of the CFR as follows:

Title 22—Foreign Relations

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

■ 34. The authority citation for part 205 continues to read as follows:

Authority: 22 U.S.C. 2381(a).

■ 35. Revise § 205.1 to read as follows:

§ 205.1 Grants and cooperative agreements.

(a) As used in this section, the term ''award'' has the definition in 2 CFR 700.1 and the term ''Federal financial assistance'' has the definition in Executive Order 13279 (signed by President Bush on December 12, 2002). As used in this section, the following terms have the definitions in 2 CFR 200.1: ''pass-through entity,'' ''recipient,'' ''subaward,'' and ''subrecipient'' as modified by 2 CFR 700.3 to apply to both nonprofit and for-profit entities.

(b) Faith-based organizations are eligible on the same basis as any other organization to receive any U.S. Agency for International Development (USAID) award for which they are otherwise eligible. In the selection of recipients by USAID and subrecipients by pass-through entities, neither USAID nor pass-through entities shall discriminate for, or against, an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization. Notices or announcements of award opportunities shall include language to indicate that faith-based organizations are eligible on the same basis as any other organization and subject to the protections and requirements of Federal law.

(c) Nothing in this part shall be construed to preclude USAID from making an accommodation, including for religious exercise, with respect to one or more award requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(d) USAID shall not disqualify an organization from participating in any USAID award for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more award requirements, unless the organization has made clear that the accommodation is necessary to its participation and USAID has determined that it would deny the accommodation.

(e) Organizations that receive direct Federal financial assistance from USAID under any USAID award or subaward may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services directly funded with direct Federal financial assistance from USAID. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance from USAID, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. Nothing in this part restricts USAID's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(f) A faith-based organization that applies for, or participates in, USAID-funded awards or subawards will retain its autonomy, religious character, and independence, and may continue to carry out its mission consistent with religious freedom protections in Federal law, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance from USAID to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), or in any other manner prohibited by law. Among other things, a faith-based organization that receives Federal financial assistance from USAID may use space in its facilities, without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance from USAID retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statement and other governing documents.

(g) USAID must implement its awards in accordance with the Establishment Clause. Nothing in this part shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law. USAID will consult with the U.S. Department of Justice if, in implementing a specific program involving overseas acquisition, rehabilitation, or construction of structures used for explicitly religious activities, there is any question about whether such funding is consistent with the Establishment Clause. USAID will describe any program implemented after such consultation on its website.

(h) An organization that receives a USAID-funded award or subaward shall not, in providing services or outreach activities related to such services, discriminate against a program beneficiary or potential program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(i) No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation used by USAID shall require faith-based organizations to provide assurances or notices where the Agency does not require them of secular organizations. Any restrictions on the use of award or subaward funds shall apply equally to faith-based and secular organizations. All organizations that receive USAID awards and subawards, including faith-based organizations, must carry out eligible activities in accordance with all award requirements and other applicable requirements that govern the conduct of USAID-funded activities, including those that prohibit the use of direct Federal financial assistance from USAID to engage in explicitly religious activities. No grant document, contract, agreement, covenant, memorandum of understanding, policy, or regulation used by USAID shall disqualify faith-based organizations from receiving USAID awards on the basis of the organization's religious character, motives, or affiliation, or lack thereof.

(j) A religious organization does not forfeit its exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, when the organization receives Federal financial assistance from USAID.

(k) If a USAID award requires an organization to be a ''nonprofit organization'' in order to be eligible for funding, the individual solicitation will specifically indicate the requirement for nonprofit status in the eligibility section of the solicitation. Potential applicants should consult with the appropriate USAID program office to determine the scope of any applicable requirements. In USAID awards in which an applicant must show that it is a nonprofit organization, other than programs which are limited to registered Private and Voluntary Organizations, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a state taxing body or the State secretary of state certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (k)(1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate.

(l) Decisions about awards of USAID Federal financial assistance must be free from political interference, or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religion or religious belief, or lack thereof.

(m) Nothing in this part shall be construed as authorizing the use of USAID funds for the acquisition, construction, or rehabilitation of religious structures inside the United States.

(n) The Secretary of State may waive the requirements of this section in whole or in part, on a case-by-case basis, where the Secretary determines that such waiver is necessary to further the national security or foreign policy interests of the United States.

(o) Nothing in this section shall be construed in such a way as to advantage, or disadvantage, faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

For the reasons set forth in the preamble, HUD amends part 5 of title 24 of the CFR as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 36. Revise the authority citation for part 5 to read as follows:

Authority: 12 U.S.C. 1701x; 42 U.S.C. 1437a, 1437c, 1437f, 1437n, 3535(d); 42 U.S.C. 2000bb *et seq.;* 34 U.S.C. 12471 *et seq.;* Sec. 327, Pub. L. 109–115, 119 Stat. 2396; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 37. Amend § 5.109 by:

■ a. In paragraph (a), removing the words ''Executive Order 13831, entitled ''Establishment of a White House Faith and Opportunity Initiative,'' '' and adding, in their place, the words ''Executive Order 14015, entitled ''Establishment of the White House Office of Faith-Based and Neighborhood Partnerships,'' ''.

■ b. In paragraph (b), revising the definition of ''Indirect Federal financial assistance''.

■ c. Removing the introductory text of paragraph (c).

■ d. Revising paragraphs (c)(1) through (3).

■ e. In paragraph (c)(4), removing the word ''availability'' and adding, in its place, the word ''opportunity''.

■ f. Revising paragraphs (d)(1) and (2), (g), and (h).

■ g. In paragraph (l)(3), adding an ''or'' at the end of the paragraph.

■ h. In paragraph (l)(4), removing ''; or'' and adding, in its place, a period.

■ i. Removing paragraph (l)(5).

The revisions read as follows:

§ 5.109 Equal participation of faith-based organizations in HUD programs and activities.

* * * * *

(b) * * *

Indirect Federal financial assistance means Federal financial assistance provided when the choice of the provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is considered indirect when the Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion meaning that it is available to providers without regard to the religious or non-religious nature of the institution and there are no program incentives that deliberately skew for or against religious or secular providers; and the organization receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

* * * * *

(c) *Equal participation of faith-based organizations in HUD programs and activities.*(1) Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity for which they are otherwise eligible. Neither the Federal Government, nor a State, Tribal, or local government, nor any other entity that administers any HUD program or activity, shall discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(2) Nothing in this section shall be construed to preclude HUD from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(3) HUD shall not disqualify an organization from participating in any HUD program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and, in accordance with the Constitution and laws of the United States, HUD has determined that it would deny the accommodation.

* * * * *

(d) * * *

(1) A faith-based organization that applies for, or participates in, a HUD program or activity supported with Federal financial assistance retains its autonomy, right of expression, religious character, authority over its governance, and independence, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs; provided that, it does not use direct Federal financial assistance, whether received through a prime award or sub-award, to support or engage in any explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization.

(2) A faith-based organization that receives direct Federal financial assistance may use space (including a sanctuary, chapel, prayer hall, or other space) in its facilities (including a temple, synagogue, church, mosque, or other place of worship) to carry out activities under a HUD program without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization participating in a HUD program or activity retains its authority over its internal governance, and may retain religious terms in its organization's name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization consistent with paragraph (i) of this section, and include religious references

in its organization's mission statements and other governing documents.

* * * * *

(g) *Nondiscrimination and beneficiary notice requirements*—(1) *Nondiscrimination.* Any organization that receives Federal financial assistance under a HUD program or activity shall not, in providing services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program or activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(2) *Beneficiary notice.* (i) An organization providing services under a program supported by direct Federal financial assistance from HUD, or an entity that administers indirect Federal financial assistance from HUD, must give written notice to beneficiaries and prospective beneficiaries of certain protections in a manner and form prescribed by HUD, including by incorporating the notice into materials that are otherwise provided to beneficiaries. The required language for this written notice to beneficiaries is set forth in appendix C to this subpart.

(ii) For the Housing Choice Voucher (HCV), Project-Based Voucher (PBV), and Section 8 Moderate Rehabilitation programs, the respective recipient (*i.e.,* Public Housing Agency) is required to provide the written beneficiary notice. For the Housing Opportunities for Persons with AIDS (HOPWA) program, the grantee or project sponsor that is responsible for making eligibility determinations is required to provide the written beneficiary notice. For the Continuum of Care (CoC) and Emergency Solutions Grants (ESG) programs, the recipient or subrecipient that is responsible for determining the eligibility of each family or individual is required to provide the written beneficiary notice. The participating or prospective providers (landlords) are not responsible for providing the written beneficiary notice for indirect aid recipients. The notice must include the following information:

(A) Nondiscrimination requirements of paragraph (g)(1) of this section;

(B) Notification that a beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Center for Faith-Based and Neighborhood Partnerships or the intermediary that awarded funds to the organization; and

(C) For direct Federal financial assistance only, prohibitions with respect to explicitly religious activities as set forth in paragraph (e) of this section.

(3) *Notice timing.* The written notice described in paragraph (g)(2) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections at the earliest available opportunity.

(4) *Alternative option information.* HUD may determine that the notice described in paragraph (g)(2) of this section must inform each beneficiary or prospective beneficiary about how to obtain information from HUD, or a State agency or other entity administering the applicable program, about other federally funded service providers in their area that provide the services available under the applicable program.

(h) *No additional assurances from faith-based organizations.* A faith-based organization is not rendered ineligible by its religious nature to access and participate in HUD programs. Absent regulatory or statutory authority, no notice of funding opportunity, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering Federal financial assistance from HUD shall require otherwise eligible faith-based organizations to provide assurances or notices where they are not required of similarly situated secular organizations. All organizations that participate in HUD programs or activities, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No notice of funding opportunity, grant agreement, cooperative agreement, covenant, memorandum of understanding, policy, or regulation that is used by HUD or a recipient or intermediary in administering financial assistance from HUD shall disqualify otherwise eligible faith-based organizations from participating in HUD's programs or activities on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

* * * * *

■ 38. Revise appendix A to subpart A of part 5 to read as follows:

Appendix A to Subpart A of Part 5—Notice of Funding Opportunity

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at § 5.109, and subject to the protections and requirements of any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* HUD will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct financial assistance from HUD to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by HUD, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 39. Add appendix B to subpart A of part 5 to read as follows:

Appendix B to Subpart A of Part 5—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from HUD to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving

Federal financial assistance also may not, in providing services funded by HUD, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 40. Add appendix C to subpart A of part 5 to read as follows:

Appendix C to Subpart A of Part 5—Department of Housing and Urban Development Model Written Notice of Beneficiary Rights

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities from activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report an organization's violations of these protections, including any denial of services or benefits by an organization, by contacting or filing a written complaint with HUD's Center for Faith-Based and Neighborhood Partnership, 451 7th Street SW, Washington, DC 20410, or by email to *partnerships@hud.gov*; and

(5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please use the contact information set forth above.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

DEPARTMENT OF JUSTICE

For the reasons set forth in the preamble, the Attorney General amends part 38 of title 28 of the CFR as follows:

Title 28—Judicial Administration

PART 38—PARTNERSHIPS WITH FAITH-BASED AND OTHER NEIGHBORHOOD ORGANIZATIONS

■ 41. Revise the authority citation for part 38 to read as follows:

Authority: 28 U.S.C. 509; 5 U.S.C. 301; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; 18 U.S.C. 4001, 4042, 5040; 21 U.S.C. 871; 25 U.S.C. 3681; Pub. L. 107–273, 116 Stat. 1758; Pub. L. 109–162, 119 Stat. 2960; 34 U.S.C. 10152, 10154, 10172, 10221, 10382, 10388, 10444, 10446, 10448, 10473, 10614, 10631, 11111, 11182, 20110, 20125; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; 42 U.S.C. 2000bb *et seq.;* E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 42. Revise § 38.1 to read as follows:

§ 38.1 Purpose.

The purpose of this part is to implement Executive Order 13279, Executive Order 13559, and Executive Order 14015.

■ 43. Amend § 38.3 by:
■ a. Redesignating paragraphs (a) through (g) as paragraphs (b) through (h).
■ b. Adding a new paragraph (a).
■ c. Revising newly redesignated paragraphs (b), (c)(2), (e), and (g).

The addition and revisions read as follows:

§ 38.3 Definitions.

* * * * *

(a) ''Federal financial assistance'' means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

(b) ''Direct Federal financial assistance'' or ''Federal financial assistance provided directly'' refers to situations in which the Government or an intermediary (under this part) selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via a grant or cooperative agreement). This includes recipients of subawards that receive Federal financial assistance through State administering agencies or State-administered programs. In general, Federal financial assistance shall be treated as direct, unless it meets the definition of ''indirect Federal financial assistance'' or ''Federal financial assistance provided indirectly.''

(c) * * *

(2) The service provider receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuinely independent and private choice.

* * * * *

(e) ''Department program'' refers to a discretionary, formula, or block grant program administered by or from the Department.

* * * * *

(g) The ''Office for Civil Rights'' refers to the Office for Civil Rights of the Department's Office of Justice Programs.

* * * * *

■ 44. Revise § 38.4 to read as follows:

§ 38.4 Policy.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to participate in any Department program for which they are otherwise eligible. Neither the Department nor any State or local government receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) Nothing in this part shall be construed to preclude the Department from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(c) The Department shall not disqualify an organization from participating in any Department program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the Department has determined that it would deny the accommodation.

(d) Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or a religious belief, or lack thereof.

■ 45. Amend § 38.5 by:
■ a. Revising paragraphs (c) through (f).
■ b. In paragraph (g)(3), adding the word ''or'' at the end of the paragraph.

■ c. In paragraph (g)(4), removing ''; or'' and adding, in its place, a period.
■ d. Removing paragraph (g)(5).
The revisions read as follows:

§ 38.5 Responsibilities.

* * * * *

(c) Any organization that participates in programs funded by Federal financial assistance from the Department shall not, in providing services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that receives indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that the Department or a State or local government uses in administering Federal financial assistance from the Department shall require faith-based or religious organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, including religious ones, that participate in Department programs must carry out all eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance from the Department to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the Department or a State or local government in administering Federal financial assistance from the Department shall disqualify faith-based or religious organizations from participating in the Department's programs on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(e) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1(a), is not forfeited when the organization receives direct or indirect Federal financial assistance from the Department. Some Department programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. Grantees receiving Federal financial assistance from such programs should consult with the appropriate Department program office to determine the scope of any applicable requirements.

(f) If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select organizations to provide services funded by the Federal Government, the intermediary must ensure the compliance of the recipient of a contract, grant, or agreement with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance. If the intermediary is a nongovernmental organization, it retains all other rights of a nongovernmental organization under the program's statutory and regulatory provisions.

* * * * *

■ 46. Revise § 38.6 to read as follows:

§ 38.6 Procedures.

(a) If a State or local government voluntarily contributes its own funds to supplement activities carried out under the applicable programs, the State or local government has the option to separate out the Federal funds or commingle them. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds.

(b) An organization providing social services under a program of the Department supported by Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections in a manner and form prescribed by the Office for Civil Rights, including by incorporating the notice into materials that are otherwise provided to beneficiaries. This written notice shall include language substantially similar to that in appendix C to this part. The notice must include the following information:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Office for Civil Rights or the intermediary that awarded funds to the organization.

(c) The written notice described in paragraph (b) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections at the earliest available opportunity.

(d) The Department may determine that the notice described in paragraph (b) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from the Department, or a State agency or other entity administering the applicable program, as to whether there are any other federally funded organizations in their area that provide the kind of services available under the applicable program.

(e) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to this part.

■ 47. Revise appendix A to part 38 to read as follows:

Appendix A to Part 38—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C.

2000bb *et seq.* The Department of Justice will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) An organization may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by the Department of Justice, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 48. Revise appendix B to part 38 to read as follows:

Appendix B to Part 38—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) An organization may not use direct Federal financial assistance from the Department of Justice to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by the Department of Justice, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 49. Add appendix C to part 38 to read as follows:

Appendix C to Part 38—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the Department of Justice's Office for Civil Rights, 810 7th Street NW, Washington, DC 20531, or by email to *AskOCR@usdoj.gov*; and

[When required by the Department, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please use the contact information for the Department's Office for Civil Rights set forth above.

We are required to give this written notice to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable for us to provide such notice before we provide the actual service. In such an instance, we must give this notice to you at the earliest available opportunity.

DEPARTMENT OF LABOR

For the reasons set forth in the preamble, DOL amends part 2 of title 29 of the CFR as follows:

Title 29—Labor

PART 2—GENERAL REGULATIONS

■ 50. Revise the authority citation for part 2 to read as follows:

Authority: 5 U.S.C. 301; E.O. 13198, 66 FR 8497, 3 CFR, 2001 Comp., p. 750; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

■ 51. Revise the heading for subpart D to read as follows:

Subpart D—Equal Treatment in Department of Labor Programs for Faith-Based and Community Organizations; Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries

■ 52. Amend § 2.31 by revising paragraph (a) and the second sentence of paragraph (d) to read as follows:

§ 2.31 Definitions.

* * * * *

(a) The term *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, a deduction, or an exemption. Federal financial assistance may be *direct* or *indirect.*

(1) The term *direct Federal financial assistance* or *Federal financial assistance provided directly* means that the Government or a DOL social service intermediary provider under this part selects the provider and either purchases services from that provider (*e.g.,* via a contract) or awards funds to that provider to carry out a service (*e.g.,* via a grant or cooperative agreement). In general, Federal financial assistance shall be treated as direct, unless it meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly.*

(2) The term *indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means that the choice of the service provider is placed in the hands of the beneficiary, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. Federal financial assistance provided to an organization is indirect when:

(i) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion; and

(ii) The organization receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuinely independent and private choice.

(3) The recipient of sub-awards received through programs administered by States or other intermediaries that are themselves recipients of Federal financial assistance (*e.g.,* local areas that receive within-state allocations to provide workforce services under title I of the Workforce Innovation and Opportunity Act) are not considered recipients of *indirect Federal financial assistance* or recipients of *Federal financial assistance provided indirectly* as those terms are used in Executive Order 13559. These recipients of sub-

awards are considered recipients of direct Federal financial assistance.

* * * * *

(d) * * * Such programs include, but are not limited to, the one-stop delivery system, Job Corps, and other programs supported through the Workforce Innovation and Opportunity Act.

* * * * *

■ 53. Revise § 2.32 to read as follows:

§ 2.32 Equal participation of faith-based organizations.

(a)(1) Faith-based organizations are eligible, on the same basis as any other organization, to seek DOL support or participate in DOL programs for which they are otherwise eligible. DOL and DOL social service intermediary providers, as well as State and local governments administering DOL support, must not discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(2) Notices and announcements of award opportunities, and notices of awards and contracts, shall include language substantially similar to that in appendices A and B to this subpart, respectively.

(b)(1) A grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government administering DOL support, or a DOL social service intermediary provider must not require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations.

(2) No grant document, contract or other agreement, covenant, memorandum of understanding, policy, or regulation that is used by DOL, a State or local government, or a DOL social service intermediary provider in administering a DOL social service program shall disqualify faith-based or religious organizations from receiving DOL support or participating in DOL programs on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(c)(1) A faith-based organization that is a DOL social service provider retains its autonomy; right of expression; religious character; and independence from Federal, State, and local governments and must be permitted to continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct Federal financial assistance, whether received through a prime award or sub-award, to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization).

(2) Among other things, a faith-based organization must be permitted to:

(i) Use its facilities to provide DOL-supported social services without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols from those facilities; and

(ii) Retain its authority over its internal governance, including retaining religious terms in its name, selecting its board members on the basis of their acceptance of or adherence to the religious requirements or standards of the organization, and including religious references in its mission statements and other governing documents.

(d)(1) Any restrictions on the use of financial assistance under a grant shall apply equally to faith-based and non-faith-based organizations.

(2) All organizations, including religious ones, that are DOL social service providers must carry out DOL-supported activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance for explicitly religious activities (including worship, religious instruction, or proselytization).

(e)(1) Nothing in this subpart shall be construed to preclude DOL from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States, including Federal civil rights laws.

(2) DOL shall not disqualify an organization from participating in any DOL program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and DOL has determined that it would deny the accommodation.

■ 54. Amend § 2.33 by revising the section heading, the first two sentences of paragraph (a), and paragraphs (b)(1) and (c) to read as follows:

§ 2.33 Responsibilities of DOL, DOL social service providers, and State and local governments administering DOL support.

(a) Any organization that participates in a program funded by Federal financial assistance shall not, in providing services supported in whole or in part with Federal financial assistance, or in conducting outreach activities related to such services, discriminate against a current or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program. * * *

(b)(1) Organizations that receive direct Federal financial assistance may not engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct Federal financial assistance. If an organization conducts such explicitly religious activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance, and participation must be voluntary for beneficiaries of the programs and services funded with such assistance.

* * * * *

(c) If a DOL social service intermediary provider, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the DOL social service intermediary provider must ensure the recipient's compliance with the provisions of Executive Order 13279, as amended by Executive Order 13559, and any implementing rules or guidance. If the DOL social service intermediary provider is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

■ 55. Add § 2.34 to read as follows:

§ 2.34 Written notice to beneficiaries.

(a) *Notice to beneficiaries of programs supported by direct Federal financial assistance.* Organizations providing

social services to beneficiaries under programs supported by direct Federal financial assistance from DOL must give the written notice described in paragraph (c) of this section to beneficiaries and prospective beneficiaries.

(b) *Notice to beneficiaries of programs supported by indirect Federal financial assistance.* The entity responsible for disbursing Federal funds as part of a program of indirect Federal financial assistance administered by DOL must give the written notice described in paragraph (c) of this section to beneficiaries and prospective beneficiaries.

(c) *Contents of the notice.* The required language for the written notice to beneficiaries and prospective beneficiaries is set forth in appendix C to this subpart. The notice includes the following:

(1) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance;

(4) Beneficiaries and prospective beneficiaries may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with DOL's Civil Rights Center, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210, or by email to *CRCExternalComplaints@dol.gov;* and

(5) Beneficiaries and potential beneficiaries may seek information about whether there are any other federally funded organizations that provide these kinds of services in their area by calling DOL's US2–JOBS helpline toll-free at 1–877–US2–JOBS (1–877–872–5627) or TTY 1–877–889–5627.

(d) *Timing.* The written notice set forth in appendix C to this subpart must be given to prospective beneficiaries before they enroll in the program or receive services from the program. The written notice may be incorporated into materials that are otherwise provided to prospective beneficiaries. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, organizations must advise beneficiaries of their protections at the earliest available opportunity.

■ 56. Revise § 2.37 to read as follows:

§ 2.37 Effect of DOL support on Title VII employment nondiscrimination requirements and on other existing statutes.

A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the organization receives direct or indirect Federal financial assistance from DOL. Some DOL programs, however, were established through Federal statutes containing independent statutory provisions requiring that recipients refrain from discriminating on the basis of religion. In this case, to determine the scope of any applicable requirements, recipients and potential recipients should consult with the appropriate DOL program office or with the Civil Rights Center, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210, (202) 693–6500. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to reach the number in the preceding sentence through telecommunications relay services.

■ 57. Amend § 2.38 by:

■ a. Revising paragraphs (b)(3) and (4).

■ b. Removing paragraph (b)(5).

The revisions read as follows:

§ 2.38 Status of nonprofit organizations.

* * * * *

(b) * * *

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (b)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or national parent organization that the applicant is a local nonprofit affiliate of the organization.

■ 58. Add appendix A to subpart D to read as follows:

Appendix A to Subpart D of Part 2—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, subject to the protections and requirements of this subpart and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* DOL will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DOL, or in conducting outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 59. Add appendix B to subpart D to read as follows:

Appendix B to Subpart D of Part 2—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by DOL, or in conducting outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 60. Add appendix C to subpart D to read as follows:

Appendix C to Subpart D of Part 2—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Type of Federal Financial Assistance: [specify DIRECT Federal financial assistance or INDIRECT Federal financial assistance]

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from

the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Labor's Civil Rights Center, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210, or by email to *CRCExternalComplaints@dol.gov;* and

(5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please call toll-free 1–877–US2–JOBS (1–877–872–5627) or TTY 1–877–889–5627.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

Appendix A to Part 2 [Removed]

■ 61. Remove appendix A to part 2.

Appendix B to Part 2 [Removed]

■ 62. Remove appendix B to part 2.

DEPARTMENT OF VETERANS AFFAIRS

For the reasons set forth in the preamble, VA amends 38 CFR parts 50, 61, and 62 as follows:

Title 38—Pensions, Bonuses, and Veterans' Relief

PART 50—EQUAL TREATMENT OF FAITH-BASED ORGANIZATIONS

■ 63. The authority citation for part 50 continues to read as follows:

Authority: 38 U.S.C. 501 and as noted in specific sections.

■ 64. Amend § 50.1 by revising paragraphs (b)(2) and (c) to read as follows:

§ 50.1 Definitions.

* * * * *

(b) * * *

(2) The organization receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuine and independent private choice.

(c) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption.

* * * * *

■ 65. Revise § 50.2 to read as follows:

§ 50.2 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to participate in any VA program or service for which they are otherwise eligible. Neither the VA program nor any State or local government or other pass-through entity receiving funds under any VA program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) Organizations that receive direct Federal financial assistance from a VA program may not engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) as part of the programs or services funded with direct Federal financial assistance from the VA program, or in any other manner prohibited by law. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded with direct Federal financial assistance from the VA program, and participation must be voluntary for beneficiaries of the programs or services funded with such assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts VA's authority under applicable Federal law to fund activities, such as the provision of chaplaincy services, that can be directly funded by the Government consistent with the Establishment Clause.

(c) A faith-based organization that participates in programs or services funded by a VA program will retain its autonomy; right of expression; religious character; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs. A faith-based organization that receives direct Federal financial assistance may use space in its facilities to provide programs or services funded with financial assistance from the VA program without concealing, removing, or altering religious art, icons, scriptures, or other religious symbols. In addition, a faith-based organization that receives Federal financial assistance from a VA program does not lose the protections of law. Such a faith-based organization retains its authority over its internal governance, and it may retain religious terms in its name, select its board members on the basis of their acceptance of or adherence to the religious tenets of the organization, and include religious references in its mission statements and other governing documents.

(d) Any organization that participates in programs funded by Federal financial assistance from the VA shall not, in providing services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization receiving indirect Federal financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(e) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a VA program or a State or local government in administering Federal financial assistance from any VA program shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations that participate in VA programs or services, including faith-based ones, must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted on a case-by-case basis in accordance with

the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by VA or a State or local government in administering financial assistance from VA shall disqualify faith-based organizations from participating in the VA programs or services on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(f) Nothing in this part shall be construed to preclude VA from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(g) VA shall not disqualify an organization from participating in any VA program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and VA has determined that it would deny the accommodation.

(h) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization receives direct or indirect Federal financial assistance from a VA program. Some VA programs, however, contain independent statutory provisions affecting a recipient's ability to discriminate on the basis of religion in employment. In this case, recipients should consult with the appropriate VA program office if they have questions about the scope of any applicable requirements.

(i) In general, VA programs do not require that a recipient, including a faith-based organization, obtain tax-exempt status under section 501(c)(3) of the Internal Revenue Code to be eligible for funding under VA programs. Some grant programs, however, do require an organization to be a nonprofit organization in order to be eligible for funding. Funding announcements and other grant application solicitations that require organizations to have nonprofit status will specifically so indicate in the eligibility section of the solicitation. In addition, any solicitation that requires an organization to maintain tax-exempt status will expressly state the statutory authority for requiring such status. Recipients should consult with the appropriate VA program office to determine the scope of any applicable requirements. In VA programs in which an applicant must show that it is a nonprofit organization, the applicant may do so by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State or other governmental taxing body or the State secretary of State certifying that:

(i) The organization is a nonprofit organization operating within the State; and

(ii) No part of its net earnings may benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (i)(1) through (3) of this section if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

(j) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement VA program-supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provision of this part shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this part apply irrespective of whether such funds are commingled with Federal funds or segregated.

(k) Decisions about awards of Federal financial assistance must be made on the basis of merit, not on the basis of the religious affiliation, or lack thereof, of a recipient organization, and must be free from political interference or even the appearance of such interference.

(l) Neither VA nor any State or local government or other pass-through entity receiving funds under any VA program or service shall construe these provisions in such a way as to advantage or disadvantage faith-based organizations affiliated with historic or well-established religions or sects in comparison with other religions or sects.

(m) If a pass-through entity, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the pass-through entity must ensure compliance by the subrecipient with the provisions of this part and any implementing regulations or guidance. If the pass-through entity is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

■ 66. Add § 50.3 to read as follows:

§ 50.3 Notice requirements.

(a) An organization providing social services under a program of VA supported by Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections in a manner and form prescribed by the VA program. The language for this written notice to beneficiaries must be substantially similar to the text set forth in appendix C to this part. Specifically, the notice must include the following:

(1) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(3) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(4) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the VA program or the intermediary that awarded funds to the organization.

(b) The written notice described in paragraph (a) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization

must advise beneficiaries of their protections at the earliest available opportunity.

(c) VA may determine that the notice described in paragraph (a) of this section must inform each beneficiary or prospective beneficiary of the option to seek information from VA, or another entity administering the program, as to whether there are any other federally funded organizations in their area that provide the services available under the applicable program.

(d) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices A and B, respectively, to this part.

■ 67. Revise appendix A to part 50 to read as follows:

Appendix A to Part 50—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq.* VA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(c) A faith-based organization may not use direct financial assistance from VA to support or engage in any explicitly religious activities except where consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by VA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 68. Revise appendix B to part 50 to read as follows:

Appendix B to Part 50—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from VA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by VA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 69. Add appendix C to part 50 to read as follows:

Appendix C to Part 50—Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for VA Grant Program Office (name, phone number, and email address, if appropriate):

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the grant program office using the contact information set forth above; and

[When required by VA, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please use the contact information set forth above.

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 70. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2001, 2002, 2011, 2012, 2013, 2061, 2064.

■ 71. Amend § 61.64 by revising paragraphs (b)(2), (e), and (g) to read as follows:

§ 61.64 Faith-based organizations.

* * * * *

(b) * * *

(2) For purposes of this section, ''indirect Federal financial assistance'' means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement, or other form of disbursement, wholly as a result of the genuinely independent and private choice of a beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice. ''Direct Federal financial assistance'' means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this paragraph (b)(2).

* * * * *

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

* * * * *

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance wholly as a result of a genuinely independent and private choice of a beneficiary, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to

that beneficiary and designed to give that beneficiary a choice among providers.

PART 62—SUPPORTIVE SERVICES FOR VETERAN FAMILIES PROGRAM

■ 72. The authority citation for part 62 continues to read as follows:

Authority: 38 U.S.C. 501, 2044, and as noted in specific sections.

■ 73. Amend § 62.62 by revising paragraphs (b)(2), (e), and (g) to read as follows:

§ 62.62 Faith-based organizations.

* * * * *

(b) * * *

(2) For purposes of this section, ''indirect Federal financial assistance'' means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement, or other form of disbursement, wholly as a result of the genuinely independent and private choice of a beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice. ''Direct Federal financial assistance'' means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (*e.g.,* by contract, grant, or cooperative agreement). References to ''financial assistance'' will be deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of ''indirect Federal financial assistance'' in this paragraph (b)(2).

* * * * *

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

* * * * *

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance wholly as a result of a genuinely independent and private choice of a beneficiary, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

For the reasons set forth in the preamble, HHS amends part 87 of title 45 of the CFR as follows:

Title 45—Public Welfare

PART 87—EQUAL TREATMENT FOR FAITH-BASED ORGANIZATIONS

■ 74. The authority citation for part 87 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.*

■ 75. Amend § 87.1 by revising paragraphs (c) and (d) to read as follows:

§ 87.1 Definitions.

* * * * *

(c) *Indirect Federal financial assistance* or *Federal financial assistance provided indirectly* means Federal financial assistance received by a service provider when the service provider is paid for services rendered by means of a voucher, certificate, or other means of Government-funded payment provided to a beneficiary who is able to make a choice of a service provider, and:

(1) The Government program through which the beneficiary receives the voucher, certificate, or other similar means of Government-funded payment is neutral toward religion; and

(2) The service provider receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government. The availability of adequate secular alternatives is a significant factor in determining whether a program affords true private choice.

(d) *Federal financial assistance* means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption. Federal financial assistance may be direct or indirect.

* * * * *

■ 76. Amend § 87.2 by revising paragraphs (a) and (b) to read as follows:

§ 87.2 Applicability.

* * * * *

(a) *Discretionary grants.* This part is not applicable to the discretionary grant programs that are governed by the Substance Abuse and Mental Health Services Administration (SAMHSA) Charitable Choice regulations found at 42 CFR part 54a. This part is also not applicable to discretionary grant programs that are governed by the Community Services Block Grant (CSBG) Charitable Choice regulations at 45 CFR part 1050, with the exception of §§ 87.1 and 87.3(k) through (m) and (o), which do apply to such CSBG discretionary grants. Discretionary grants authorized by the Child Care and Development Block Grant Act are also not governed by this part.

(b) *Formula and block grants.* This part does not apply to non-discretionary and block grant programs governed by the SAMHSA Charitable Choice regulations found at 42 CFR part 54, or the Temporary Assistance for Needy Families (TANF) Charitable Choice regulations at 45 CFR part 260. Block grants governed by the CSBG Charitable Choice regulations at 45 CFR part 1050 are not subject to this part, with the exception of §§ 87.1 and 87.3(k) through (m) and (o), which do apply to such CSBG block grants. This part is not applicable to Child Care and Development Block Grants governed by 45 CFR part 98.

■ 77. Amend § 87.3 by:
■ a. Revising paragraph (a).
■ b. Redesignating paragraphs (b) through (h) and (i) through (k) as paragraphs (d) through (j) and (o) through (q), respectively.
■ c. Adding new paragraphs (b) and (c).
■ d. Removing note 1 following newly redesignated paragraph (e).
■ e. Revising newly redesignated paragraphs (f) through (h) and (i)(3) and (4).
■ f. Removing newly redesignated paragraph (i)(5).
■ g. Adding a new paragraph (k) and paragraphs (l) through (n).

The revisions and additions read as follows:

§ 87.3 Faith-based organizations and Federal financial assistance.

(a) Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HHS awarding agency program or service for which they are otherwise eligible. Neither the HHS awarding agency nor any State or local government or other pass-through entity receiving funds

under any HHS awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) Nothing in this part shall be construed to preclude HHS from making an accommodation, including for religious exercise, with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States.

(c) HHS shall not disqualify an organization from participating in any HHS program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and HHS has determined that it would deny the accommodation.

* * * * *

(f) An organization, whether faith-based or not, that receives Federal financial assistance from HHS shall not, in providing services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, a faith-based organization receiving indirect Federal financial assistance need not modify any religious components or integration with respect to its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(g) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations. Any restrictions on the use of grant funds shall apply equally to faith-based and non-faith-based organizations. All organizations, whether faith-based or not, that participate in HHS awarding agency programs or services must carry out eligible activities in accordance with all program requirements, including those prohibiting the use of direct Federal financial assistance to engage in explicitly religious activities, subject to any accommodations that HHS grants to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States. No grant document, agreement, covenant, memorandum of understanding, policy, or regulation used by an HHS awarding agency or a State or local government in administering Federal financial assistance from the HHS awarding agency shall disqualify faith-based organizations from participating in the HHS awarding agency's programs or services on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(h) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when the faith-based organization receives direct or indirect Federal financial assistance from an HHS awarding agency. Some HHS awarding agency programs, however, contain independent statutory provisions requiring that all grantees agree not to discriminate in employment on the basis of religion. In this case, grantees should consult with the appropriate HHS awarding agency program office to determine the scope of any applicable requirements.

(i) * * *

(3) A certified copy of the applicant's certificate of incorporation or similar document that clearly establishes the nonprofit status of the applicant; or

(4) Any item described in paragraphs (i)(1) through (3) of this section, if that item applies to a State or national parent organization, together with a statement by the State or parent organization that the applicant is a local nonprofit affiliate.

* * * * *

(k) An organization providing social services under a discretionary grant program of HHS that is supported by Federal financial assistance must give written notice to beneficiaries and prospective beneficiaries of certain protections. A pass-through entity administering social service programs under a mandatory formula, block or entitlement grant of HHS that is supported by Federal financial assistance shall ensure that beneficiaries and prospective beneficiaries receive written notice of certain protections.

(1) The written notice to beneficiaries and prospective beneficiaries of directly funded social services shall include language substantially similar to that found in appendix A to this part. The notice must include the following information:

(i) The organization may not discriminate against a beneficiary or prospective beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require a beneficiary or prospective beneficiary to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by a beneficiary in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(iv) A beneficiary or prospective beneficiary may report an organization's violation of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with either the HHS awarding entity or the pass-through entity that awarded funds to the organization, which must promptly report the complaint to the HHS awarding entity. The HHS awarding entity will address the complaint in consultation with the HHS Office for Civil Rights.

(2) The written notice to beneficiaries of indirectly funded social services must identify the protections in paragraphs (f) and (k)(1)(ii) and (iv) of this section; it must also provide the contact information of the HHS awarding entity or the pass-through entity that administers the program.

(l) The written notice described in paragraph (k) of this section must be given to a prospective beneficiary prior to the time the prospective beneficiary enrolls in the program or receives services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, an organization must advise beneficiaries of their protections and provide the notice at the earliest available opportunity.

(m) The written notice described in paragraph (k) of this section must be given in a manner prescribed by the HHS awarding agency in consultation with the HHS Office for Civil Rights, such as by incorporating the notice into materials that are otherwise provided to beneficiaries. The HHS awarding

agency, in consultation with the HHS Office for Civil Rights, may determine that the notice must inform each beneficiary or prospective beneficiary of the option to seek information from the HHS awarding agency, or another entity administering the applicable program, about other federally funded organizations in their area, if any, that provide the services available under the applicable program.

(n) Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar to that in appendices B and C to this part.

* * * * *

■ 78. Revise § 87.4 to read as follows:

§ 87.4 Severability.

To the extent that any provision of this part is declared invalid by a court of competent jurisdiction, the Department intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

Appendices A and B to Part 87 [Redesignated as Appendices B and C to Part 87]

■ 79. Redesignate appendices A and B to part 87 as appendices B and C to part 87, respectively.

■ 80. Add a new appendix A to part 87 to read as follows:

Appendix A to Part 87—Direct Aid Programs: Written Notice of Beneficiary Protections

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that—

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction or proselytization) that may be offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction or proselytization) from activities supported with direct Federal financial assistance;

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with [identify the HHS awarding entity, or the pass-through entity that awarded funds to your organization, and the phone number and physical street and/or email address of the identified office]. The HHS awarding entity will address the complaint in consultation with the HHS Office for Civil Rights;

[When required by the HHS awarding agency, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please use the contact information set forth above.

We must give you this notice before you enroll in or receive services from the program, unless the nature of the service provided or exigent circumstances make advanced notice impracticable. In that case, this notice must be given to you at the earliest available opportunity.

■ 81. Revise newly redesignated appendix B to part 87 to read as follows:

Appendix B to Part 87—Notice or Announcement of Award Opportunities

(a) Faith-based organizations may apply for this award on the same basis as any other organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq*. HHS will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law.

(c) A faith-based organization may not use direct Federal financial assistance from HHS to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by HHS, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

■ 82. Revise newly redesignated appendix C to part 87 to read as follows:

Appendix C to Part 87—Notice of Award or Contract

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom, nondiscrimination, and conscience protections in Federal law.

(b) A faith-based organization may not use direct Federal financial assistance from HHS to support or engage in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. Such an organization also may not, in providing services funded by the Department, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Miguel A. Cardona,

Secretary, U.S. Department of Education.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Dated: February 21, 2024.

Thomas J. Vilsack,

Secretary, U.S. Department of Agriculture.

Colleen R. Allen,

Assistant Administrator, Bureau for Management, U.S. Agency for International Development.

Marcia L. Fudge,

Secretary, U.S. Department of Housing and Urban Development.

Dated: February 12, 2024.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

Julie A. Su,

Acting Secretary, U.S. Department of Labor.

Denis McDonough,

Secretary, U.S. Department of Veterans Affairs.

Xavier Becerra,

Secretary, U.S. Department of Health and Human Services.

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H.R. 7463/P.L. 118–40
Extension of Continuing Appropriations and Other Matters Act, 2024 (Mar. 1, 2024)

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