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Contents

Federal Register

Vol. 89, No. 55

Wednesday, March 20, 2024

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10711.....19727

11 CFR

1.....19729
111.....19729

12 CFR

1238.....19731

14 CFR

Proposed Rules:

33.....19763
91.....19775
125.....19775
135.....19775
137.....19775
145.....19775

21 CFR

Proposed Rules:

216.....19776

24 CFR

58.....20032
1005.....20032

25 CFR

Proposed Rules:

1000.....19788

33 CFR

117.....19731
165.....19732

38 CFR

4.....19735

40 CFR

Proposed Rules:

124.....19952
260.....19952
264.....19952
265.....19952
270.....19952
271.....19952

47 CFR

Proposed Rules:

11.....19789

48 CFR

7.....19754

50 CFR

648.....19760

Federal Register
Vol. 89, No. 55
Wednesday, March 20, 2024

Presidential Documents

Title 3—

The President

Proclamation 10711 of March 15, 2024

National Poison Prevention Week, 2024

By the President of the United States of America

A Proclamation

Every year, Americans report more than 2 million cases of poisoning. During National Poison Prevention Week, we thank all those who staff our Nation's poison control centers for working around the clock to offer people in need life-saving guidance and care. We urge all Americans to learn how to prevent and respond to poison emergencies.

Poisoning risks abound in everyday items, from medicines and cosmetics to cleaning supplies and household chemicals. Tens of thousands of children a year end up in the emergency room after accidently ingesting household products like the small batteries found in toys and game controllers. Federal laws like the Poison Prevention Packaging Act of 1970 and the Child Nicotine Poisoning Prevention Act of 2015 have saved countless lives, decreasing accidental childhood poisoning deaths by over 70 percent since 1972. There is still more to do.

In 2022, I signed Reese's Law, which established child safety standards to reduce the risk of injury from ingesting small batteries. To avoid dangerous mix-ups, we urge everyone to label their medications clearly, to keep them away from children in child-safe packaging, and to throw them out when expired or no longer needed. The liquid nicotine used in e-cigarettes can be deadly and should be stored in child-resistant packaging.

My Administration is also taking aggressive action to combat the opioid crisis. Following the directives outlined in our National Drug Control Strategy, my Administration is working to prevent dangerous illicit drugs from ever reaching our borders by working with countries like Mexico and the People's Republic of China to disrupt the trafficking of deadly illicit fentanyl and boosting law enforcement's capabilities at the border. My Administration is funding the expansion of substance use prevention, harm reduction, treatment, and recovery services including by expanding access to lifesaving opioid-overdose-reversal medications like naloxone nationwide.

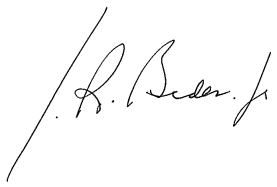
Poisoning deaths are preventable, and awareness is essential to saving lives. If you believe that you or someone you know may have ingested a toxic substance, call the National Poison Control help line immediately at 800–222–1222 to be connected to a local poison control center. Trained experts are ready to offer real-time help and can often solve a poisoning emergency over the phone. Learn more about their lifesaving services at poisonhelp.hrsa.gov.

To encourage Americans to learn more about the dangers of unintentional poisonings and to take appropriate preventive measures, on September 26, 1961, the United States Congress, by joint resolution (75 Stat. 681), authorized and requested the President to issue a proclamation designating the third week of March each year as ''National Poison Prevention Week.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim March 17 through March 23, 2024, to be National Poison Prevention Week. I call upon all Americans to observe this week by taking actions to safeguard their families and friends from poisonous products, chemicals, and medicines often found in our homes

and to raise awareness of these dangers to prevent accidental injuries and deaths.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of March, in the year of our Lord two thousand twenty-four, and of the Independence of the United States of America the two hundred and forty-eighth.



[FR Doc. 2024–06024
Filed 3–19–24; 8:45 am]
Billing code 3395–F4–P

Rules and Regulations

Federal Register
Vol. 89, No. 55
Wednesday, March 20, 2024

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL ELECTION COMMISSION

11 CFR Part 1

[Notice 2024–07]

ZIP Code Correction; Technical Amendment

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission is correcting its mailing address as set forth in its regulations, to clarify the correct ZIP Code to use for certain purposes.

DATES: This rule effective date is March 20, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Joanna S. Waldstreicher, Attorney, or Mr. Robert M. Knop, Assistant General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is amending its regulation at 11 CFR 1.2, defining ''Commission,'' to clarify that different ZIP Codes must be used for the Commission's address for certain purposes. For all uses, the Commission's street address is 1050 First Street NE, Washington, DC. For purposes of U.S. Postal Service delivery, the Commission's ZIP Code is 20463. For purposes of physical location as well as for all other deliveries, including by courier or by private delivery service such as FedEx or UPS, the Commission's ZIP Code is 20002.

The Commission is promulgating this amendment without advance notice or an opportunity for comment because it falls under the ''good cause'' exemption of the Administrative Procedure Act. 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because this amendment is merely technical; it effects no substantive changes to any rule. For the same reason, this amendment falls within the ''good cause'' exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C. 553(d)(3), 808(2). Moreover, because this amendment is exempt from the notice and comment procedure of the Administrative Procedure Act under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit this amendment for congressional review under the Federal Election Campaign Act of 1971, as amended, the Presidential Election Campaign Fund Act, as amended, or the Presidential Primary Matching Payment Account Act, as amended. *See* 52 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law''); 26 U.S.C. 9009(c)(1), (4), 9039(c)(1), (4) (same).

List of Subjects in 11 CFR Part 1

Privacy.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR part 1 as follows:

PART 1—PRIVACY ACT

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

Authority: 5 U.S.C. 552a.

■ 2. Amend § 1.2 by revising the definition for ''Commission'' to read as follows:

§ 1.2 Definitions.

* * * * *

Commission means the Federal Election Commission, its Commissioners and employees. For purposes of U.S. Postal Service delivery, the Commission's address is 1050 First Street NE, Washington, DC 20463. For purposes of physical location as well as for all other deliveries, including by courier or by private delivery service such as FedEx or UPS, the Commission's address is 1050 First Street NE, Washington, DC 20002. The Commission's website is *www.fec.gov*.

* * * * *

Dated: March 14, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–05829 Filed 3–19–24; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2024–08]

Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process

AGENCY: Federal Election Commission.

ACTION: Statement of Policy.

SUMMARY: The Federal Election Commission (''Commission'' or ''FEC'') is issuing a Policy Statement to explain generally the ways by which the Commission intends to address Matters Under Review (''Matters'' or ''MURs'') at the initial stage of enforcement proceedings. This Policy Statement supersedes the Commission's prior Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, published on Mar. 16, 2007. Under this Statement of Policy, the Commission generally will either dismiss a Matter or find ''reason to believe'' concerning an alleged violation.

DATES: The effective date of this Statement of Policy is April 19, 2024.

FOR FURTHER INFORMATION CONTACT: Aaron Rabinowitz, Assistant General Counsel, Enforcement Division, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: This Statement of Policy supersedes the Commission's prior Statement of Policy Regarding Commission Action in Matters at the Initial Stage of Enforcement. 72 FR 12545 (Mar. 16, 2007) (''Initial Stage Policy'').

The Federal Election Campaign Act of 1971, as amended, 52 U.S.C. 30101–30145. (''FECA'' or ''Act''), vests the Commission with ''exclusive jurisdiction with respect to civil enforcement'' of the Act and 26 U.S.C. chapters 95 and 96. 52 U.S.C. 30107€. Enforcement Matters come to the Commission through complaints from the public; information ascertained in the ordinary course of the Commission's

supervisory responsibilities, including referrals from the Commission's Reports Analysis and Audit Divisions; referrals from other government agencies; and self-reported submissions.

FECA provides that ''upon receiving a complaint'' or upon the basis of information ascertained in the course of carrying out its supervisory responsibilities, the Commission ''shall make an investigation of such alleged violation'' of the Act where the Commission, with the vote of four members, determines that there is ''reason to believe that a person has committed, or is about to commit'' a violation of the Act. 52 U.S.C. 30109(a)(2); *see also* 11 CFR 111.10(f). ''Reason to believe'' findings indicate only that the Commission found sufficient legal justification to open an investigation to determine whether a violation of the Act has occurred.

The Act also provides that the Commission may ''vote to dismiss'' a complaint. 52 U.S.C. 30109(a)(1)–(2), (8). At the initial stage of the enforcement process, voting to find reason to believe, or to dismiss, are the only actions contemplated by FECA. The Commission, however, in both public guidance and agency practice, has adopted at least seven possible options by which the Commission has resolved Matters: it may find reason to believe, find no reason to believe, dismiss the allegation, dismiss pursuant to prosecutorial discretion, dismiss with admonishment, dismiss with the issuance of a cautionary letter, or simply close the file without further action. *See, e.g.,* Initial Stage Policy at 12545–12546. Although these differences were initiated with the intent of making the Commission's actions more understandable to the public, they have instead fostered confusion and imposed unnecessary administrative costs on the Commission's work.

Accordingly, the Commission is issuing this policy to apprise complainants, respondents, and the public of its decision to simplify voting options at the initial stage of the enforcement process. Generally speaking, at the initial stage in the enforcement process, the Commission will take one of the following actions with respect to a MUR: (1) find ''reason to believe'' or (2) dismiss.

A. ''Reason To Believe''

The Act requires that the Commission find ''reason to believe that a person has committed, or is about to commit, a violation'' of the Act as a predicate to opening an investigation into the alleged violation. 52 U.S.C. 30109(a)(2). The Commission will find ''reason to believe'' where the available evidence in the Matter is at least sufficient to warrant conducting an investigation, and where the seriousness of the alleged violation warrants either further investigation or immediate conciliation. A ''reason to believe'' finding will always be followed by either an investigation or pre-probable cause conciliation.

For example:

- A ''reason to believe'' finding followed by an investigation would be appropriate when a complaint credibly alleges that a significant violation may have occurred, but further investigation is required to determine whether a violation in fact occurred and, if so, its exact scope.
- A ''reason to believe'' finding followed by conciliation would be appropriate when the Commission is certain that a violation has occurred, and the seriousness of the violation warrants conciliation.

A ''reason to believe'' finding by itself does not establish that the law has been violated. When the Commission later accepts a conciliation agreement with a respondent, the conciliation agreement speaks to the Commission's ultimate conclusions. When the Commission does not enter into a conciliation agreement with a respondent, and does not file suit, a Statement of Reasons, a Factual and Legal Analysis, or a General Counsel's Report may provide further explanation of the Commission's conclusions.

B. ''Vote To Dismiss''

The Act also provides that the Commission may ''vote to dismiss'' a MUR, either before or after respondents are notified. 52 U.S.C. 30109(a)(1).

The Commission's rationale for voting to dismiss may vary from case to case. It may be exercising its prosecutorial discretion under *Heckler* v. *Chaney,* 470 U.S. 821 (1985) to dismiss Matters that do not merit the additional expenditure of Commission resources. Alternatively, the Commission may dismiss because the complaint, any response filed by the respondent, and other available information, when taken together, fail to give rise to a reasonable inference that a violation has occurred.

Examples where a dismissal would be appropriate include, but are not limited to, situations where:

- A violation has been alleged, but the respondent's response or other evidence convincingly demonstrates that no violation has occurred;
- A complaint alleges a violation that is either not credible or is so vague that an investigation would be effectively impossible;
- A complaint fails to describe a violation of the Act;
- The seriousness of the alleged conduct is not sufficient to justify the likely cost and difficulty of an investigation to determine whether a violation in fact occurred;
- The available information is sufficient to support a ''reason to believe'' finding, but the violation is minor;
- A respondent admits to a violation, but the amount of the violation is not sufficient to warrant any monetary penalty; or
- A complaint convincingly alleges a violation, but the significance of the violation is not sufficient to warrant further pursuit by the Commission.

When the Commission votes to dismiss, a Statement of Reasons, a Factual and Legal Analysis, or a General Counsel's Report may provide further explanation of the Commission's conclusions.

C. Conclusion

This policy enunciates and describes the Commission's standards for actions at the point of determining whether to open an investigation or to enter into conciliation with respondents prior to a finding of probable cause to believe. The policy does not confer any rights on any person and does not in any way limit the right of the Commission to evaluate every case individually on its own facts and circumstances.

This notice represents a general statement of policy announcing the general course of action that the Commission intends to follow. This policy statement does not constitute an agency regulation requiring notice of proposed rulemaking, opportunities for public participation, prior publication, and delay effective under 5 U.S.C. 553 of the Administrative Procedures Act (''APA''). As such, it does not bind the Commission or any member of the general public. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 605(b), which apply when notice and comment are required by the APA or another statute, are not applicable.

Dated: March 14, 2024.

On behalf of the Commission,

Sean J. Cooksey,

Chairman, Federal Election Commission.

[FR Doc. 2024–05830 Filed 3–19–24; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

[No. 2024–N–4]

Orders: Reporting by Regulated Entities of Stress Testing Results as of December 31, 2023; Summary Instructions and Guidance

AGENCY: Federal Housing Finance Agency.

ACTION: Orders.

SUMMARY: In this document, the Federal Housing Finance Agency (FHFA) provides notice that it issued Orders, dated March 13, 2024, with respect to stress test reporting as of December 31, 2023, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Summary Instructions and Guidance accompanied the Orders to provide testing scenarios.

DATES: Each Order is applicable March 13, 2024.

FOR FURTHER INFORMATION CONTACT: Andrew Varrieur, Senior Associate Director, Office of Capital Policy, (202) 649–3141, *Andrew.Varrieur@fha.gov;* Karen Heidel, Assistant General Counsel, Office of General Counsel, (202) 738–7753, *Karen.Heidel@fhfa.gov.* For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner, including the maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513. These Orders are being issued under 12 U.S.C. 4516(a), which authorizes the Director of FHFA to require by Order that the regulated entities submit regular or special reports to FHFA and establishes remedies and procedures for failing to make reports required by Order. The Orders, through the accompanying Summary Instructions and Guidance, prescribe for the regulated entities the scenarios to be used for stress testing. The Summary Instructions and Guidance also provides to the regulated entities advice concerning the content and format of reports required by the Orders and the rule.

II. Orders, Summary Instructions and Guidance

For the convenience of the affected parties and the public, the text of the Orders follows below in its entirety. The Orders and Summary Instructions and Guidance are also available for public inspection and copying at the Federal Housing Finance Agency's Freedom of Information Act (FOIA) Reading Room at *https://www.fhfa.gov/AboutUs/FOIAPrivacy/Pages/Reading-Room.aspx* by clicking on ''Click here to view Orders'' under the Final Opinions and Orders heading. You may also access these documents at *http://www.fhfa.gov/SupervisionRegulation/DoddFrankActStressTests.*

The text of the Orders is as follows:

Federal Housing Finance Agency

Order Nos. 2024–OR–FNMA–1 and 2024–OR–FHLMC–1

Reporting by Regulated Entities of Stress Testing Results as of December 31, 2023

Whereas, section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), as amended by section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (''EGRRCPA'') requires certain financial companies with total consolidated assets of more than $250 billion, and which are regulated by a primary Federal financial regulatory agency, to conduct periodic stress tests to determine whether the companies have the capital necessary to absorb losses as a result of severely adverse economic conditions;

Whereas, FHFA's rule implementing section 165(i)(2) of the Dodd-Frank Act, as amended by section 401 of EGRRCPA is codified as 12 CFR 1238 and requires that ''[e]ach Enterprise must file a report in the manner and form established by FHFA.'' 12 CFR 1238.5(b);

Whereas, The Board of Governors of the Federal Reserve System issued stress testing scenarios on February 15, 2024; and

Whereas, section 1314 of the Safety and Soundness Act, 12 U.S.C. 4514(a) authorizes the Director of FHFA to require regulated entities, by general or specific order, to submit such reports on their management, activities, and operation as the Director considers appropriate.

Now therefore, it is hereby Ordered as follows:

Each Enterprise shall report to FHFA and to the Board of Governors of the Federal Reserve System the results of the stress testing as required by 12 CFR part 1238, in the form and with the content described therein and in the Summary Instructions and Guidance, with Appendices 1 through 7 thereto, accompanying this Order and dated March 13, 2024.

It is so ordered, this the 13th day of March, 2024.

This Order is effective immediately.

Signed at Washington, DC, this 13th day of March, 2024.

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2024–05757 Filed 3–19–24; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2024–0198]

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Beaufort, SC

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

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Lady's Island (Woods Memorial) Bridge across the Atlantic Intracoastal Waterway (AICW) (Beaufort River), mile 536.0, at Beaufort, SC. South Carolina Department of Transportation (SCDOT) has requested the Coast Guard consider changing the operating schedule to remove the seasonal operating schedule aligning with other drawbridges along the AICW in SC. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The Coast Guard is seeking comments from the public regarding this deviation.

DATES: This deviation is effective from 12:01 a.m. on March 25, 2024, through 11:59 p.m. on September 29, 2024.

Comments and related material must reach the Coast Guard on or before May 20, 2024.

ADDRESSES: You may submit comments identified by docket number USCG–2024–0198 using Federal Decision Making Portal at *https://www.regulations.gov.*

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this test deviation, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 571–607–5951, email *Jennifer.N.Zercher@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Background, Purpose and Legal Basis

Lady's Island (Woods Memorial) Bridge across the Atlantic Intracoastal Waterway (AICW) (Beaufort River), mile 536.0, at Beaufort, SC, is a swing bridge with a 30-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is found in 33 CFR 117.911(f).

The Coast Guard received a request from SCDOT to consider changing the operating schedule for the Lady's Island (Woods Memorial) Bridge removing the seasonal operating schedule which would align with other drawbridges along the AICW in SC. This temporary deviation will test a change to the drawbridge operation schedule to determine if the reasonable needs of navigation are maintained and whether a permanent change to the schedule is needed.

Under this temporary deviation, the Lady's Island (Woods Memorial) Bridge shall open on signal; except that the draw need not open from 6 a.m. to 9:29 a.m. and 3:31 p.m. to 7 p.m., Monday through Friday, except Federal holidays. Between 9:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays, the draw need open only once an hour on the half hour. Public vessels of the United States and tugs with tows, upon proper signal, will be passed through any time. Vessels able to pass without an opening may do so at any time.

The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

II. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2024–0198 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

View material in the docket. To view documents mentioned in this deviation as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. Also, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted, or a final rule is published of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of this deviation. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Dated: March 14, 2024.

Randall D. Overton,

Director, Bridge Administration, Seventh Coast Guard District.

[FR Doc. 2024–05930 Filed 3–19–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0834]

RIN 1625–AA00

Safety Zone; Storms With High Winds; Sector Maryland-National Capital Region Captain of the Port Zone

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

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone for the navigable waters of the Sector Maryland-National Capital Region Captain of the Port (COTP) Zone. It will be enforced, as needed, to ensure the safety of these waters in the event of hurricanes, tropical storms, and other storms with high winds. The rule provides for actions to be completed by industry and vessels within the COTP Zone before and after the landfall of hurricanes, tropical storms, and other severe weather events threatening the State of Maryland.

DATES: This rule is effective April 19, 2024.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0834 in the search box and click ''Search.'' Next in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this this rule, call, or email LCDR Kate Newkirk, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard; telephone 410–365–8141, email *Kate.M.Newkirk@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
§ Section
U.S.C. United States Code
COTP Captain of the Port
MTS Marine Transportation System

II. Background Information and Regulatory History

Sector Maryland-National Capital Region, whose borders are defined in 33 CFR 3.25–15, has the potential to be affected by hurricanes and tropical storms on a yearly basis, especially between the months of June and

November. Additionally, severe storms generating high winds and rough seas are also common in the winter months. On January 18, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) titled ''Safety Zone; Storms With High Winds; Sector Maryland-National Capital Region Captain of the Port Zone'' (89 FR 3366). There, we stated why we had issued the NPRM and we invited comments on our proposed regulatory action related to this fireworks display. During the comment period that ended February 20, 2024, we received one comment.

III. Legal Authority and Need for the Rule

As noted above, Maryland is subject to hurricanes and other storms generating high winds from year to year. This rule is necessary to protect mariners, port infrastructure, and the environment during and after these severe weather events. The Coast Guard has authority to establish this rule under 46 U.S.C. 70034.

IV. Discussion of Comments, Changes, and the Rule

The Coast Guard received one comment expressing concern over restricting citizens' access to ''high-wind thrill-seeking,'' and complains of the rule's failure to account for the ''love for riding unreal waves that only a hurricane's high winds could brew.'' However, the failure of one mariner to properly secure his boat could result in the destruction of another mariner's boat or offshore infrastructure, or in damage to the environment. Further, the commenter does not explain how we might promote public safety and safeguard the nation's marine transportation system without putting restrictions on reckless conduct. The final rule is unchanged from that which we proposed in the NPRM.

This safety zone provides for actions to be completed by local industry and vessels in the COTP zone prior to landfall of hurricanes, tropical storms, and other storms with high winds threatening Maryland-National Capital Region and in the aftermath of landfall. Port Conditions (WHISKEY, X–RAY, YANKEE, ZULU, and RECOVERY) are standardized terms for states of operation instituted by the COTP, which are clearly communicated to port facilities, vessels, and members of the Marine Transportation System (MTS).

Action to be taken by vessels is provided in the language of the rule available at the end of this document. In addition, ports and waterfront facilities are encouraged to act when specific Port Conditions are declared. Under Port Condition WHISKEY, ports and waterfront facilities shall remove all debris and secure potential flying hazards. Upon a declaration that Port Condition X–RAY is in effect, port facilities shall ensure that potential flying debris and hazardous materials are removed, and that loose cargo and cargo equipment is secured. Upon a declaration of Port Condition YANKEE, terminal operators should terminate all cargo operations not associated with storm preparations. All facilities shall continue to operate in accordance with any approved Facility Security Plans (as defined in 33 CFR 101.105, and as further described in 33 CFR 105.400 to 105.415), and to comply with all applicable requirements of the Maritime Transportation Security Act of 2002 (46 U.S.C. chapter 701).

Under the rule, the COTP retains flexibility in controlling and reconstituting vessel traffic during periods of heavy weather and allows for the expedited resumption of the MTS following such events. The safety zone consists of all waters of the territorial seas within the Sector Maryland-National Capital Region COTP Zone, as defined in 33 CFR 3.25–15. Portions of the safety zone might be activated at different times, as conditions dictate. Notice of Port Conditions and their requirements will be given via Marine Safety Information Bulletins (MSIBs) and Broadcast Notice to Mariners (BNMs). The regulatory text appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the necessity to protect life, port infrastructure, and the environment during hurricanes, tropical storms, and other storms with high winds. The scope of the regulation is narrow and will only apply when a hurricane, tropical storm, or other storm with high winds impacts the navigable waters of the Maryland-National Capital Region COTP Zone. These events are infrequent and of short duration. Regulatory restrictions will be lifted as soon as practicable.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

The Coast Guard did not receive any comments from the Small Business Administration on this rulemaking.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed

this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that would prohibit entry in certain waters of the Sector Maryland-National Capital Region COTP Zone for the duration needed to ensure safe transit of vessels and industry before and after a hurricane, tropical storm, or other storm with high winds. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.521 to read as follows:

§ 165.521 Safety Zone[s] Hurricanes, Tropical Storms, and other Storms with High Winds; Captain of the Port Zone Maryland-National Capital Region.

(a) *Regulated Areas:* The following area is a safety zone: All navigable waters, as defined in 33 CFR 2.36 within the Captain of the Port Zone (COTP) Maryland-National Capital Region, as described in 33 CFR 3.25–15, or some portion of those waters, during specified conditions. Port conditions and safety zone activation may vary for different portions of the regulated area at different times, based on storm conditions and its projected track.

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

Captain of the Port means Commander, Coast Guard Sector Maryland National Capital Region.

Representative means any Coast Guard commissioned, warrant, or petty officer or civilian employee who has been authorized to act on the behalf of the Captain of the Port.

Port Condition WHISKEY means a condition set by the COTP when National Weather Service (NWS) weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) are predicted to reach the COTP zone within 72 hours.

Port Condition X–RAY means a condition set by the COTP when NWS weather advisories indicate sustained gale force winds (39–54 mph/34–47 knots) are predicted to reach the COTP zone within 48 hours.

Port Condition YANKEE means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) are predicted to reach the COTP zone within 24 hours.

Port Condition ZULU means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) are predicted to reach the COTP zone within 12 hours.

Port Condition RECOVERY means a condition set by the COTP when NWS weather advisories indicate that sustained gale force winds (39–54 mph/34–47 knots) are no longer predicted for the regulated area. This port condition remains in effect until the regulated areas are deemed safe and are reopened to normal operations.

(c) *Regulations:*

(1) *Port Condition WHISKEY.* All vessels must exercise due diligence in preparation for potential storm impacts. All oceangoing tank barges and their supporting tugs and all self-propelled oceangoing vessels over 500 gross tons (GT) must make plans to depart no later than setting of Port Condition Yankee unless authorized by the COTP. Also, vessels must maintain a continuous listening watch on VHF Channel 16. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition WHISKEY, based on the trajectory and forecasted storm conditions.

(2) *Port Condition X–RAY.* Vessels at facilities must carefully monitor their moorings and cargo operations. Additional anchor(s) must be made ready to let go, and preparations must be made to have a continuous anchor watch during the storm. Engine(s) must be made immediately available for maneuvering. All oceangoing tank barges and their supporting tugs and all self-propelled oceangoing vessels over 500 GT must prepare to depart the port and anchorages within the affected regulated area. These vessels shall depart immediately upon the setting of Port Condition YANKEE. During this condition, slow-moving vessels may be ordered to depart to ensure safe avoidance of the incoming storm. All oceangoing tank barges and their supporting tugs and all self-propelled oceangoing vessels over 500 GT that are unable to depart or desire to remain in port must contact the COTP to receive permission to remain in port. Vessels with COTP's permission to remain in port must implement their pre-approved mooring arrangement. The COTP may require additional precautions to ensure

the safety of the ports and waterways. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition X–RAY based on the trajectory and forecasted storm conditions.

(3) *Port Condition YANKEE.* Affected ports and waterways are closed to all inbound vessel traffic. All oceangoing tank barges and their supporting tugs and all self-propelled oceangoing vessels over 500 GT must have departed the regulated area or received permission to remain in port. The COTP may require additional precautions to ensure the safety of the ports and waterways. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition YANKEE based on the trajectory and forecasted storm conditions.

(4) *Port Condition ZULU.* Cargo operations are suspended, except final preparations that are expressly permitted by the COTP as necessary to ensure the safety of the ports and facilities. Other than vessels designated by the COTP, no vessels may enter, transit, move, or anchor within the regulated area. The COTP may modify the geographic boundaries of the regulated area and actions to be taken under Port Condition ZULU based on the trajectory and forecasted storm conditions.

(5) *Port Condition RECOVERY.* Designated areas are closed to all vessels. Based on assessments of channel conditions, navigability concerns, and hazards to navigation, the COTP may permit vessel movements with restrictions. Restrictions may include, but are not limited to, preventing, or delaying vessel movements, imposing draft, speed, size, horsepower, daylight restrictions, or directing the use of specific routes. Vessels permitted to transit the regulated area shall comply with the lawful orders or directions given by the COTP or representative.

(6) *Notification.* The Coast Guard will provide notice of where, within the regulated area, a declared Port Condition is to be in effect, via Broadcast Notice to Mariners, Marine Safety Information Bulletins, or by on-scene representatives.

(7) *Exception.* This regulation does not apply to authorized law enforcement agencies operating within the regulated area.

Dated: March 14, 2024.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2024–05803 Filed 3–19–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AQ90

Schedule for Rating Disabilities: The Digestive System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD) by revising the portion of the schedule that addresses the Digestive System. The effect of this action is to ensure that the rating schedule uses current medical terminology and provides detailed and updated criteria for evaluation of digestive conditions for disability rating purposes.

DATES: This final rule is effective May 19, 2024.

FOR FURTHER INFORMATION CONTACT: Ulia Sokol, M.D., M.B.A., Medical Officer, Regulations Staff, (218A), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, *218VASRDPMO.VBACO@va.gov,* (202) 461–9700. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: On January 11, 2022, VA published in the **Federal Register** the proposed rule for Schedule of Rating Disabilities: The Digestive System. *See* 87 FR 1522. VA received 22 comments during the 60-day comment period, including from two Veterans Service Organizations (Paralyzed Veterans of America and The National Veterans Legal Services Program) and two Veterans advocacy groups (The National Organization of Veterans' Advocates, Inc. and The National Law School Veterans Clinic Consortium). VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the proposed rule is adopted as a final rule with minor changes noted below.

Severability: The provisions of the proposed rule are separate and severable from one another, and if any provision is stayed or determined to be invalid, the agency would intend that the remaining provisions continue in effect. VA has carefully considered the requirements of the proposed rule, both individually and in their totality, including their potential costs to the agency and benefit to veterans. In the event a court were to stay or invalidate one or more provisions of this rule as finalized, VA would want the remaining portions of the rule as finalized to remain in full force and legal effect.

I. Comments of General Support

One commenter expressed support for utilizing ''undernutrition'' instead of ''malnutrition'' under 38 CFR 4.112. VA thanks this commenter for their input.

Another commenter expressed support for the proposed rule because it provides more comprehensive evaluative criteria for those with assisted nutrition devices such as gastrostomy tubes, total parenteral nutrition (TPN) ports, and gastric stimulators. VA thanks this commenter for their support.

One commenter expressed support for the change to DC 7326 for Crohn's disease because it comprehensively addresses the symptoms of this disease, its treatment modalities, and functional impairment caused by this disease. VA thanks this commenter for their support.

While most commenters generally welcomed modernizing the rating schedule and recognized this effort as a thoroughly-researched undertaking, some commenters shared some concerns with VA. These concerns are addressed in the sections below.

II. Comments Regarding Coexisting Abdominal Conditions Under § 4.114, Schedule of Ratings—Digestive System

Two commenters expressed concern regarding the prohibition of rating coexisting abdominal conditions under 38 CFR 4.113 and 4.114, stating they are too broad in scope. One commenter recommended VA should simply have rating specialists consider the anti-pyramiding principles set out in 38 CFR 4.14. The other commenter suggested that VA specifically reconsider adding the following diagnostic codes to the list of codes that cannot be combined with each other: DC 7303, chronic complications of upper gastrointestinal surgery, DC 7350, liver abscess, DC 7352, pancreas transplant, DC 7355, celiac disease, DC 7356, gastrointestinal dysmotility syndrome, and DC 7357, post pancreatectomy. It was the commenter's opinion that this approach is restrictive and precludes the ability to maximize benefits for veterans.

VA makes no changes based on these comments. First, the addition of the newly created diagnostic codes is appropriate due to 38 CFR 4.14 and 4.113, which advises rating personnel to avoid providing multiple evaluations for the same disability under various diagnoses. Even though VA is adding diagnostic codes for new conditions, the symptoms and functional impairment experienced by these new conditions are commonly shared with other diagnoses found in this body system and therefore cannot be combined. Next, while 38 CFR 4.114 adheres to the provisions laid out in 38 CFR 4.14, it provides a benefit that 38 CFR 4.14 does not—it allows rating personnel to elevate the evaluation to the next higher level when warranted based on the overall disability severity. This is a benefit to the veteran that is not available through the application of 38 CFR 4.14 alone and provides a favorable means of accounting for non-overlapping symptoms. For example, consider a veteran evaluated at 30% for the predominant disability of Crohn's disease (DC 7326) and 30% for diverticulitis (DC 7327) with non-overlapping symptoms. When applying the symptoms of diverticulitis to Crohn's, the resultant evaluation is higher than that of Crohn's alone warranting an elevation to the next higher level under DC 7326, which is 60%. The regulation in 38 CFR 4.14 does not allow for elevations in this way. Therefore, it is more advantageous that the provisions of 38 CFR 4.114 be applied for these diagnostic codes than 38 CFR 4.14. However, VA notes that the terminology used in this paragraph can be revised to aid its interpretation and application. The paragraph advises rating personnel to not combine diagnostic codes and to assign a single evaluation that reflects the predominant disability picture. The term ''combine'' in this paragraph refers to combining disabilities as defined in 38 CFR 4.25 for the purposes of determining the combined disability evaluation, but it can be misinterpreted as stating to not provide service connection for multiple conditions under these diagnostic codes. To simplify this language and ensure clarity, VA revises it to state that ratings under these diagnostic codes will be assigned a single evaluation that reflects the predominant disability picture and that elevation to the next higher evaluation can be provided if warranted based on the severity of the overall disability.

III. Comments Regarding DC 7202 Tongue, Loss of Whole or Part

One commenter recommended that VA remove the note under DC 7202 to review for Special Monthly Compensation (SMC) for tongue, loss of whole or part because the evaluative criteria no longer evaluates aphonia. Another commenter asked VA to, ''restore criteria under DC 7202 for the amount of tongue removed and speech impairment to address . . . situations where communication is impaired but not precluded'' as necessary for the grant of special monthly compensation for complete organic aphonia. Otherwise, the commenter recommended VA refer to another body system that adequately addresses speech impairment due to loss of tongue.

First, the VASRD has two diagnostic codes that provide evaluations for speech impairment. One of those diagnostic codes, DC 6519 for organic aphonia, is the most appropriate catch-all for speech impairment issues due to infection, disease, or in the case of loss of whole or part of the tongue, injury. Additionally, DC 6519 provides objective criteria to adequately evaluate situations where speech is impaired but not precluded. Second, the intent of Note 1 is to provide general guidance to the rating personnel to capture any additional functional impairment that comes with the loss of the tongue, whole or partial. However, VA agrees that removing the note about SMC is warranted and that the note should more directly guide rating personnel to the more appropriate diagnostic code to evaluate speech impairment that can arise due to whole or partial loss of the tongue. Therefore, VA revises Note 1 of DC 7202 to refer rating personnel to DC 6519 or DC 6516 when there is evidence of speech impairment. VA thanks these commenters for their input.

The same commenter pointed out that in the preamble of the proposed rule for DC 7202, VA failed to demonstrate how medical treatment and rehabilitation can restore speech function to varying degrees. VA acknowledges that speech rehabilitation methodology and references to other body systems were not discussed in the preamble because those are outside the scope of this rulemaking. From a disability compensation standpoint, VA already has regulations to address evaluations that need review if speech function is restored or the condition otherwise improves. *See* 38 CFR 3.344 and 3.327. VA thanks this commenter but makes no changes based on this comment.

One commenter suggested that VA should recognize that both the abilities to swallow and to speak are highly relevant and should be considered under DC 7202. Additionally, the commenter recommended that VA provide a 30% evaluation for marked loss of speech due to loss of tongue. While VA agrees that the ability to swallow and to speak may be impaired due to the loss of tongue in whole or in part, speech is not a function of the digestive body system. Speech impairment has no effect on whether one is able to sufficiently consume or digest sustenance. Therefore, it is more appropriate for the evaluative criteria of this condition to be limited to its effect on food consumption. Thus, VA makes no changes based on this comment.

Finally, the same commenter suggested that VA specify that ''medical advisors'' under DC 7202 are not limited to physicians but may also include physician assistants, nurse practitioners and nutritionists. While VA agrees that physicians are not the only medical providers who may provide care, the term ''medical provider'' is used throughout the VASRD to encompass a variety of healthcare professionals who provide health care services, to include medical care or treatment. This is consistent with the use of the term ''medical providers'' outside of VA as well. Therefore, VA makes no changes based on this comment.

IV. Comments Regarding DC 7203 Esophagus, Stricture of

One commenter noted that VA use ''dilation'' and ''dilatation'' in the evaluation criteria and asked if the terms should be used interchangeably. VA recognized that there was a typographical error and all instances of the word should have been ''dilatation.'' VA makes a clarifying change that amends the proposed text by replacing the word ''dilation'' with ''dilatation'' at the 50% level, and in Note 5 of DC 7203.

The same commenter asked VA to clarify if surgical correction only refers to procedures to correct esophageal strictures or if it also includes surgeries that relieve gastroesophageal reflux disease (GERD) such as Nissen fundoplication. VA clarifies that surgical correction only warrants the 80% evaluation when it is used to treat esophageal stricture(s). We make no change to DC 7203 based on this comment, but make a clarifying change to similar language in DC 7206 as discussed under Section XVIII, Technical Corrections, in this document.

Another commenter noted that the definition of refractory requires at least five dilatation treatments at two-week

intervals and that the 50% criteria is warranted when dilatation occurs three or more times per year; however, refractory esophageal strictures can receive 30% evaluations, which are warranted when dilatation occurs no more than two times per year. The commenter questioned how refractory esophageal stricture could warrant a 30% evaluation if, by definition, it requires five dilatations per year. VA agrees and revises the 30% criteria to only include recurrent esophageal strictures while the 50% criteria will reference both recurrent and refractory esophageal strictures. VA appreciates the input of these commenters.

V. Comments Regarding DC 7206 Gastroesophageal Reflux Disease

One commenter questioned why there was no mention of the GERD evaluative criteria in the Economic Regulatory Impact Analysis (ERIA). The discussion regarding how GERD is evaluated was described in the preamble of the proposed rule. The ERIA is a systemic approach to assessing the positive and negative budgetary effects of proposed and existing regulation and non-regulatory alternatives. Budgetary documentation does not require information regarding how a condition is evaluated because that is not considered pertinent to cost analysis. In the ERIA, VA compares the current evaluation levels for DC 7346 with the proposed evaluation levels for new DC 7206. For budgetary discussions, this is an appropriate methodology to estimate impact of proposed changes.

The same commenter questioned why VA categorized GERD as having a ''minor budgetary impact'' in the ERIA. As stated in the ERIA, the term ''minor budgetary impact'' is defined as having costs less than $100 million over ten years. GERD as a standalone item is anticipated to have a minor budgetary impact under that definition, whereas the digestive rule overall is anticipated to have a major budgetary impact (*i.e.,* greater than $100 million over 10 years).

Four commenters recommended that VA discontinue rating GERD by analogy or reference. In its proposed rule, VA introduced a new diagnostic code, DC 7206, with instructions to rate this condition under DC 7203. VA agrees that DC 7206 warrants its own rating criteria to provide clarity in its application. However, as indicated in the proposed rule, VA proposes to evaluate GERD using rating criteria that are based on predominant picture of disability due to GERD. These criteria consider symptoms of esophageal obstruction and irritation that lead to the esophageal stricture, which are consistent with the symptoms of GERD and clearly identified under DC 7203, Esophagus, stricture of. D. Armstrong et al., ''Canadian consensus conference on the management of gastroesophageal reflux disease in adults: Update 2004,'' 19(1) Canadian J. of Gastroenterology, 15–35 (Jan. 2005). Therefore, VA amends the proposed rule by placing the text of the evaluation criteria for DC 7206 following its title. DC 7206 will not be rated by reference to DC 7203. VA thanks the commenters for their suggestions and has updated this DC to reflect this change.

Six commenters expressed concern that the evaluative criteria for DC 7206 do not include symptoms of heartburn, regurgitation, sore throat, nausea, chest pain, difficulty swallowing, laryngitis, chronic cough, new or worsening asthma, inflammation of the gums, cavities, bad breath, disrupted sleep, ulceration, erosion or Barrett's esophagus. Three of those six commenters proposed that VA continue to evaluate GERD under the current rating schedule, analogous to DC 7346 for hiatal hernia.

Even though these symptoms are important in the diagnosis and treatment of GERD, the VA rating schedule bases its evaluations on the permanent impairment due to this condition. Such permanent impairment of function is based on the scarring due to the chronic irritation of the esophagus by acid reflux and consequent development of scar tissue that causes esophageal stricture. *See* Desai JP, Moustarah F., Esophageal Stricture [Updated 2021 May 27], *https://www.ncbi.nlm.nih.gov/books/NBK542209/.* Therefore, for VA disability compensation purposes, the functional impairment due to GERD will be evaluated and based on the degree of esophageal stricture. VA makes no changes based on these comments.

Two commenters expressed concern that VA has not considered the functional impairment posed by GERD. VA disagrees. The VASRD provides evaluative criteria in line with 38 U.S.C. 1155 (the statute that governs implementation of the ratings schedule) for the evaluation based on the average impairments of earning capacity resulting from comparable injuries in civilian occupations. Accordingly, VA has incorporated considerations regarding the functional impairment caused by each disability evaluation in its rating criteria. Therefore, VA makes no changes based on these comments.

Three commenters expressed concern that while esophageal stricture is commonly caused by GERD, not all GERD cases result in esophageal stricture. While this is true, esophageal stricture is more often than not the result of under-treated, late-stage, or refractory GERD. As stated above, the purpose of the VASRD is to evaluate the permanent residuals of a disability pursuant to 38 U.S.C. 1155. VA makes no changes based on these comments.

Two commenters expressed concern that by changing the VASRD for digestive disabilities, including GERD, VA is attempting to save money and create a higher burden to obtain compensable evaluations. VA disagrees. As stated in the preamble of the proposed rule, the purpose of this rule was to reflect medical and scientific advances in the understanding and treatment of digestive disorders. 87 FR 1522 (Jan. 11, 2022). For example, GERD is more appropriately evaluated as esophageal stricture than hiatal hernia based on objective findings. Id. at 1525 (citing D. Armstrong et al., ''Canadian consensus conference on the management of gastroesophageal reflux disease in adults: Update 2004,'' 19(1) Canadian J. of Gastroenterology, 15–35 (Jan. 2005)). This adjustment from evaluating GERD based on subjective symptoms to objective measurements is consistent with the stated purpose of this rule. Therefore, VA makes no changes based on these comments.

One commenter was concerned because the 2004 study cited in the proposed rule stated its objective was to ''develop up-to-date evidence-based recommendations relevant to the needs of Canadian health care providers for the management of the esophageal manifestations of GERD,'' and the study's author noted that ''GERD significantly impairs quality of life, both in patients with erosive esophagitis and in those who have no endoscopic evidence of injury[.]''

As stated above, functional impairment is the basis for formulating VASRD evaluative criteria. However, ''quality of life'' is not a quantifiable measurement for VA disability purposes as VA measures functional impairment pursuant to 38 U.S.C. 1155. It is the intent of this rule to incorporate modernized terminology and accepted clinical treatment into the VASRD. VA recognizes the importance of the symptoms that were mentioned by the commenter (*e.g.,* erosions, ulcerations and Barrett's esophagus) in the diagnosis and treatment of GERD; however, the VASRD concentrates on the ongoing impairment due to this condition. Ongoing impairment of function due to GERD is based on the scarring due to the chronic irritation of the esophagus by acid reflux and consequent development of scar tissue

that causes esophageal stricture. Therefore, for VA disability compensation purposes, the functional impairment due to GERD will be evaluated and based on the degree of esophageal stricture. Thus, VA makes no changes based on this comment.

One commenter suggested that acid reflux more than three times a week should warrant a 20% evaluation. VA disagrees. Acid reflux is already considered in the 10% evaluation, but VA sought a more objective measure—specifically, the prescription of medication on a daily basis—rather than assessing frequency of acid reflux events. And VA compensates such medication usage at the 10% level consistent with other conditions that require daily medication for control (*e.g.,* cardiac conditions rated under 38 CFR 4.104). VA thanks the commenter for their suggestion but makes no changes to the rule.

VI. Comments Regarding DC 7319 Irritable Bowel Syndrome (IBS)

One commenter asked whether an individual could submit a claim for DC 7207 Barrett's esophagus and DC 7319 irritable bowel syndrome (IBS) or DC 7326 Crohn's disease. Neither 38 CFR 4.113 nor 38 CFR 4.114 prohibit separate evaluations of any 7200 series conditions and 7300 series conditions. Thus, Barrett's esophagus and either IBS or Crohn's disease may be separately evaluated without pyramiding if there are no similar comorbid symptoms. The same commenter asked a question regarding submitting a personal benefit application for these conditions. VA always encourages veterans to file claims for benefits to which they believe they are entitled and to seek assistance with filing claims from accredited representatives whenever necessary. However, VA does not respond to comments regarding individual claims in rulemakings. VA thanks the commenter and makes no changes based on this comment.

One commenter expressed concern that the terms ''change in stool frequency'' and ''change in stool form'' used under DC 7319 are ambiguous and highly subjective and could cause confusion and disagreements as to the timeframe such change occurred. The commenter further stated that while it generally supports VA implementing more objective rating criteria based on the Rome IV criteria, the proposed changes ''should not mirror this undefined language in the Rome IV criteria.'' Instead, the commenter suggested explicitly stating in the evaluative criteria that these changes occurred after the onset of IBS.

VA reserves some of the more detailed instructions, such as the definition of ''change'' as it relates to stools for IBS, for its subregulatory guidance. Generally, the VASRD does not provide definitions of common clinical guidelines. Rather, VA relies on the medical community to adhere to current medical practice and standards, or otherwise provides the definition of medical terms in subregulatory guidance. In this instance, VA will accept the recorded findings of a qualified medical provider using the Bristol Stool Scale, also known as Meyers Scale, to indicate whether stool frequency and form has changed. VA will identify these findings in the training for use of the appropriate disability benefits questionnaires (DBQs). Therefore, VA makes no changes based on this comment.

One commenter stated that limiting the evaluation of IBS under DC 7319 to a maximum schedular evaluation of 30% does not contemplate the functional impairment posed by those experiencing severe and frequent symptoms. The commenter suggested that DC 7319 instead provide a 50% evaluation, comparable to migraine headaches under DC 8100, to account for severe economic inadaptability. For evaluative purposes, severe economic inadaptability denotes a degree of substantial work impairment but does not preclude substantially gainful employment.

Since the 1960s, VA has moved away from including work-specific criterion and instead focused solely on the functional impact caused by the condition in its evaluative criteria. The establishment of a maximum 30% schedular evaluation reflects VA's judgement as to the average occupational impairment resulting from IBS. In exceptional cases where IBS has an unusually severe impact on earning capacity, VA may consider extraschedular ratings under 38 CFR 3.321 and 4.16.

Additionally, in its proposed rule, VA did not propose to change the number of disability levels for the assessment of functional impairment due to IBS. VA kept the same 30%, 10%, and 0% evaluation levels, but updated them with more objective criteria derived from the Rome IV criteria for IBS. *See* 87 FR 1522, 1530 (Jan. 11, 2022) (citing Brian Lacy, ''Bowel Disorders,'' Gastroenterology, 150: 1393–1407 (2016)). VA thanks the commenter for the suggestion but makes no change based on this comment.

Finally, the same commenter suggested that VA include a reference to DC 7332 for impairment of sphincter control of the rectum and anus for veterans who experience incontinence due to IBS. VA does not routinely create notes for all possible comorbid manifestations of a disease process and declines to do so in this circumstance. The regulation in 38 CFR 4.2 advises rating specialists to interpret medical evidence so that the appropriate disability is evaluated. VA thanks the commenter for this suggestion, but makes no changes based on this comment.

VII. Comments Regarding DC 7326 Crohn's Disease or Undifferentiated Form of Inflammatory Bowel Disease

One commenter expressed support for the change to DC 7326 for Crohn's disease because it comprehensively addresses the symptoms of this disease, all treatment modalities and functional impairment caused by this disease. VA thanks this commenter for their support.

One commenter shared their personal experience with Crohn's disease treatment and management. Additionally, the commenter expressed concern about medical coverage for veterans and the burden of co-payments for medical treatment. VA appreciates this comment, but medical care benefit issues are outside of the scope of this rulemaking. Therefore, VA makes no changes based on this comment.

The same commenter noted that mental disorders are frequently diagnosed subsequent to Crohn's disease and should be addressed accordingly. Currently, VA has the authority to grant entitlement to service connection on a secondary basis for disabilities that are proximately due to, or aggravated by, service-connected disease or injury pursuant to 38 CFR 3.310. This would allow VA to service connect a mental disorder due to Crohn's disease without any additional revisions to the portion of the rating schedule which addressed digestive disabilities. Therefore, VA makes no changes based on this comment.

The same commenter suggested using a 100-point system developed by Crohn's and Colitis Foundation of America. However, this point system was developed for diagnosis, treatment and management of these diseases in a clinical setting and is not appropriate to be used for disability evaluation. Therefore, VA makes no changes based on this comment.

Finally, the same commenter expressed support for the rule change for DC 7326 Crohn's disease because it more accurately defines the functional impairment in its rating criteria. VA thanks the commenter for their support.

VIII. Comments Regarding DC 7329, Intestine, Large, Resection of

One commenter suggested that the 100% evaluation criteria for DC 7329 Intestine, large, resection of, should simply consist of the elements from the 60% criteria with one additional element (high-output syndrome) instead of three additional elements. The commenter's concern was that veterans could experience inconsistent ratings if they fall between these two requirements, such as a total colectomy with high-output syndrome but no ileostomy. Additionally, the commenter suggested adding an intermediary 80% evaluation under this DC to cover the cases that fall between these two requirements.

The proposed 100% evaluation criteria include three major elements, (1) total colectomy with (2) formation of ileostomy and (3) high-output syndrome with more than two episodes of dehydration in the past 12 months. The episodes of dehydration that require intravenous hydration are reflective of the gravity of the consequences of the large intestine resection, demonstrating total impairment. The functional impairment due to total colectomy with high-output syndrome and total colectomy without high-output syndrome has clear demarcation along the absence or presence of said high-output syndrome. Therefore, VA proposed clearly identifiable levels of disability for the 60% and 100% evaluation based on that principle. Furthermore, 38 CFR 4.7 already provides guidance to rating specialists to assign the next higher evaluation should the disability picture more closely approximate that level of disability. VA thanks the commenter for their suggestions but declines to make changes based on this comment.

However, during its internal review, VA noted a minor inconsistency in using certain terminology for surgical outcomes for a 40% evaluation for a partial colectomy with permanent colostomy and for a 60% evaluation for total colectomy without high-output syndrome. VA corrects this inconsistent use of medical terminology by revising the 40% evaluative criteria to read as ''Partial colectomy with permanent colostomy or ileostomy without high-output syndrome'' and 60% evaluative criteria to read as ''Total colectomy with or without permanent colostomy or ileostomy without high-output syndrome.'' This clerical change brings additional clarity to the rating criteria for the 20%, 40%, 60% and 100% ratings, and assures their consistent application by rating specialists. This revision does not result in any substantive changes to the criteria under DC 7329.

IX. Comments Regarding DC 7332, Rectum and Anus, Impairment of Sphincter Control

One commenter requested clarification between the terminology ''wearing'' and ''changing'' of pads under DC 7332, rectum and anus, impairment of sphincter control. VA's proposed rating criteria provided descriptive criteria that track the Cleveland Clinic Incontinence Scale (CCIS), a standardized, evidence-based measure that accounts for difficulties with retention and expulsion of stool. This scale determines the severity of sphincter impairment, the frequency of incontinence, and the extent to which it alters a person's life. *See* A.M. Kaiser, ''The McGraw-Hill Manual of Colorectal Surgery,'' 743 (2009). For the purposes of VA disability compensation, the term ''changing'' of pads refers to the need to change a pad due to an incontinence to gas, incontinence to liquid or incontinence to solid and the resulting soiling of the pad. The term ''wearing'' of pads refers to a necessary or advisable measure to address the effects of incontinence, regardless of the frequency with which soiling occurs.

One commenter expressed concern regarding the proposed changes to DC 7332 because the evaluative criteria list specific findings that may be applied more rigidly than the existing criteria. The same commenter proposed VA instead create a non-exclusive example to demonstrate levels of loss of control without applying specific findings. As compared to the existing rating criteria, the proposed rule contains successive criteria, which offer clear and objective findings at each level of impairment in line with the CCIS. Additionally, the proposed criteria replace subjective terminology such as ''extensive,'' ''frequent,'' ''occasional,'' and ''slight'' with measurable descriptive findings that clarify existing rating criteria. Furthermore, each level of disability allows for evaluation based on responsiveness to treatment or frequency of incontinence with use of pads, which allows flexibility in applying disability evaluation. VA thanks the commenter for their suggestion but makes no changes to the rule based on this comment.

The same commenter was concerned that the proposed criteria under DC 7332 may impose a higher burden than current procedures to award entitlement to special monthly compensation (SMC) under 38 CFR 3.350(e)(2) and 38 U.S.C. 1114(o) for paraplegia. VA disagrees. Aside from making the criteria more objective, VA's proposed revision to this diagnostic code includes consideration as to whether loss of anal sphincter control is responsive to treatment. This is not incompatible with SMC for paraplegia. Rather, 38 CFR 3.350(e)(2) states that ''[t]he requirement of loss of anal and bladder sphincter control is met even though incontinence has been overcome under a strict regimen of rehabilitation of bowel and bladder training and other auxiliary measures.'' The fact that the evaluative criteria have become more objective and include consideration of treatment response does not make it more difficult to be awarded SMC due to paraplegia than under current requirements. Therefore, VA makes no changes to this rule based on this comment.

X. Comments Regarding DC 7336, Hemorrhoids, External or Internal

One commenter expressed concern that the 0% (noncompensable) evaluation for hemorrhoids under DC 7336 was removed without explanation and requested VA reinstate this evaluation. Current VASRD criteria warrant a 0% evaluation for mild or moderate internal or external hemorrhoids. These rating criteria are unquantifiable and nonspecific; therefore, VA removed them. However, 38 CFR 4.31 requires VA raters to assign a noncompensable evaluation for any diagnostic code in the VASRD where one is not present when the requirements for a compensable evaluation are not met. Therefore, VA can still assign 0% evaluations for hemorrhoids despite the evaluation level being removed.

Additionally, the commenter was concerned that without a noncompensable evaluation under DC 7336 for hemorrhoids, veterans would not be eligible for the 10% evaluation awarded for two or more noncompensable evaluations under 38 CFR 3.324. As stated above, despite the removal of the noncompensable evaluation under DC 7336, veterans may be eligible for a 10% rating based on two or more noncompensable evaluations under 38 CFR 3.324 even if those noncompensable evaluations are awards through 38 CFR 4.31. Therefore, VA makes no changes based on this comment.

XI. Comments Regarding DC 7345, Chronic Liver Disease Without Cirrhosis

One commenter suggested adding a 10% evaluation under DC 7345 for chronic liver disease without cirrhosis to account for those in remission who

may experience spontaneous reactivation of hepatitis B and/or experience mental health symptoms related to the anxiety that spontaneous reactivation could occur. Proposed DC 7345 provides a 0% evaluation for those with a history of liver disease who are asymptomatic. Compensable evaluations, 10% or more, are based on laboratory findings and/or symptoms associated with a disease. Should the disease recur, the veteran may submit a claim for increase based on recurrence and level of severity. Regarding mental symptoms associated with chronic liver disease, VA may grant entitlement to service connection on a secondary basis for disabilities that are proximately due to, or aggravated by, service-connected disease or injury pursuant to 38 CFR 3.310. VA thanks this commenter, but makes no changes based on this comment.

XII. Comments Regarding DC 7347, Pancreatitis, Chronic

One commenter was concerned that the enteral feeding element of the rating criteria is not included in every evaluation level under DC 7347, Pancreatitis, chronic. Additionally, the commenter asked for further clarification on how to rate this condition if it requires enteral feeding, regardless of whether or not the feeding causes complication. The commenter also stated that other proposed criteria, specifically DCs 7301, 7303, and 7328, provide an 80% disability rating for enteral feeding whereas this code and 7330 only provide 60%. The commenter suggested that VA consider applying the 80% rating for enteral feeding to align it with the rest of the proposed ratings.

First, VA closely examined the full range of functional impairment due to the chronic pancreatitis during its review of this VASRD body system. VA found that the proposed rating criteria is aligned appropriately with the functional impairment due to the chronic pancreatitis, as described in the preamble of the proposed rule. To that end, consideration of enteral feeding is not necessary at every evaluation level.

Second, DCs 7301, 7303, and 7328 provide an 80% disability rating for TPN, not enteral feeding. TPN provides nutrition outside of the digestive tract (intravenously), whereas enteral feeding provides nutrition through the digestive tract by way of a feeding tube. Additionally, TPN is primarily indicated when enteral feeding is not possible. *See* Maudar K.K. (1995), TOTAL PARENTERAL NUTRITION, *Medical journal, Armed Forces India, 51*(2), 122–126, *https://doi.org/10.1016/S0377-1237(17)30942-5.* Thus, TPN is assigned a higher evaluation than enteral feeding based on the need for intravenous nutrition due to the greater impairment of functioning of the digestive tract. Therefore, VA makes no changes based on this comment.

XIII. Comments Regarding DC 7355, Celiac Disease

One commenter suggested using ''undernutrition'' instead of ''malabsorption syndrome'' under DC 7355 for celiac disease because malabsorption is not defined in the VASRD, and it ultimately results in undernutrition. VA disagrees. Malabsorption syndrome is separate from undernutrition condition; these two conditions cannot be used interchangeably. Furthermore, malabsorption syndrome has its own clear clinical definition and does not have to be defined in the VASRD. Therefore, VA makes no changes based on this comment.

XIV. Comments Regarding Dysphagia

One commenter asked whether the term dysphagia is defined in this rule as difficulty swallowing or a condition encompassing a variety of symptoms such as pain while swallowing, a sensation of food getting stuck in the throat or chest, drooling, hoarseness, regurgitation, etc. As stated above, the VASRD does not provide detailed definitions of common clinical guidelines. Qualified clinicians may determine the presence or absence of any symptoms of GERD upon examination, including the common symptom of dysphasia, which may manifest as a variety of symptoms including difficulty of swallowing. VA thanks the commenter but makes no changes to the rule based on this comment.

XV. Comments Regarding General Terminology

One commenter expressed concern regarding with the inconsistency of using general terminology, such as ''prescribed dietary modification,'' ''dietary intervention,'' and ''dietary restriction'' under a number of diagnostic codes. VA uses all three references—prescribed dietary modification, dietary intervention, and dietary restriction—to describe different types of therapeutic diets. A therapeutic diet is a meal plan that controls the intake of certain foods or nutrients and is part of the treatment of a medical condition and is normally prescribed by a physician and planned by a dietician. A therapeutic diet is usually a modification of a regular diet, and it is modified or tailored to fit the nutrition needs of a particular person. VA uses these references as appropriate under specific diagnostic codes according to specific clinical situations. Additionally, in issuing its proposed rule, VA provided specific examples of prescribed dietary modification (*e.g.,* therapeutic diets can be modified for nutrients or texture due to impaired swallowing or frequent aspiration), dietary intervention (*e.g.,* a prescribed gluten-free diet), and dietary restriction (*e.g.,* a reduction of particular or total nutrient intake without causing malnutrition). Therefore, VA makes no changes based on this comment.

The same commenter stated that the 30% criteria for DC 7356, Gastrointestinal dysmotility syndrome, is repetitive and misleading because it requires both symptoms of intestinal pseudo-obstruction (CIPO) and symptoms of intestinal motility disorder, but CIPO is an intestinal motility disorder. VA agrees and revises the criteria at the 30% level to use ''or'' instead of ''; and.'' CIPO is a specific diagnosis of an intestinal motility disorder, so use of the conjunctive ''and'' makes reference to CIPO redundant. VA thanks the commenter for their comment.

Additionally, the commenter questioned whether recurrent emergency treatment for the 50% evaluation for DC 7356 only applies to episodes of intestinal obstruction or if it also applies to regurgitation. VA clarifies once more that the recurrent emergency treatment for the 50% evaluation also applies to regurgitation due to poor gastric emptying, abdominal pain, recurrent nausea or recurrent vomiting. The commenter asked that VA adjust the wording for further clarification. However, VA notes that when evaluation criteria use the disjunctive ''or'' without a semi-colon, then ''or'' indicates that the qualifier applies to criterion on both sides of the ''or.'' That is the case regarding recurrent emergency treatment in this evaluation. Conversely, when VA uses ''or'' with a semi-colon, then the qualifier only applies to the criterion on the same side of the semi-colon. Therefore, a 50% evaluation would be warranted if the evidence demonstrated intermittent tube feeding for nutritional support, along with recurrent emergency treatment for either intestinal obstruction due to poor gastric emptying, abdominal pain, recurrent nausea, or recurrent vomiting *or* regurgitation due to poor gastric emptying, abdominal pain, recurrent nausea, or recurrent vomiting. VA makes no changes based on these comments.

XVI. Comments of General Disagreement

One commenter indicated that the current VASRD does not incorporate the most up-to-date and accurate scientific data because its rating criteria do not allow clinicians to more accurately diagnose and therefore to fairly distribute disability services. The VASRD is not intended to be utilized in a clinical setting to identify, diagnose or treat injuries, diseases or disorders. The VASRD provides evaluative criteria based on the average impairments of earning capacity resulting from comparable injuries in civilian occupations, in line with VA's authority under 38 U.S.C. 1155 to adopt a rating schedule. Clinicians are urged to utilize standard diagnostic and treatment practices in their respective clinical setting. Therefore, VA makes no changes based on this comment.

Two commenters expressed concern that VA is taking benefits away from veterans and disagreed with the rule change in general. The commenters did not offer any specific recommendations. The primary objective for this rule is to revise the rating criteria to reflect updated medical advances, add new medical conditions and update terminology. There are no provisions in this rule that seek to remove any entitlement to benefits, and this rule would not disturb ratings currently in effect. Therefore, VA makes no changes based on these comments.

XVII. Comments Beyond the Scope of This Rulemaking

One commenter shared their experience seeking diagnoses for their digestive symptoms due to Gulf War Illness. The regulation in 38 CFR 3.317(a)(2)(i)(B)(*3*) creates a presumption of service connection for certain Persian Gulf veterans who exhibit functional gastrointestinal disorders. The presumption of service connection for those disorders falls outside the scope of this rulemaking. Commentary or advice for questions regarding individual claims also fall outside of the scope of this rulemaking. Therefore, VA makes no changes based on this comment.

XVIII. Technical Corrections

During its internal review, VA identified a number of minor issues that are clerical and typographical in nature and took a corrective action in its final rule with minor changes as noted below.

VA makes a minor typographical correction to revised § 4.112(d)(2). In the proposed rule, the last sentence of the revised regulation used the word ''parental'' when describing the function of nasogastric or nasoenteral feeding tubes. VA amends this sentence by replacing ''assisted parental nutrition'' with ''assisted parenteral nutrition.'' This change to the language does not result in any substantive changes to § 4.112(d)(2).

VA makes minor clerical changes to the paragraph under 38 CFR 4.114, Schedule of ratings—digestive system. To streamline this regulatory language and to ensure its clarity, VA revises 38 CFR 4.114 to (1) state that ratings under these diagnostic codes will be assigned a single evaluation that reflects the predominant disability picture and (2) that, if warranted, elevation of the disability rating to the next higher evaluation level can be provided and will be based on the severity of the overall disability under 38 CFR 4.114. This change to the language does not result in any substantive changes to the paragraph under 38 CFR 4.114, Schedule of ratings—digestive system.

VA makes a minor clerical correction to DC 7206, Gastroesophageal reflux disease, to the 80% disability level language. To promote clarity, VA amends the evaluative criteria for an 80% disability rating by adding the words ''of esophageal stricture(s)'' after ''treatment with either surgical correction.'' This clerical change is intended to specify that the surgical correction applies only to correction of esophageal stricture(s) and not any other conditions. This change does not result in any substantive changes to the criteria under DC 7206.

VA makes clerical changes under DC 7303, Chronic complications of upper gastrointestinal surgery. The 30% and 50% disability ratings discussed ''vomiting not controlled by oral dietary modification'' or ''vomiting not controlled by medical treatment.'' To promote clarity, VA removes the phrase ''not controlled by'' and replaces it with the word ''despite.'' This change to the language does not result in any substantive changes to the criteria under DC 7303.

VA makes two clerical changes under DC 7304, Peptic ulcer disease. First, the rating criteria under the 0% disability rating mentions an x-ray test as one of the diagnostic imaging studies to record a history of peptic ulcer disease. VA replaces the reference to just one diagnostic imaging study, such as an x-ray test, with a general reference to diagnostic imaging studies, such as an X-ray, CT scan, MRI, and others. This clerical change brings additional clarity to the rating criteria for a 0% evaluation. This change to the language does not result in any substantive changes to the criteria under DC 7304.

Second, VA amends the note under DC 7304 to include the following standard instruction: ''Apply the provisions of § 3.105(e) to any change in evaluation based upon that or any subsequent examination.'' This clerical change is consistent with the reduction of evaluations under 38 CFR 3.105(e) and with notes regarding mandatory VA medical examinations throughout the VASRD. While VA inadvertently left this instruction out of the proposed rule, this addition does not result in any substantive changes to the criteria under DC 7304.

VA makes a clerical change under DC 7312, Cirrhosis of the liver. In the proposed rule, one of the criteria for a 100% evaluation is listed as encephalopathy, whereas one of the criteria for a 60% evaluation is listed as hepatic encephalopathy. To avoid confusion and ensure consistency in the application of the rating schedule, VA replaces the phrase ''encephalopathy'' in the 100% criteria with ''hepatic encephalopathy.'' This change to the language does not result in any substantive changes to the criteria under DC 7312.

VA makes a clerical change to the note under DC 7317, Gallbladder, injury of. In the proposed rule, VA instructs adjudicators that adhesions are not necessary when rating under DC 7301 (Adhesions of the peritoneum due to surgery, trauma, disease, or infection). As written, this note appears contradictory and could lead to confusion in applying the correct evaluation. To clarify the intent of this note, VA makes a minor clerical change by stating that when gallbladder injuries are rated by analogy under DC 7301, a finding of adhesion is not necessary. This change is structural in nature and does not result in any substantive changes to the rating criteria.

VA identified that DC 7319 had one note labeled Note 1. There is only one note in relation to DC 7319 and, therefore, no numerical designation is required. To provide consistency and clarity, VA corrects this typographical error and revises DC 7319 to remove the numerical designation.

VA makes a clerical change under DC 7319, Irritable bowel syndrome (IBS) and DC 7326, Crohn's Disease. In the proposed rule, VA listed ''distension'' under the evaluative criteria for the 20% and 30% evaluations levels under DC 7319 and listed ''distention'' under the 10% evaluation level of DC 7319 and the 100% evaluation level of DC 7326. To ensure consistency, VA corrects this typographical error and changes the

spelling at the 10% level under DC 7319 and the 100% evaluation under DC 7326 to ''distension.''

VA makes two minor clerical corrections to DC 7330, Intestinal fistulous disease, external at the 100% evaluation. VA amends the evaluative language by replacing ''enteral nutrition'' with ''enteral nutritional support.'' Additionally, VA specifies the size of the ostomy bags by adding ''(sized 130cc).'' This language is consistent with the 60% evaluative criteria under DC 7330. These changes do not result in any substantive changes to the criteria under DC 7330.

VA makes two minor clerical corrections to DC 7351, Liver transplant, at the 30 and 60-percent disability levels. To promote clarity, VA amends the evaluative criteria for 30% disability rating by adding the words ''Following transplant surgery,'' to the existing language ''minimum rating.'' The minimum rating for liver transplant surgery was applicable to the veterans with liver transplant. The minimum rating's intent was to compensate veterans for post-transplant functional impairment due to antirejection therapy and other liver transplant medical management treatment modalities. Therefore, this change to the language does not result in any substantive changes to the criteria under DC 7351.

VA amends the evaluative criteria for a 60% disability rating by replacing the word ''retransplantation'' with the words ''transplant surgery,'' which is consistent with medical terminology that is currently used to describe both first organ transplant surgery and any subsequent organ transplant surgery. Additionally, VA adds the word ''eligible'' to the language ''awaiting'' to read ''Eligible and awaiting transplant surgery, minimum rating.'' This clerical change brings additional clarity to VA's intent in revising the rating criteria for a 60% disability rating, which is to capture a specific population of veterans who are awaiting liver transplant surgery and who are eligible candidates for such surgery. This change to the language does not result in any substantive changes to the criteria under DC 7351.

VA noted a minor inconsistency in the use of the preposition ''with'' in the 30%, 50%, and 80% disability levels under DC 7355, Celiac disease. At the 30% level, it reads, ''Malabsorption syndrome with chronic diarrhea'', whereas at the 50% level it reads, ''Malabsorption syndrome that causes chronic diarrhea.'' To promote clarity and consistency, VA amends the proposed text at the 50% level by replacing ''that causes'' with the preposition ''with.'' The 50% level now begins with the phrase, ''Malabsorption syndrome with chronic diarrhea.'' To ensure standardization at all levels, VA makes a similar amendment to the proposed text at the 80% level by replacing ''that causes'' with the preposition ''with.'' The 80% level now begins with the phrase, ''Malabsorption syndrome with weakness.'' This change to the language does not result in any substantive changes to the criteria under DC 7355, Celiac disease.

VA makes five clerical corrections under 38 CFR 4.114 for DCs 7301 Peritoneum, adhesions of, due to surgery, trauma, disease, or infection, 7303 Chronic complications of upper gastrointestinal surgery, 7328 Intestine, small, resection of, 7330 Intestinal fistulous disease, external, and 7356 Gastrointestinal dysmotility syndrome. For consistency and clarity, VA amends the evaluative language for each occurrence where a total parenteral nutrition is mentioned. Throughout its regulation, VA will refer to total parenteral nutrition as ''total parenteral nutrition (TPN).'' These changes do not result in any substantive changes to the criteria under DCs 7301, 7303, 7328, 7330, and 7356.

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 a significant regulatory action under Executive Order 12866, section 3(f)(1), 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.*

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). The factual basis for this certification is based on the fact that small entities or businesses are not affected by revisions to the VASRD.

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 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 would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

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

Congressional Review Act

Under the Congressional Review Act, this regulatory action may result in an annual effect on the economy of $100 million or more, 5 U.S.C. 804(2), and so is subject to the 60-day delay in effective date under 5 U.S.C. 801(a)(3). In accordance with 5 U.S.C. 801(a)(1), VA will submit to the Comptroller General and to Congress a copy of this regulation and the Regulatory Impact Analysis (RIA) associated with the regulation.

List of Subjects in 38 CFR Part 4

Disability benefits, Pensions, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on March 4, 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.

Jeffrey M. Martin,

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

For the reasons set out in the preamble, VA amends 38 CFR part 4 as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

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

Authority: 38 U.S.C. 1155, unless otherwise noted.

§ 4.110 [Removed and Reserved]

■ 2. Remove and reserve § 4.110.

§ 4.111 [Removed and Reserved]

■ 3. Remove and reserve § 4.111.

■ 4. Revise § 4.112 to read as follows:

§ 4.112 Weight loss and nutrition.

The following terms apply when evaluating conditions in § 4.114:

(a) *Weight loss. Substantial weight loss* means involuntary loss greater than 20% of an individual's baseline weight sustained for three months with diminished quality of self-care or work tasks. The term *minor weight loss* means involuntary weight loss between 10% and 20% of an individual's baseline weight sustained for three months with gastrointestinal-related symptoms, involving diminished quality of self-care or work tasks, or decreased food intake. The term *inability to gain weight* means substantial weight loss with the inability to regain it despite following appropriate therapy.

(b) *Baseline weight. Baseline weight* means the clinically documented average weight for the two-year period preceding the onset of illness or, if relevant, the weight recorded at the veteran's most recent discharge physical. If neither of these weights is available or currently relevant, then use ideal body weight as determined by either the Hamwi formula or Body Mass Index tables, whichever is most favorable to the veteran.

(c) *Undernutrition. Undernutrition* means a deficiency resulting from insufficient intake of one or multiple essential nutrients, or the inability of the body to absorb, utilize, or retain such nutrients. Undernutrition is characterized by failure of the body to maintain normal organ functions and healthy tissues. Signs and symptoms may include loss of subcutaneous tissue, edema, peripheral neuropathy, muscle wasting, weakness, abdominal distention, ascites, and Body Mass Index below normal range.

(d) *Nutritional support.* Paragraphs (d)(1) and (2) of this section describe various nutritional support methods used to treat certain digestive conditions.

(1) Total parenteral nutrition (TPN) or hyperalimentation is a special liquid mixture given into the blood through an intravenous catheter. The mixture contains proteins, carbohydrates (sugars), fats, vitamins, and minerals. TPN bypasses the normal digestion in the stomach and bowel.

(2) Assisted enteral nutrition requires a special liquid mixture (containing proteins, carbohydrates (sugar), fats, vitamins, and minerals) to be delivered into the stomach or bowel through a flexible feeding tube. Percutaneous endoscopic gastrostomy is a type of assisted enteral nutrition in which a flexible feeding tube is inserted through the abdominal wall and into the stomach. Nasogastric or nasoenteral feeding tube is a type of assisted parenteral nutrition in which a flexible feeding tube is inserted through the nose into the stomach or bowel.

■ 5. Amends § 4.114 by:

■ a. Revising the introductory text and the entries for diagnostic codes 7200 through 7205;

■ b. Adding in numerical order entries for diagnostic codes 7206 and 7207;

■ c. Revising the entry for diagnostic code 7301;

■ d. Adding in numerical order an entry for diagnostic code 7303;

■ e. Revising the entry for diagnostic code 7304;

■ f. Removing the entries for diagnostic codes 7305 and 7306;

■ g. Revising the entries for diagnostic codes 7307 through 7310, 7312, 7314, and 7315;

■ h. Removing the entry for diagnostic code 7316;

■ i. Revising the entries for diagnostic codes 7317 through 7319;

■ j. Removing the entries for diagnostic codes 7321 and 7322;

■ k. Revising the entry for diagnostic code 7323;

■ l. Removing the entry for diagnostic code 7324;

■ m. Revising the entries for diagnostic codes 7325 through 7330 and 7332 through 7338;

■ n. Removing the entries for diagnostic codes 7339 and 7340;

■ o. Revising the entries for diagnostic codes 7344 through 7348;

■ p. Adding in numerical order an entry for diagnostic code 7350;

■ q. Revising the entry for diagnostic code 7351;

■ r. Adding in numerical order an entry for diagnostic code 7352;

■ s. Revising the entry for diagnostic code 7354; and

■ t. Adding in numerical order entries for diagnostic codes 7355 through 7357.

The revisions and additions read as follows:

§ 4.114 Schedule of ratings—digestive system.

Do not combine ratings under diagnostic codes 7301 through 7329 inclusive, 7331, 7342, 7345 through 7350 inclusive, 7352, and 7355 through 7357 inclusive, with each other. Instead, when more than one rating is warranted under those diagnostic codes, assign a single evaluation under the diagnostic code that reflects the predominant disability picture, and elevate it to the next higher evaluation if warranted by the severity of the overall disability.

	Rating
7200 Soft tissue injury of the mouth, other than tongue or lips:	
Rate as for disfigurement (diagnostic codes 7800 and 7804) and impairment of mastication.	
7201 Lips, injuries of:	
Rate as disfigurement (diagnostic codes 7800 and 7804).	
7202 Tongue, loss of whole or part:	
Absent oral nutritional intake	100
Intact oral nutritional intake with permanently impaired swallowing function that requires prescribed dietary modification	60
Intact oral nutritional intake with permanently impaired swallowing function without prescribed dietary modification	30
Note (1): Rate the residuals of speech impairment as complete organic aphonia (DC 6519) or incomplete aphonia as laryngitis, chronic (DC 6516).	
Note (2): Dietary modifications due to this condition must be prescribed by a medical provider.	
7203 Esophagus, stricture of:	

	Rating
Documented history of recurrent or refractory esophageal stricture(s) causing dysphagia with at least one of the symptoms present: (1) aspiration, (2) undernutrition, and/or (3) substantial weight loss as defined by § 4.112(a) and treatment with either surgical correction or percutaneous esophago-gastrointestinal tube (PEG tube)	80
Documented history of recurrent or refractory esophageal stricture(s) causing dysphagia which requires at least one of the following (1) dilatation 3 or more times per year, (2) dilatation using steroids at least one time per year, or (3) esophageal stent placement	50
Documented history of recurrent esophageal stricture(s) causing dysphagia which requires dilatation no more than 2 times per year	30
Documented history of esophageal stricture(s) that requires daily medications to control dysphagia otherwise asymptomatic	10
Documented history without daily symptoms or requirement for daily medications	0
Note (1): Findings must be documented by barium swallow, computerized tomography, or esophagogastroduodenoscopy.	
Note (2): Non-gastrointestinal complications of procedures should be rated under the appropriate system.	
Note (3): This diagnostic code applies, but is not limited to, esophagitis, mechanical or chemical; Mallory Weiss syndrome (bleeding at junction of esophagus and stomach due to tears) due to caustic ingestion of alkali or acid; drug-induced or infectious esophagitis due to Candida, virus, or other organism; idiopathic eosinophilic, or lymphocytic esophagitis; esophagitis due to radiation therapy; esophagitis due to peptic stricture; and any esophageal condition that requires treatment with sclerotherapy.	
Note (4): Recurrent esophageal stricture is defined as the inability to maintain target esophageal diameter beyond 4 weeks after the target diameter has been achieved.	
Note (5): Refractory esophageal stricture is defined as the inability to achieve target esophageal diameter despite receiving no fewer than 5 dilatation sessions performed at 2-week intervals.	
7204 Esophageal motility disorder:	
Rate as esophagus, stricture of (DC 7203).	
Note: This diagnostic code applies, but is not limited to, achalasia (cardiospasm), diffuse esophageal spasm (DES), corkscrew esophagus, nutcracker esophagus, and other motor disorders of the esophagus; esophageal rings (including Schatzki rings), mucosal webs or folds, and impairment of the esophagus caused by systemic conditions such as myasthenia gravis, scleroderma, and other neurologic conditions.	
7205 Esophagus, diverticulum of, acquired:	
Rate as esophagus, stricture of (DC 7203).	
Note: This diagnostic code, applies, but is not limited to, pharyngo- esophageal (Zenker's) diverticulum, mid-esophageal diverticulum, and epiphrenic (distal esophagus) diverticulum.	
7206 Gastroesophageal reflux disease:	
Documented history of recurrent or refractory esophageal stricture(s) causing dysphagia with at least one of the symptoms present: (1) aspiration, (2) undernutrition, and/or (3) substantial weight loss as defined by § 4.112(a) and treatment with either surgical correction of esophageal stricture(s) or percutaneous esophago-gastrointestinal tube (PEG tube)	80
Documented history of recurrent or refractory esophageal stricture(s) causing dysphagia which requires at least one of the following (1) dilatation 3 or more times per year, (2) dilatation using steroids at least one time per year, or (3) esophageal stent placement	50
Documented history of recurrent esophageal stricture(s) causing dysphagia which requires dilatation no more than 2 times per year	30
Documented history of esophageal stricture(s) that requires daily medications to control dysphagia otherwise asymptomatic	10
Documented history without daily symptoms or requirement for daily medications	0
Note (1): Findings must be documented by barium swallow, computerized tomography, or esophagogastroduodenoscopy.	
Note (2): Non-gastrointestinal complications of procedures should be rated under the appropriate system.	
Note (3): This diagnostic code applies, but is not limited to, esophagitis, mechanical or chemical; Mallory Weiss syndrome (bleeding at junction of esophagus and stomach due to tears) due to caustic ingestion of alkali or acid; drug-induced or infectious esophagitis due to Candida, virus, or other organism; idiopathic eosinophilic, or lymphocytic esophagitis; esophagitis due to radiation therapy; esophagitis due to peptic stricture; and any esophageal condition that requires treatment with sclerotherapy.	
Note (4): Recurrent esophageal stricture is defined as the inability to maintain target esophageal diameter beyond 4 weeks after the target diameter has been achieved.	
Note (5): Refractory esophageal stricture is defined as the inability to achieve target esophageal diameter despite receiving no fewer than 5 dilatation sessions performed at 2-week intervals.	
7207 Barrett's esophagus:	
With esophageal stricture: Rate as esophagus, stricture of (DC 7203).	
Without esophageal stricture:	
Documented by pathologic diagnosis with high-grade dysplasia	30
Documented by pathologic diagnosis with low-grade dysplasia	10
Note (1): If malignancy develops, rate as malignant neoplasms of the digestive system, exclusive of skin growths (DC 7343).	
Note (2): If the condition is resolved via surgery, radiofrequency ablation, or other treatment, rate residuals as esophagus, stricture of (DC 7203).	
7301 Peritoneum, adhesions of, due to surgery, trauma, disease, or infection:	
Persistent partial bowel obstruction that is either inoperable and refractory to treatment, or requires total parenteral nutrition (TPN) for obstructive symptoms	80
Symptomatic peritoneal adhesions, persisting or recurring after surgery, trauma, inflammatory disease process such as chronic cholecystitis or Crohn's disease, or infection, as determined by a healthcare provider; and clinical evidence of recurrent obstruction requiring hospitalization at least once a year; and medically-directed dietary modification other than total parenteral nutrition (TPN); and at least one of the following: (1) abdominal pain, (2) nausea, (3) vomiting, (4) colic, (5) constipation, or (6) diarrhea	50
Symptomatic peritoneal adhesions, persisting or recurring after surgery, trauma, inflammatory disease process such as chronic cholecystitis or Crohn's disease, or infection, as determined by a healthcare provider; and medically-directed dietary modification other than total parenteral nutrition (TPN); and at least one of the following: (1) abdominal pain, (2) nausea, (3) vomiting, (4) colic, (5) constipation, or (6) diarrhea	30

	Rating
Symptomatic peritoneal adhesions, persisting or recurring after surgery, trauma, inflammatory disease process such as chronic cholecystitis or Crohn's disease, or infection, as determined by a healthcare provider, and at least one of the following: (1) abdominal pain, (2) nausea, (3) vomiting, (4) colic, (5) constipation, or (6) diarrhea	10
History of peritoneal adhesions, currently asymptomatic	0
7303 Chronic complications of upper gastrointestinal surgery:	
Requiring continuous total parenteral nutrition (TPN) or tube feeding for a period longer than 30 consecutive days in the last six months	80
Any one of the following symptoms with or without pain: (1) daily vomiting despite oral dietary modification or medication; (2) six or more watery bowel movements per day every day, or explosive bowel movements that are difficult to predict or control; (3) post-prandial (meal-induced) light-headedness (syncope) with sweating and the need for medications to specifically treat complications of upper gastrointestinal surgery such as dumping syndrome or delayed gastric emptying	50
With two or more of the following symptoms: (1) vomiting two or more times per week or vomiting despite medical treatment; (2) discomfort or pain within an hour of eating and requiring ongoing oral dietary modification; (3) three to five watery bowel movements per day every day	30
With either nausea or vomiting managed by ongoing medical treatment	10
Post-operative status, asymptomatic	0
Note (1): For resection of small intestine, use DC 7328.	
Note (2): If pancreatic surgery results in a vitamin or mineral deficiency (e.g., B12, iron, calcium, or fat-soluble vitamins), evaluate under the appropriate vitamin/mineral deficiency code and assign the higher rating. For example, evaluate Vitamin A, B, C or D deficiencies under DC 6313; ocular manifestations of vitamin deficiencies, such as night blindness, under DC 6313; keratitis or keratomalacia due to Vitamin A deficiency under DC 6001; Vitamin E deficiency under neuropathy; and Vitamin K deficiency under prolonged clotting (e.g., DC 7705).	
Note (3): This diagnostic code includes operations performed on the esophagus, stomach, pancreas, and small intestine, including bariatric surgery.	
7304 Peptic ulcer disease:	
Post-operative for perforation or hemorrhage, for three months	100
Continuous abdominal pain with intermittent vomiting, recurrent hematemesis (vomiting blood) or melena (tarry stools); and manifestations of anemia which require hospitalization at least once in the past 12 months	60
Episodes of abdominal pain, nausea, or vomiting, that: last for at least three consecutive days in duration; occur four or more times in the past 12 months; and are managed by daily prescribed medication	40
Episodes of abdominal pain, nausea, or vomiting, that: last for at least three consecutive days in duration; occur three times or less in the past 12 months; and are managed by daily prescribed medication	20
History of peptic ulcer disease documented by endoscopy or diagnostic imaging studies	0
Note: After three months at the 100% evaluation, rate on residuals as determined by mandatory VA medical examination. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
7307 Gastritis, chronic:	
Rate as peptic ulcer disease (DC 7304).	
Note: This diagnostic code includes Helicobacter pylori infection, drug-induced gastritis, Zollinger-Ellison syndrome, and portal-hypertensive gastropathy with varix-related complications.	
7308 Postgastrectomy syndrome:	
Rate residuals as chronic complications of upper gastrointestinal surgery (DC 7303).	
7309 Stomach, stenosis of:	
Rate as chronic complications of upper gastrointestinal surgery (DC 7303) or peptic ulcer disease (DC 7304), depending on the predominant disability.	
7310 Stomach, injury of, residuals:	
Pre-operative: Rate as adhesions of peritoneum due to surgery, trauma, disease, or infection (DC 7301). No adhesions are necessary when evaluating under DC 7301.	
Post-operative: Rate as chronic complications of upper gastrointestinal surgery (DC 7303).	
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7312 Cirrhosis of the liver:	
Liver disease with Model for End-Stage Liver Disease score greater than or equal to 15; or with continuous daily debilitating symptoms, generalized weakness and at least one of the following: (1) ascites (fluid in the abdomen), or (2) a history of spontaneous bacterial peritonitis, or (3) hepatic encephalopathy, or (4) variceal hemorrhage, or (5) coagulopathy, or (6) portal gastropathy, or (7) hepatopulmonary or hepatorenal syndrome	100
Liver disease with Model for End-Stage Liver Disease score greater than 11 but less than 15; or with daily fatigue and at least one episode in the last year of either (1) variceal hemorrhage, or (2) portal gastropathy or hepatic encephalopathy	60
Liver disease with Model for End-Stage Liver Disease score of 10 or 11; or with signs of portal hypertension such as splenomegaly or ascites (fluid in the abdomen) and either weakness, anorexia, abdominal pain, or malaise	30
Liver disease with Model for End-Stage Liver Disease score greater than 6 but less than 10; or with evidence of either anorexia, weakness, abdominal pain or malaise	10
Asymptomatic, but with a history of liver disease	0
Note (1): Rate hepatocellular carcinoma occurring with cirrhosis under DC 7343 (Malignant neoplasms of the digestive system, exclusive of skin growths) in lieu of DC 7312.	
Note (2): Biochemical studies, imaging studies, or biopsy must confirm liver dysfunction (including hyponatremia, thrombocytopenia, and/or coagulopathy).	
Note (3): Rate condition based on symptomatology where the evidence does not contain a Model for End-Stage Liver Disease score.	
7314 Chronic biliary tract disease:	
With three or more clinically documented attacks of right upper quadrant pain with nausea and vomiting during the past 12 months; or requiring dilatation of biliary tract strictures at least once during the past 12 months.	30
With one or two clinically documented attacks of right upper quadrant pain with nausea and vomiting in the past 12 months.	10

	Rating
Asymptomatic, without history of a clinically documented attack of right upper quadrant pain with nausea and vomiting in the past 12 months.	0
Note: This diagnostic code includes cholangitis, biliary strictures, Sphincter of Oddi dysfunction, bile duct injury, and choledochal cyst. Rate primary sclerosing cholangitis under chronic liver disease without cirrhosis (DC 7345).	
7315 Cholelithiasis, chronic:	
Rate as chronic biliary tract disease (DC 7314).	
7317 Gallbladder, injury of:	
Rate as adhesions of the peritoneum due to surgery, trauma, disease, or infection (DC 7301); or chronic gallbladder and biliary tract disease (DC 7314), or cholecystectomy (gallbladder removal), complications of (such as strictures and biliary leaks) (DC 7318), depending on the predominant disability.	
Note: When rating gallbladder injuries analogous to DC 7301, a finding of adhesions is not necessary.	
7318 Cholecystectomy (gallbladder removal), complications of (such as strictures and biliary leaks):	
With recurrent abdominal pain (post-prandial or nocturnal); and chronic diarrhea characterized by three or more watery bowel movements per day	30
With intermittent abdominal pain; and diarrhea characterized by one to two watery bowel movements per day	10
Asymptomatic	0
7319 Irritable bowel syndrome (IBS):	
Abdominal pain related to defecation at least one day per week during the previous three months; and two or more of the following: (1) change in stool frequency, (2) change in stool form, (3) altered stool passage (straining and/or urgency), (4) mucorrhea, (5) abdominal bloating, or (6) subjective distension	30
Abdominal pain related to defecation for at least three days per month during the previous three months; and two or more of the following: (1) change in stool frequency, (2) change in stool form, (3) altered stool passage (straining and/or urgency), (4) mucorrhea, (5) abdominal bloating, or (6) subjective distension	20
Abdominal pain related to defecation at least once during the previous three months; and two or more of the following: (1) change in stool frequency, (2) change in stool form, (3) altered stool passage (straining and/or urgency), (4) mucorrhea, (5) abdominal bloating, or (6) subjective distension	10
Note: This diagnostic code may include functional digestive disorders (see § 3.317 of this chapter), such as dyspepsia, functional bloating and constipation, and diarrhea. Evaluate other symptoms of a functional digestive disorder not encompassed by this diagnostic code under the appropriate diagnostic code, to include gastrointestinal dysmotility syndrome (DC 7356), following the general principles of § 4.14 and this section.	
7323 Colitis, ulcerative:	
Rate as Crohn's disease or undifferentiated form of inflammatory bowel disease (DC 7326).	
7325 Enteritis, chronic:	
Rate as Irritable Bowel Syndrome (DC 7319) or Crohn's disease or undifferentiated form of inflammatory bowel disease (DC 7326), depending on the predominant disability.	
7326 Crohn's disease or undifferentiated form of inflammatory bowel disease:	
Severe inflammatory bowel disease that is unresponsive to treatment; and requires hospitalization at least once per year; and results in either an inability to work or is characterized by recurrent abdominal pain associated with at least two of the following: (1) six or more episodes per day of diarrhea, (2) six or more episodes per day of rectal bleeding, (3) recurrent episodes of rectal incontinence, or (4) recurrent abdominal distension	100
Moderate inflammatory bowel disease that is managed on an outpatient basis with immunosuppressants or other biologic agents; and is characterized by recurrent abdominal pain, four to five daily episodes of diarrhea; and intermittent signs of toxicity such as fever, tachycardia, or anemia	60
Mild to moderate inflammatory bowel disease that is managed with oral and topical agents (other than immunosuppressants or other biologic agents); and is characterized by recurrent abdominal pain with three or less daily episodes of diarrhea and minimal signs of toxicity such as fever, tachycardia, or anemia	30
Minimal to mild symptomatic inflammatory bowel disease that is managed with oral or topical agents (other than immunosuppressants or other biologic agents); and is characterized by recurrent abdominal pain with three or less daily episodes of diarrhea and no signs of systemic toxicity	10
Note (1): Following colectomy/colostomy with persistent or recurrent symptoms, rate either under DC 7326 or DC 7329 (Intestine, large, resection of), whichever provides the highest rating.	
Note (2): VA requires diagnoses under DC 7326 to be confirmed by endoscopy or radiologic studies.	
Note (3): Inflammation may involve small bowel (ileitis), large bowel (colitis), or inflammation of any component of the gastrointestinal tract from the mouth to the anus.	
7327 Diverticulitis and diverticulosis:	
Diverticular disease requiring hospitalization for abdominal distress, fever, and leukocytosis (elevated white blood cells) one or more times in the past 12 months; and with at least one of the following complications: (1) hemorrhage, (2) obstruction, (3) abscess, (4) peritonitis, or (5) perforation	30
Diverticular disease requiring hospitalization for abdominal distress, fever, and leukocytosis (elevated white blood cells) one or more times in the past 12 months; and without associated (1) hemorrhage, (2) obstruction, (3) abscess, (4) peritonitis, or (5) perforation	20
Asymptomatic; or a symptomatic diverticulitis or diverticulosis that is managed by diet and medication	0
Note: For colectomy or colostomy, use DC 7327 or DC 7329 (Intestine, large, resection of), whichever results in a higher evaluation.	
7328 Intestine, small, resection of:	
Status post intestinal resection with undernutrition and anemia; and requiring total parenteral nutrition (TPN)	80
Status post intestinal resection with undernutrition and anemia; and requiring prescribed oral dietary supplementation, continuous medication and intermittent total parenteral nutrition (TPN)	60
Status post intestinal resection with four or more episodes of diarrhea per day resulting in undernutrition and anemia; and requiring prescribed oral dietary supplementation and continuous medication	40
Status post intestinal resection with four or more episodes of diarrhea per day	20
Status post intestinal resection, asymptomatic	0

	Rating
Note: This diagnostic code includes short bowel syndrome, mesenteric ischemic thrombosis, and post-bariatric surgery complications. Where short bowel syndrome results in high-output syndrome, to include high-output stoma, consider assigning a higher evaluation under DC 7329 (Intestine, large, resection of).	
7329 Intestine, large, resection of:	
Total colectomy with formation of ileostomy, high-output syndrome, and more than two episodes of dehydration requiring intravenous hydration in the past 12 months	100
Total colectomy with or without permanent colostomy or ileostomy without high-output syndrome	60
Partial colectomy with permanent colostomy or ileostomy without high-output syndrome	40
Partial colectomy with reanastomosis (reconnection of the intestinal tube) with loss of ileocecal valve and recurrent episodes of diarrhea more than 3 times per day	20
Partial colectomy with reanastomosis (reconnection of the intestinal tube)	10
7330 Intestinal fistulous disease, external:	
Requiring total parenteral nutrition (TPN); or enteral nutritional support along with at least one of the following: (1) daily discharge equivalent to four or more ostomy bags (sized 130 cc), (2) requiring ten or more pad changes per day, or (3) a Body Mass Index (BMI) less than 16 and persistent drainage (any amount) for more than 1 month during the past 12 months	100
Requiring enteral nutritional support along with at least one of the following: (1) daily discharge equivalent to three or less ostomy bags (sized 130 cc), (2) requiring fewer than ten pad changes per day, or (3) a Body Mass Index (BMI) of 16 to 18 inclusive and persistent drainage (any amount) for more than 2 months in the past 12 months	60
Intermittent fecal discharge with persistent drainage for more than 3 months in the past 12 months	30
Note: This code applies to external fistulas that have developed as a consequence of abdominal trauma, surgery, radiation, malignancy, infection, or ischemia.	
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7332 Rectum and anus, impairment of sphincter control:	
Complete loss of sphincter control characterized by incontinence or retention that is not responsive to a physician-prescribed bowel program and requires either surgery or digital stimulation, medication (beyond laxative use), and special diet; or incontinence to solids and/or liquids two or more times per day, which requires changing a pad two or more times per day	100
Complete or partial loss of sphincter control characterized by incontinence or retention that is partially responsive to a physician-prescribed bowel program and requires either surgery or digital stimulation, medication (beyond laxative use), and special diet; or incontinence to solids and/or liquids two or more times per week, which requires wearing a pad two or more times per week	60
Complete or partial loss of sphincter control characterized by incontinence or retention that is fully responsive to a physician-prescribed bowel program and requires digital stimulation, medication (beyond laxative use), and special diet; or incontinence to solids and/or liquids two or more times per month, which requires wearing a pad two or more times per month	30
Complete or partial loss of sphincter control characterized by incontinence or retention that is fully responsive to a physician-prescribed bowel program and requires medication or special diet; or incontinence to solids and/or liquids at least once every six months, which requires wearing a pad at least once every six months	10
History of loss of sphincter control, currently asymptomatic	0
Note: Complete or partial loss of sphincter control refers to the inability to retain or expel stool at an appropriate time and place.	
7333 Rectum and anus, stricture of:	
Inability to open the anus with inability to expel solid feces	100
Reduction of the lumen 50% or more, with pain and straining during defecation	60
Reduction of the lumen by less than 50%, with straining during defecation	30
Luminal narrowing with or without straining, managed by dietary intervention	10
Note (1): Conditions rated under this code include dyssynergic defecation (levator ani) and anismus (functional constipation)..	
Note (2): Evaluate an ostomy as Intestine, large, resection of (DC 7329)..	
7334 Rectum, prolapse of:	
Persistent irreducible prolapse, repairable or unrepairable	100
Manually reducible prolapse that is not repairable and occurs at times other than bowel movements, exertion, or while performing the Valsalva maneuver	50
Manually reducible prolapse that is not repairable and occurs only after bowel movements, exertion, or while performing the Valsalva maneuver	30
Spontaneously reducible prolapse that is not repairable	10
Note (1): For repairable prolapse of the rectum, continue the 100% evaluation for two months following repair. Thereafter, determine the appropriate evaluation based on residuals by mandatory VA examination. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
Note (2): Where impairment of sphincter control constitutes the predominant disability, rate under diagnostic code 7332 (Rectum and anus, impairment of sphincter control).	
7335 Ano, fistula in, including anorectal fistula and anorectal abscess:	
More than two constant or near-constant fistulas with abscesses, drainage, and pain, which are refractory to medical and surgical treatment	60
One or two simultaneous fistulas, with abscess, drainage, and pain	40
Two or more simultaneous fistulas with drainage and pain, but without abscesses	20
One fistula with drainage and pain, but without abscess	10
7336 Hemorrhoids, external or internal:	
Internal or external hemorrhoids with persistent bleeding and anemia; or continuously prolapsed internal hemorrhoids with three or more episodes per year of thrombosis	20
Prolapsed internal hemorrhoids with two or less episodes per year of thrombosis; or external hemorrhoids with three or more episodes per year of thrombosis	10

	Rating
7337 Pruritus ani (anal itching):	
With bleeding or excoriation	10
Without bleeding or excoriation	0
7338 Hernia, including femoral, inguinal, umbilical, ventral, incisional, and other (but not including hiatal).	
Irreparable hernia (new or recurrent) present for 12 months or more; with both of the following present for 12 months or more: 1. Size equal to 15 cm or greater in one dimension; and 2. Pain when performing at least three of the following activities: (1) bending over, (2) activities of daily living (ADLs), (3) walking, and (4) climbing stairs	100
Irreparable hernia (new or recurrent) present for 12 months or more; with both of the following present for 12 months or more: 1. Size equal to 15 cm or greater in one dimension; and 2. Pain when performing two of the following activities: (1) bending over, (2) activities of daily living (ADLs), (3) walking, and (4) climbing stairs	60
Irreparable hernia (new or recurrent) present for 12 months or more; with both of the following present for 12 months or more: 1. Size equal to 3 cm or greater but less than 15 cm in one dimension; and 2. Pain when performing at least two of the following activities: (1) bending over, (2) activities of daily living (ADLs), (3) walking, and (4) climbing stairs	30
Irreparable hernia (new or recurrent) present for 12 months or more; with both of the following present for 12 months or more: 1. Size equal to 3 cm or greater but less than 15 cm in one dimension; and 2. Pain when performing one of the following activities: (1) bending over, (2) activities of daily living (ADLs), (3) walking, and (4) climbing stairs	20
Irreparable hernia (new or recurrent) present for 12 months or more; with hernia size smaller than 3 cm	10
Asymptomatic hernia; present and repairable, or repaired	0
Note (1): With two compensable inguinal hernias, evaluate the more severely disabling hernia first, and then add 10% to that rating to account for the second compensable hernia. Do not add 10% to that rating if the more severely disabling hernia is rated at 100%.	
Note (2): Any one of the following activities of daily living are sufficient for evaluation: bathing, dressing, hygiene, and/or transfers.	
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7344 Benign neoplasms, exclusive of skin growths:	
Evaluate under a diagnostic code appropriate to the predominant disability or the specific residuals after treatment.	
Note: This diagnostic code includes lipoma, leiomyoma, colon polyps, or villous adenoma.	
7345 Chronic liver disease without cirrhosis:	
Progressive chronic liver disease requiring use of both parenteral antiviral therapy (direct antiviral agents), and parenteral immunomodulatory therapy (interferon and other); and for six months following discontinuance of treatment	100
Progressive chronic liver disease requiring continuous medication and causing substantial weight loss and at least two of the following: (1) daily fatigue, (2) malaise, (3) anorexia, (4) hepatomegaly, (5) pruritus, and (6) arthralgia	60
Progressive chronic liver disease requiring continuous medication and causing minor weight loss and at least two of the following: (1) daily fatigue, (2) malaise, (3) anorexia, (4) hepatomegaly, (5) pruritus, and (6) arthralgia	40
Chronic liver disease with at least one of the following: (1) intermittent fatigue, (2) malaise, (3) anorexia, (4) hepatomegaly, or (5) pruritus	20
Previous history of liver disease, currently asymptomatic	0
Note (1): 100% evaluation shall continue for six months following discontinuance of parenteral antiviral therapy and administration of parenteral immunomodulatory drugs. Six months after discontinuance of parenteral antiviral therapy and parenteral immunomodulatory drugs, determine the appropriate disability rating by mandatory VA exam. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
Note (2): For individuals for whom physicians recommend both parenteral antiviral therapy and parenteral immunomodulatory drugs, but for whom treatment is medically contraindicated, rate according to DC 7312 (Cirrhosis of the liver).	
Note (3): This diagnostic code includes Hepatitis B (confirmed by serologic testing), primary biliary cirrhosis (PBC), primary sclerosing cholangitis (PSC), autoimmune liver disease, Wilson's disease, Alpha-1-antitrypsin deficiency, hemochromatosis, drug-induced hepatitis, and non-alcoholic steatohepatitis (NASH). Track Hepatitis C (or non-A, non-B hepatitis) under DC 7354 but evaluate it using the criteria in this entry.	
Note (4): Evaluate sequelae, such as cirrhosis or malignancy of the liver, under an appropriate diagnostic code, but do not use the same signs and symptoms as the basis for evaluation under DC 7354 and under a diagnostic code for sequelae. (See § 4.14)	
7346 Hiatal hernia and paraesophageal hernia:	
Rate as esophagus, stricture of (DC 7203).	
7347 Pancreatitis, chronic:	
Daily episodes of abdominal or mid-back pain that require three or more hospitalizations per year; and pain management by a physician; and maldigestion and malabsorption requiring dietary restriction and pancreatic enzyme supplementation	100
Three or more episodes of abdominal or mid-back pain per year and at least one episode per year requiring hospitalization for management either of complications related to abdominal pain or complications of tube enteral feeding	60
At least one episode per year of abdominal or mid-back pain that requires ongoing outpatient medical treatment for pain, digestive problems, or management of related complications including but not limited to cyst, pseudocyst, intestinal obstruction, or ascites	30
Note (1): Appropriate diagnostic studies must confirm that abdominal pain in this condition results from pancreatitis.	
Note (2): Separately rate endocrine dysfunction resulting in diabetes due to pancreatic insufficiency under DC 7913 (Diabetes mellitus).	
7348 Vagotomy with pyloroplasty or gastroenterostomy:	

	Rating
Following confirmation of postoperative complications of stricture or continuing gastric retention	40
With symptoms and confirmed diagnosis of alkaline gastritis, or with confirmed persisting diarrhea	30
With incomplete vagotomy	20
Note: Rate recurrent ulcer following complete vagotomy under DC 7304 (Peptic ulcer disease), with a minimum rating of 20%; and rate post-operative residuals not addressed by this diagnostic code under DC 7303 (Chronic complications of upper gastrointestinal surgery).	
7350 Liver abscess:	
Assign a rating of 100% for 6 months from the date of initial diagnosis. Six months following initial diagnosis, determine the appropriate disability rating by mandatory VA examination. Thereafter, rate the condition based on chronic residuals under the appropriate body system. Apply the provisions of § 3.105(e) of this chapter to any reduction in evaluation.	
Note: This diagnostic code includes abscesses caused by bacterial, viral, amebic (e.g., E. hystolytica), fungal (e.g., C. albicans), and other agents.	
7351 Liver transplant:	
For an indefinite period from the date of hospital admission for transplant surgery	100
Eligible and awaiting transplant surgery, minimum rating	60
Following transplant surgery, minimum rating	30
Note: Assign a rating of 100% as of the date of hospital admission for transplant surgery. One year following discharge, determine the appropriate disability rating by mandatory VA examination. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination. Rate residuals of any recurrent underlying liver disease under the appropriate diagnostic code and, when appropriate, combine with other post-transplant residuals under the appropriate body system(s), subject to the provisions of § 4.14 and this section.	
7352 Pancreas transplant:	
For an indefinite period from the date of hospital admission for transplant surgery	100
Minimum rating	30
Note: Assign a rating of 100% as of the date of hospital admission for transplant surgery. One year following discharge, determine the appropriate disability rating by mandatory VA examination. Apply the provisions of § 3.105(e) of this chapter to any change in evaluation based upon that or any subsequent examination.	
7354 Hepatitis C (or non-A, non-B hepatitis):	
Rate under DC 7345 (Chronic liver disease without cirrhosis).	
7355 Celiac disease:	
Malabsorption syndrome with weakness which interferes with activities of daily living; and weight loss resulting in wasting and nutritional deficiencies; and with systemic manifestations including but not limited to, weakness and fatigue, dermatitis, lymph node enlargement, hypocalcemia, low vitamin levels; and anemia related to malabsorption; and episodes of abdominal pain and diarrhea due to lactase deficiency or pancreatic insufficiency	80
Malabsorption syndrome with chronic diarrhea managed by medically-prescribed dietary intervention such as prescribed gluten-free diet, with nutritional deficiencies due to lactase and pancreatic insufficiency; and with systemic manifestations including, but not limited to, weakness and fatigue, dermatitis, lymph node enlargement, hypocalcemia, low vitamin levels, or atrophy of the inner intestinal lining shown on biopsy	50
Malabsorption syndrome with chronic diarrhea managed by medically-prescribed dietary intervention such as prescribed gluten-free diet; and without nutritional deficiencies	30
Note (1): An appropriate serum antibody test or endoscopy with biopsy must confirm the diagnosis.	
Note (2): For evaluation of celiac disease with the predominant disability of malabsorption, use the greater evaluation between DC 7328 or celiac disease under DC 7355.	
7356 Gastrointestinal dysmotility syndrome:	
Requiring complete dependence on total parenteral nutrition (TPN) or continuous tube feeding for nutritional support	80
Requiring intermittent tube feeding for nutritional support; with recurrent emergency treatment for episodes of intestinal obstruction or regurgitation due to poor gastric emptying, abdominal pain, recurrent nausea, or recurrent vomiting	50
With symptoms of chronic intestinal pseudo-obstruction (CIPO) or symptoms of intestinal motility disorder, including but not limited to, abdominal pain, bloating, feeling of epigastric fullness, dyspepsia, nausea and vomiting, regurgitation, constipation, and diarrhea, managed by ambulatory care; and requiring prescribed dietary management or manipulation	30
Intermittent abdominal pain with epigastric fullness associated with bloating; and without evidence of a structural gastrointestinal disease	10
Note: Use this diagnostic code for illnesses associated with § 3.317(a)(2)(i)(B)(*3*) of this chapter, other than those which can be evaluated under DC 7319.	
7357 Post pancreatectomy syndrome:	
Following total or partial pancreatectomy, evaluate under Pancreatitis, chronic (DC 7347), Chronic complications of upper gastrointestinal surgery (DC 7303), or based on residuals such as malabsorption (Intestine, small, resection of, DC 7328), diarrhea (Irritable bowel syndrome, DC 7319, or Crohn's disease or undifferentiated form of inflammatory bowel disease, DC 7326), or diabetes (DC 7913), whichever provides the highest evaluation.	
Minimum	30

* * * * *

■ 6. Amend appendix A to part 4 by:

■ a. Adding entries in numerical order for §§ 4.110, 4.111, and 4.112; and

■ b. Revising and republishing the entry for § 4.114.

The additions and revision read as follows:

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946

Sec.	Diagnostic code No.	
*	*	* * * * * * *
4.110		Removed and reserved May 19, 2024.
4.111		Removed and reserved May 19, 2024.
4.112		Revised May 19, 2024.
*	*	* * * * * * *
4.114		Introduction paragraph revised March 10, 1976; introduction paragraph revised May 19, 2024.
	7200	Title, criterion May 19, 2024.
	7201	Criterion May 19, 2024.
	7202	Evaluation, criterion, note May 19, 2024.
	7203	Evaluation, criterion, note May 19, 2024.
	7204	Title, note May 19, 2024.
	7205	Note May 19, 2024.
	7206	Added May 19, 2024.
	7207	Added May 19, 2024.
	7301	Title, Evaluation, criterion, note May 19, 2024.
	7302	Removed April 8, 1959.
	7303	Added May 19, 2024.
	7304	Evaluation November 1, 1962; title, evaluation, criterion, and note May 19, 2024.
	7305	Evaluation November 1, 1962; Removed May 19, 2024.
	7306	Criterion April 8, 1959; Removed May 19, 2024.
	7307	Evaluation May 22, 1964; Criterion May 22, 1964; Note May 22, 1964; title, evaluation, criterion, and note May 19, 2024.
	7308	Title April 8, 1959; evaluation April 8, 1959; evaluation and criterion May 19, 2024.
	7309	Evaluation May 19, 2024.
	7310	Evaluation May 19, 2024.
	7311	Criterion July 2, 2001.
	7312	Evaluation March 10, 1976; evaluation July 2, 2001; title, evaluation, criterion, and note May 19, 2024.
	7313	Evaluation March 10, 1976; removed July 2, 2001.
	7314	Title, evaluation, note May 19, 2024.
	7315	Evaluation May 19, 2024.
	7316	Removed May 19, 2024.
	7317	Note May 19, 2024.
	7318	Title, evaluation, and criterion May 19, 2024.
	7319	Title November 1, 1962; evaluation November 1, 1962; title, evaluation, criterion, and note May 19, 2024.
	7321	Evaluation July 6, 1950; criterion March 10, 1976; Removed May 19, 2024.
	7322	Removed May 19, 2024.
	7323	Criterion and note May 19, 2024.
	7324	Removed May 19, 2024.
	7325	Note November 1, 1962; note May 19, 2024.
	7326	Note November 1, 1962; title, evaluation, criterion and note May 19, 2024.
	7327	Evaluation November 1, 1962; criterion November 1, 1962; note November 1, 1962; title, evaluation, criterion, and note May 19, 2024.
	7328	Evaluation November 1, 1962; title, evaluation, criterion, and note May 19, 2024.
	7329	Evaluation November 1, 1962; evaluation, criterion, and note May 19, 2024.
	7330	Evaluation November 1, 1962; criterion and note May 19, 2024.
	7331	Criterion March 11, 1969.
	7332	Evaluation November 1, 1962; evaluation, criterion, and note May 19, 2024.
	7333	Evaluation, criterion, and note May 19, 2024.
	7334	Evaluation July 6, 1950; evaluation November 1, 1962; evaluation, criterion, and note May 19, 2024.
	7335	Evaluation and criterion May 19, 2024.
	7336	Criterion November 1, 1962; criterion May 19, 2024.
	7337	Title, evaluation, and criterion May 19, 2024.
	7338	Title, evaluation, criterion, and note May 19, 2024.
	7339	Criterion March 10, 1976; removed May 19, 2024.
	7340	Removed May 19, 2024.
	7341	Removed March 10, 1976.
	7343	Criterion March 10, 1976; criterion July 2, 2001.
	7344	Criterion July 2, 2001; note May 19, 2024.
	7345	Evaluation August 23, 1948; evaluation February 17, 1955; evaluation July 2, 2001; title May 19, 2024; evaluation, criterion, and note May 19, 2024.
	7346	Evaluation February 1, 1962; title May 19, 2024; evaluation, criterion, and note May 19, 2024.
	7347	Added September 9, 1975; title May 19, 2024; evaluation, criterion, and note May 19, 2024.
	7348	Added March 10, 1976; criterion and note May 19, 2024.
	7350	Added May 19, 2024.
	7351	Added July 2, 2001; evaluation, criterion, and note May 19, 2024.
	7352	Added May 19, 2024.
	7354	Added July 2, 2001; evaluation, criterion, and note May 19, 2024.

APPENDIX A TO PART 4—TABLE OF AMENDMENTS AND EFFECTIVE DATES SINCE 1946—Continued

Sec.	Diagnostic code No.	
	7355	Added May 19, 2024.
	7356	Added May 19, 2024.
	7357	Added May 19, 2024.
* * * * * * *		

■ 7. Amend appendix B to part 4 by revising and republishing the entries in the table under ''The Digestive System'' to read as follows:

APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES

Diagnostic code No.	
* * * * * * *	
The Digestive System	
7200	Soft tissue injury of the mouth, other than tongue or lips.
7201	Lips, injuries.
7202	Tongue, loss of whole or part.
7203	Esophagus, stricture.
7204	Esophageal motility disorder.
7205	Esophagus, diverticulum.
7206	Gastroesophageal reflux disease.
7207	Barrett's esophagus.
7301	Peritoneum, adhesions of, due to surgery, trauma, or infection.
7303	Chronic complications of upper gastrointestinal surgery.
7304	Peptic ulcer disease.
7305	[Removed].
7306	[Removed].
7307	Gastritis, chronic.
7308	Postgastrectomy syndromes.
7309	Stomach, stenosis.
7310	Stomach, injury of, residuals.
7311	Liver, injury of, residuals.
7312	Cirrhosis of the liver.
7314	Chronic biliary tract disease.
7315	Cholelithiasis, chronic.
7316	[Removed].
7317	Gallbladder, injury of.
7318	Cholecystectomy (gallbladder removal), complications of (such as strictures and biliary leaks).
7319	Irritable bowel syndrome (IBS).
7321	[Removed].
7322	[Removed].
7323	Colitis, ulcerative.
7324	[Removed].
7325	Enteritis, chronic.
7326	Crohn's disease or undifferentiated form of inflammatory bowel disease.
7327	Diverticulitis and diverticulosis.
7328	Intestine, small, resection of.
7329	Intestine, large, resection.
7330	Intestinal fistulous diseases, external.
7331	Peritonitis.
7332	Rectum and anus, impairment of sphincter control.
7333	Rectum & anus, stricture.
7334	Rectum, prolapse.
7335	Ano, fistula in, including anorectal fistula, anorectal abscess.
7336	Hemorrhoids, external or internal.
7337	Pruritus ani (anal itching).
7338	Hernia, including femoral, inguinal, umbilical, ventral, incisional, and other (but not including hiatal).
7339	[Removed].
7340	[Removed].
7342	Visceroptosis.
7343	Neoplasms, malignant.
7344	Benign neoplasms, exclusive of skin growths.
7345	Chronic liver disease without cirrhosis.
7346	Hiatal hernia and paraesophageal hernia.
7347	Pancreatitis, chronic.

APPENDIX B TO PART 4—NUMERICAL INDEX OF DISABILITIES—Continued

Diagnostic code No.	
7348	Vagotomy with pyloroplasty or gastroenterostomy.
7350	Liver abscess.
7351	Liver transplant.
7352	Pancreas transplant.
7354	Hepatitis C (or non-A, non-B hepatitis).
7355	Celiac disease.
7356	Gastrointestinal dysmotility syndrome.
7357	Post pancreatectomy syndrome.

* * * * * * *

■ 8. Amend appendix C to part 4 by:
■ a. Adding in alphabetical order under the entry for ''Abscess'', entries for ''Anorectal'' and ''Liver'';
■ b. Revising the entry for ''Cholangitis, chronic'';
■ c. Adding in alphabetical order an entry for ''Cholecystectomy (gallbladder removal), complications of (such as strictures and biliary leaks)'';
■ d. Adding in alphabetical order under the entry for ''Disease'', entries for ''Celiac'', ''Crohn's'', ''Gallbladder and biliary tract, chronic'', and ''Inflammatory bowel'';
■ e. Removing the entry for ''Diverticulitis'' and adding in its place an entry for ''Diverticulitis and diverticulosis'';
■ f. Adding in alphabetical order under the entry for ''Esophagus'', entries for ''Barrett's'' and ''Motility disorder'';
■ g. Removing the entry for ''Gastritis, hypertrophic'' and adding in its place an entry for ''Gastritis, chronic'';
■ h. Adding, in alphabetical order, an entry for ''Gastroesophageal reflux disease'';
■ i. Revising the entry for ''Hernia'';
■ j. Removing, under the entry for ''Injury'', the entries for ''Gall bladder'' and ''Mouth'' and adding in their place entries for ''Gallbladder'' and ''Mouth, soft tissue'', respectively;
■ k. Removing the entry for ''Intestine, fistula of'' and adding in its place an entry for ''Intestine:'' and subentries for ''Fistulous disease, external'', ''Large, resection of'', and ''Small, resection of'';
■ l. Removing the entry for ''Irritable colon syndrome'' and adding in its place an entry for ''Irritable bowel syndrome (IBS)'';
■ m. Removing the entry for ''Pancreatitis'' and adding in its place an entry for ''Pancreas:'' and subentries for ''Chronic pancreatitis'', ''Post pancreatectomy syndrome'', ''Surgery, complications of'', and ''Transplant'';
■ n. Removing the entry for ''Pruritus ani'' and adding in its place an entry for ''Pruritus ani (anal itching)'';
■ o. Removing the entry for ''Stomach, stenosis of'' and adding in its place an entry for ''Stomach:'' and subentries for ''Postgastrectomy syndrome'', ''Stenosis of'', and ''Surgery, complications of'';
■ p. Adding in alphabetical order under the entry for ''Syndromes'', entries for ''Gastrointestinal dysmotility'', ''Postgastrectomy'', and ''Post pancreatectomy''; and
■ q. Removing the entry for ''Ulcer'' and subentries ''Duodenal'', ''Gastric'', and ''Marginal'' adding in their place an entry for ''Ulcer, peptic''.

The revisions and additions read as follows:

APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES

	Diagnostic code No.
* * * * * * *	
Abscess:	
Anorectal	7335
* * * * * * *	
Liver	7350
* * * * * * *	
* * * * * * *	
Cholangitis, chronic	7314
Cholecystectomy (gallbladder removal), complications of (such as strictures and biliary leaks)	7318
* * * * * * *	
Disease:	
* * * * * * *	
Celiac	7355
* * * * * * *	
Crohn's	7326
Gallbladder and biliary tract, chronic	7314
* * * * * * *	
Inflammatory bowel	7326

APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES—Continued

	Diagnostic code No.
* * * * * * *	
* * * * * * *	
Diverticulitis and diverticulosis	7327
* * * * * * *	
Esophagus:	
Barrett's	7207
* * * * * * *	
Motility disorder	7204
* * * * * * *	
* * * * * * *	
Gastritis, chronic	7307
Gastroesophageal reflux disease	7206
* * * * * * *	
Hernia:	
Femoral, inguinal, umbilical, ventral, incisional, and other	7338
Hiatal and parasophageal	7346
Muscle	5326
* * * * * * *	
Injury:	
* * * * * * *	
Gallbladder	7317
* * * * * * *	
Mouth, soft tissue	7200
* * * * * * *	
Intestine:	
Fistulous disease, external	7330
Large, resection of	7329
Small, resection of	7328
Irritable bowel syndrome (IBS)	7319
* * * * * * *	
Pancreas:	
Chronic pancreatitis	7347
Post pancreatectomy syndrome	7357
Surgery, complications of	7303
Transplant	7352
* * * * * * *	
Pruritus ani (anal itching)	7337
* * * * * * *	
Stomach:	
Postgastrectomy syndrome	7308
Stenosis of	7309
Surgery, complications of	7303
* * * * * * *	
Syndromes:	
* * * * * * *	
Gastrointestinal dysmotility	7356
* * * * * * *	
Postgastrectomy	7308
Post pancreatectomy	7357
* * * * * * *	
* * * * * * *	
Ulcer, peptic	7304

APPENDIX C TO PART 4—ALPHABETICAL INDEX OF DISABILITIES—Continued

						Diagnostic code No.
*	*	*	*	*	*	*

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AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412–AA87

USAID Acquisition Regulation (AIDAR): Security and Information Technology Requirements

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Agency for International Development (USAID) Acquisition Regulation (AIDAR) to incorporate a revised definition of ''information technology'' (IT) and new contract clauses relating to information security, cybersecurity, and IT resources. The purpose of these revisions is to provide increased oversight of contractor acquisition and use of IT resources.

DATES: This final rule is effective May 20, 2024.

FOR FURTHER INFORMATION CONTACT: Jasen Andersen, Procurement Analyst, USAID M/OAA/P, at 202–286–3116 or *policymailbox@usaid.gov* for clarification of content or information pertaining to status or publication schedules. All communications regarding this rule must cite RIN No. 0412–AA87.

SUPPLEMENTARY INFORMATION:

A. Background

USAID published a proposed rule on March 21, 2019 (84 FR 10469) to amend the AIDAR to implement various requirements related to information security and IT resources that support the operations and assets of the agency, including those managed by contractors. These new requirements will strengthen protections of agency information systems and facilities. The public comment period closed on May 20, 2019.

B. Discussion and Analysis

USAID updated the final rule to incorporate feedback from public comments, streamline requirements by removing duplicative or unnecessary elements from the rule, and maintain consistency with the Federal Acquisition Regulation (FAR). USAID received four public comments in response to the proposed rule. USAID assessed the public comments in the development of the final rule. The full text of the comments is available at the Federal Rulemaking Portal, *www.regulations.gov.* A summary of the comments, USAID's responses, and changes made to the rule as a result are as follows:

(1) Summary of Significant Changes

The following significant changes from the proposed rule are made in the final rule, organized below using the section titles from the proposed rule:

(i) AIDAR Part 739, Acquisition of Information Technology. No changes were made to the definition of ''information technology'' as a result of the public comments received. Minor administrative changes were made to revise AIDAR Part 739 to add a section regarding the scope of the part, as well as the prescriptions for the applicable contract clauses included in this final rule.

(ii) AIDAR 752.204–72 Homeland Security Presidential Directive–12 (HSPD–12) and Personal Identity Verification (PIV). Several changes were made to this clause as a result of the public comments received. In response to a commenter's concerns that the proposed rule limited access to only U.S. citizens and resident aliens, USAID revised the clause to clarify that various types of credentials are available to different types of users—including non-U.S. citizens—who require physical access to USAID facilities and/or logical access to USAID information systems. Similarly, revisions also update the forms of identity source documents that must be presented to the Enrollment Office personnel, based on the credential type, as well as applicability of any security background investigation. To avoid confusion generated by the reference to the PIV credential, which may only be issued to U.S. citizens and resident aliens, USAID reverted the title of the clause back to its prior name, ''Access to USAID Facilities and USAID's Information Systems.'' The revisions also provide clarity regarding the contents of the monthly staffing report required by the clause. Finally, a new Subpart 704.13 was created to house the prescription for this clause, with this prescription moved from AIDAR 704.404 to AIDAR 704.1303.

(iii) AIDAR 752.204–XX USAID-Financed Third-Party Websites. The public comments led to several revisions in this clause. One commenter highlighted that the clause did not differentiate appropriately between a contractor's website used to implement a project versus a Federal agency's website maintained by a contractor on behalf of the agency. In its subsequent analysis, USAID further determined that ''third-party website,'' as defined in OMB Memorandum No. M–10–23 (''Guidance for Agency Use of Third-Party Websites and Applications''), was not the correct terminology for this clause. While the contract funds the website, the contractor does not operate the website on the agency's behalf. Instead, the final rule now defines a new term and establishes applicability of the clause to ''project websites.'' As further explained in this new definition, there are multiple differentiators that distinguish a ''project website'' from a ''Federal agency website'' under OMB Memorandum No. M–23–10 (''The Registration and Use of .gov Domains in the Federal Government'')—where it is hosted, who is responsible for all operations and management, whether the website is operated on behalf of USAID, and whether the website provides official communications, information, or services from USAID. USAID renamed the clause to ''USAID-Financed Project Websites'' to reflect this change in terminology. In addition, based on public comments, USAID removed certain requirements from the clause, such as the notification to and approval from the Contracting Officer's Representative and the USAID Legislative and Public Affairs (LPA) division, or the authorization of USAID to conduct periodic vulnerability scans. Instead, the contractor is solely responsible for all project website content, operations, management, information security, and disposition. Other requirements were removed from the clause because they are covered by other standard contract requirements—for example, USAID branding/marking requirements were removed from this

clause, as they are typically addressed in a branding/marking plan required elsewhere in the contract.

(iv) AIDAR 752.239–XX Limitation on Acquisition of Information Technology and AIDAR 752.239–XX Use of Information Technology Approval. As a result of the public comments received, these two overlapping clauses from the proposed rule were combined into a single AIDAR 752.239–70 (''Information Technology Authorization'') clause in the final rule. USAID believes this provides better clarity and promotes consistency in the IT approval process. No change was made to the definition of ''information technology'' used in this clause. Instead, the revisions focus on clarifying procedures that a contractor must follow in seeking approval of any IT not specified in the schedule of the contract. The revised clause provides more details regarding the contents of any approval request. In addition, the revised clause allows written approval, removing the burden of requiring a contract modification to indicate approval of additional IT by the Contracting Officer.

(v) AIDAR 752.239–XX Software License. Based on the public comments received, USAID re-evaluated the need for this clause. As noted in some of the public comments, this clause presents challenges due to the commercial nature of the transaction between the contractor and the software vendor, as well as concerns regarding privity of contract, if the U.S. Government imposes additional ''addendum'' requirements. After consideration of the public comments and further analysis—including assessing which elements of this clause may be addressed elsewhere in the FAR, such as in the contract cost principles in FAR Part 31—USAID determined that this clause is no longer needed and removed it from the final rule. While this ''Software License'' clause is no longer part of this rule, USAID reminds contractors that software acquisitions must adhere to other applicable contractual requirements, including the IT approval requirements outlined in the revised AIDAR 752.239–70 (''Information Technology Authorization'') clause.

(vi) AIDAR 752.239–XX Information and Communication Technology Accessibility. Revisions were made to this clause to clarify the requirements and applicability of Section 508 of the Rehabilitation Act of 1973, as amended, to information and communication technology (ICT) supplies and services. One significant change is the removal of the full list of Section 508 accessibility standards. Instead, the clause notes that the specific applicable standards must be identified elsewhere in the contract (*e.g.,* in Section C), in alignment with FAR Subpart 39.1. USAID also revised the clause to incorporate procedures to enable the Government to determine whether delivered supplies or services conform to Section 508 accessibility standards. In order to ensure full compliance of all ICT supplies and services delivered under a contract with Section 508 requirements, USAID added a flow-down requirement to apply the clause to subcontractors.

(vii) AIDAR 752.239–XX Skills and Certification Requirements for Privacy and Security Staff. Based on the public comments received, USAID re-evaluated the need for this clause. After further assessment, USAID removed this clause from the final rule. In alignment with the ''National Cyber Workforce and Education Strategy'' issued by the Office of the National Cyber Director in July 2023, USAID will use a skills-based approach rather than relying solely on educational qualifications and industry-recognized certifications.

(viii) Clause prescriptions. Throughout the final rule, the prescriptions for each clause have been revised to ensure clarity in the instructions, as well as alignment with the AIDAR text where the topic is addressed.

(2) Summary of and Response to Public Comments

USAID reviewed the public comments in the development of the final rule. A discussion of the comments is provided as follows:

(i) Definition of ''Information Technology'' and Applicability of the Rule

Comment: Three commenters submitted comments regarding the definition of ''information technology'' (IT) and the applicability of the IT authorization requirements in two clauses in the proposed rule (''Limitation on Acquisition of Information Technology'' and ''Use of Information Technology Approval''). These commenters indicated the definition of IT was confusing and that Contracting Officers may interpret the definition differently, resulting in inconsistent application of the rule and delays in contract performance. These commenters questioned whether all technology acquisitions—such as computers, laptops, printers, other commercial products and services, and commercially available off-the-shelf (COTS) items procured by a contractor—are within the scope of these IT authorization requirements. These commenters suggested that this rule should only apply to USAID infrastructure only, such as computer systems that interface directly with USAID internal IT systems.

Response: This rule uses the definition of ''information technology'' issued by the Office of Management and Budget (OMB) in OMB Memorandum M–15–14 (''Management and Oversight of Federal Information Technology''), pursuant to the Federal Information Technology Acquisition Reform Act (FITARA). USAID continues to use this definition in the final rule in order to maintain consistency with OMB guidance and FITARA implementation principles.

To simplify the rule and promote consistency in its application, USAID has combined the prior two clauses (''Limitation on Acquisition of Information Technology'' and ''Use of Information Technology Approval'') from the proposed rule into a single AIDAR 752.239–70 (''Information Technology Authorization'') clause in the final rule.

OMB's FITARA definition of IT adopted by USAID for this rule applies to any services or equipment ''used by an agency,'' which—as further defined in the clause—includes ''if used by the agency directly or if used by a contractor under a contract with the agency . . .'' This clause applies to all such IT, including hardware (*e.g.,* computers, laptops, desktops, tablets, printers, etc.), infrastructure equipment (e.g, networking equipment, routers, switches, firewalls, etc.), software including software as a service (SaaS), cloud services, artificial intelligence (AI) and emerging information technologies, and other commercial items and COTS technology. The applicability of this clause and the definition of ''information technology'' do not solely depend on whether the items directly interface with USAID internal IT systems or connect to the Agency's infrastructure.

To further assist Contracting Officers in the consistent application of this rule, USAID provides direction and guidance to Agency staff, such as in Automated Directives System (ADS) Chapter 509 available at *https://www.usaid.gov/about-us/agency-policy/series-500/509,* that is consistent with OMB resources and FITARA.

(ii) IT Procurements for Counterparts

Comment: One commenter indicated support for the proposed rule and its importance in fulfilling the Agency's responsibility to govern the organization's technology infrastructure, but questioned whether it was within the FITARA statutory authority to apply

the rule's approval requirements to IT that do not become part of the Agency's technology infrastructure. As an example, the commenter cited procurements of IT for international development work with third parties (*e.g.,* procurements of IT for host country counterparts).

Response: USAID acknowledges the support for the rule and agrees this rule is an important measure to promote the Agency's oversight and stewardship of IT resources. USAID also agrees there are certain IT acquisitions by a contractor that may not be subject to the IT approval requirements established in the AIDAR 752.239–70 (''Information Technology Authorization'') clause. For example, IT procured by a contractor that is provided directly and immediately to a host country counterpart does not fall into this FITARA definition of IT because it does not meet this IT definition's qualifier of ''used by an agency.'' Examples of IT procured for a host country counterpart could include a health information management system purchased for a host country ministry of health or computers procured for a host country educational institution. However, if USAID or the contractor first ''uses'' the services or equipment before transferring it to a host country counterpart, the items are then considered to be ''used by an agency,'' as defined in the FITARA definition, and therefore subject to the IT approval requirements established in the AIDAR 752.239–70 (''Information Technology Authorization'') clause. For example, if a contractor uses a health survey tool for any period of time that is required as part of its performance of the contract, and then transfers the tool to the host country government, that tool is considered to be IT as defined in this FITARA definition. Because the scope of FITARA does apply beyond the Agency's technology infrastructure, no changes were made to the language in the rule.

(iii) IT ''Incidental to a Contract''

Comment: Two commenters raised concerns that the definition of ''information technology'' is not clear regarding equipment acquired by a contractor that is ''incidental to a contract.'' One of these commenters suggesting this ''incidental'' exception should be deleted to avoid confusion.

Response: OMB's FITARA definition of IT specifically notes that the term ''information technology'' does not include any equipment that is acquired by a contractor incidental to a contract that does not require use of the equipment. Examples of ''incidental'' IT could include a contractor's corporate human resources systems, financial management systems, or email management systems, as the contractor acquired them to assist in managing its own resources assigned to a U.S. Government contract. USAID believes this ''incidental'' exclusion is a critical element of the definition of IT in order to maintain consistency with OMB guidance and FITARA implementation principles. As such, no changes were made to this language in the rule.

(iv) USAID Resources and Timing for IT Authorizations

Comment: For the ''Limitation on Acquisition of Information Technology'' and ''Use of Information Technology Approval'' clauses in the proposed rule, two commenters expressed concerns regarding the availability of USAID resources to carry out the necessary approval processes in an efficient manner. The commenters indicated that this authorization process may lead to delays and significant hindrances to the implementation of development work by contractors, if approval is required to ''purchase of every piece of IT hardware.''

Response: USAID's Bureau For Management, Office of the Chief Information Officer (M/CIO) has sufficient resources to efficiently fulfill the IT approval requirements of this rule, now reflected in a single AIDAR 752.239–70 (''Information Technology Authorization'') clause in the final rule.

Comment: One commenter suggested that contractor's notification to the Contracting Officer's Representative (COR)—rather than an approval from USAID—would be more appropriate for IT procurements included in the offeror's proposal and/or prime contract.

Response: Under FITARA, the CIO is required to review and approve all IT acquisitions. No changes are made to these requirements.

(v) USAID's IT Regulatory and Policy Framework

Comment: Two commenters questioned if this rule replaces the procedures of USAID's ADS Chapter 548, or if any procedures from ADS Chapter 548 should be included in this new rule.

Response: USAID's policies previously detailed in ADS Chapter 548 are obsolete and no longer applicable. These policies were archived in May 2019.

Comment: Two commenters questioned whether the proposed rule would apply to IT procurements conducted by recipients under USAID grants and cooperative agreements.

Response: The content of this rule only applies to acquisition awards (*e.g.,* contracts); this rule does not apply to federal assistance awards (*e.g.,* grants and cooperative agreements). ADS Chapter 509, available at *https://www.usaid.gov/about-us/agency-policy/series-500/509,* contains further clarification on the distinction between acquisition and assistance for IT procurements.

(vi) Software License Clause

Comment: Two commenters provided comments on the AIDAR 752.239–XX ''Software License'' clause from the proposed rule, noting potential challenges and confusion in complying with this clause, particularly for commercial items and commercially available off-the-shelf (COTS) items.

Response: USAID concurs with the concerns noted in these comments and has removed this clause from the final rule.

(vii) USAID-Financed Project Websites Clause

Comment: One commenter provided several comments regarding the requirements and process for the proposed rule's ''USAID-Financed Third-Party Websites'' clause, highlighting that the clause did not distinguish appropriately between a contractor's website used to implement a project versus a Federal agency's website. The commenter also questioned the need for notification by the contractor to the Contracting Officer's Representative (COR) for USAID's Bureau for Legislative and Public Affairs (LPA) evaluation and approval, as well as the requirement for contractors to authorize USAID to conduct periodic vulnerability scans.

Response: USAID agrees with several of the commenter's concerns. The proposed rule did not adequately define the type of website subject to requirements of this clause. The final rule contains several revisions to this clause, most notably clarifying that it applies to a ''project website'' funded by USAID, which is now defined in the final rule. This definition of ''project website'' is distinct from a ''third-party website'' and also provides a differentiation from websites within the Federal Government domain (*i.e.,* ''*.gov*''), in accordance with guidance established in OMB Memorandum No. M–23–10. The clause in this final rule has been renamed to ''USAID-Financed Project websites'' to reflect this change in terminology. The final rule also removes the COR/LPA notification and approval requirements. As the contractor is solely responsible for all

security safeguards for the website, the final rule removes the requirement for contractors to authorize USAID to conduct periodic vulnerability scans.

Comment: One commenter questioned whether this rule affects existing project websites funded by USAID.

Response: This AIDAR 752.239–72 (''USAID-Financed Project websites'') clause applies to any project website developed, launched or maintained under a prime contract that contains this clause.

(viii) Skills and Certification Requirements Clause

Comment: For the ''Skills and Certification Requirements for Privacy and Security Staff'' clause, one commenter suggested that the Certified Information Systems Security Professional (CISSP) certification process is unclear and requested clarification regarding the definition of ''significant information security responsibilities.''

Response: USAID has removed this clause from the final rule to maintain consistency with the FAR and the National Cyber Workforce and Education Strategy issued by the Office of the National Cyber Director, which support using a skills-based approach rather than relying solely on educational qualifications and industry-recognized certifications.

(ix) Access to USAID Facilities and USAID's Information Systems Clause

Comment: One commenter suggested that the proposed personal identity verification (PIV) clause unnecessarily restricts physical and logical access only to U.S. citizens and resident aliens, prohibiting access to cooperating country nationals (CCNs) and third country nationals (TCNs).

Response: PIV cards may only be issued to U.S. citizens and resident aliens; non-U.S. citizens are not authorized to receive PIV cards. Instead, USAID issues PIV-Alternative (PIV–A) cards to eligible CCNs and TCNs who require physical or logical access, as described further in ADS Chapter 542, available at *https://www.usaid.gov/about-us/agency-policy/series-500/542.* USAID revised the clause to clarify that various types of credentials are available to different types of users who require physical access to USAID facilities and/or logical access to USAID information systems.

Comment: One commenter expressed a concern that non-U.S. citizens may not possess a U.S. Federal or State Government-issued picture ID for purposes of the identity source documentation required for obtaining credentials. One commenter noted the rule does not specify how to identify the appropriate Enrollment Office to work with and physically present the identity source documents.

Response: In the credentialing process, two forms of identity source documents must be presented to the Enrollment Office personnel. The Federal or State Government-issued picture ID is required to obtain a PIV card, which is available to U.S. citizens only. For non-U.S. citizens, the contractor may contact the COR to request a list of acceptable forms of documentation, as this information varies by location. USAID updated the clause to clarify this information.

Comment: One commenter requested additional information regarding the requirement for documentation of security background investigations.

Response: Homeland Security Presidential Directive–12 (HSPD–12) requires that agencies complete background investigations on all employees and contractors when issuing credentials. ADS Chapter 542, available at *https://www.usaid.gov/about-us/agency-policy/series-500/542,* contains additional details regarding USAID's procedures related to background investigations in the credentialing process. USAID revised the clause to clarify that documentation of a security background investigation must be submitted as part of the credentialing process, when applicable.

Comment: One commenter suggested that USAID harmonize access requirements for those contractors with CCN and TCN staff versus the requirements for USAID's CCN and TCN personal services contractors.

Response: The same physical and logical access requirements apply to both contractor employees and individuals issued personal services contracts. As personal services contracts with individuals (issued under Appendices D and J of the AIDAR) are not within the scope of this rule, no changes were made to the rule.

(x) Outside the Scope of This Rule

Comment: One commenter noted that the rule does not specify what the COR will do with the list of individuals reported by the contractor to the COR each month under paragraph (d) of this AIDAR 752.204–72 clause.

Response: The COR's responsibilities regarding the staffing list will be addressed in internal Agency policy. As such, no changes were made to the rule.

Comment: One commenter questioned if the proposed rule impacted the use of USAID systems such as Development Experience Clearinghouse (DEC), Development Data Library (DDL), and TrainNet.

Response: This rule does not affect the use of DEC, DDL, or TrainNet. This comment is outside the scope of this rule.

Comment: One commenter noted that the language of the proposed rule seemed clear, but suggested the development of a supplemental ''decision guide'' to facilitate the interpretation of the rule's IT approval requirements.

Response: The commenter's suggestion is outside the scope of the rule.

C. Regulatory Considerations and Determinations

(1) Executive Orders 12866, 13563, and 14094

This final rule was drafted in accordance with Executive Order (E.O.) 12866, as amended by E.O. 13563 and E.O. 14094. OMB has determined that this rule is not a ''significant regulatory action,'' as defined in section 3(f) of E.O. 12866, as amended, and is therefore not subject to review by OMB.

(2) Expected Cost Impact on the Public

There are no costs to the public associated with this rulemaking.

(3) Regulatory Flexibility Act

The rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, a Regulatory Flexibility Analysis has not been performed.

(4) Paperwork Reduction Act

This rule contains information collection requirements that were detailed in the proposed rule and have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0412–0603, entitled ''Information Collection under AIDAR Clause 752.204–72, Access to USAID Facilities and USAID's Information Systems.'' No comments were received on the information collection outlined in the proposed rule.

List of Subjects in 48 CFR Parts 704, 739, and 752

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR parts 704, 739, and 752 as set forth below:

PART 704—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 704 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

§ 704.404 [Amended]

■ 2. Amend § 704.404 by removing and reserving paragraph (b).

■ 3. Add Subpart 704.13 to read as follows:

Subpart 704.13—Personal Identity Verification

Sec.
704.1303 Contract clause.

§ 704.1303 Contract clause.

When contract performance requires the contractor—including its employees, volunteers, or subcontractor employees at any tier—to have routine physical access to USAID-controlled facilities or logical access to USAID's information systems, the contracting officer must insert the clause found at FAR 52.204–9 and AIDAR 752.204–72 (''Access to USAID Facilities and USAID's Information Systems'') in the solicitation and contract.

■ 4. Add part 739 to read as follows:

PART 739—ACQUISITION OF INFORMATION TECHNOLOGY

Sec.
739.000 Scope of part.
739.001 [Reserved]
739.002 Definitions.

Subpart 739.1—General.

739.106 Contract clauses.

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR, 1979 Comp., p. 435.

§ 739.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring—

(a) Information technology, as defined in this part, consistent with the Federal Information Technology Acquisition Reform Act (FITARA).

(b) Information and communication technology (ICT), as defined in FAR 2.101.

§ 739.001 [Reserved]

§ 739.002 Definitions.

As used in this part—

Information Technology (IT) means

(1) Any services or equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency; where

(2) Such services or equipment are ''used by an agency'' if used by the agency directly or if used by a contractor under a contract with the agency that requires either use of the services or equipment or requires use of the services or equipment to a significant extent in the performance of a service or the furnishing of a product.

(3) The term ''information technology'' includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including provisioned services such as cloud computing and support services that support any point of the lifecycle of the equipment or service), and related resources.

(4) The term ''information technology'' does not include any equipment that is acquired by a contractor incidental to a contract that does not require use of the equipment.

Subpart 739.1—General.

§ 739.106 Contract clauses.

(a) [Reserved]

(b) Contracting officers must insert the clause at 752.239–70, Information Technology Authorization, in all solicitations and contracts.

(c) Contracting officers must insert the clause at 752.239–71, Information and Communication Technology Accessibility, in solicitations and contracts that include acquisition of information and communication technology (ICT) supplies and/or services for use by Federal employees or members of the public.

(d) Contracting officers must insert the clause at 752.239–72, USAID-Financed Project websites, in solicitations and contracts fully or partially funded with program funds.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. The authority citation for part 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

■ 6. Revise § 752.204–72 to read as follows:

§ 752.204–72 Access to USAID Facilities and USAID's Information Systems.

As prescribed in AIDAR 704.1303, insert the following clause in Section I of solicitations and contracts:

Access to USAID Facilities and USAID's Information Systems (May 2024)

(a) The Contractor must ensure that individuals engaged in the performance of this award as employees or volunteers of the Contractor, or as subcontractors or subcontractor employees at any tier, comply with all applicable personal identity verification (PIV) and Homeland Security Presidential Directive–12 (HSPD–12) procedures, including those summarized below, and any subsequent USAID or Government-wide procedures and policies related to PIV or HSPD–12.

(b) An individual engaged in the performance of this award may obtain access to USAID facilities or logical access to USAID's information systems only when and to the extent necessary to carry out this award. USAID issues various types of credentials to users who require physical access to Agency facilities and/or logical access to Agency information systems, in accordance with USAID's Automated Directives System (ADS) 542, available at *https://www.usaid.gov/about-us/agency-policy/series-500/542.*

(c) (1) No later than five (5) business days after award, unless the Contracting Officer authorizes a longer time period, the Contractor must provide to the Contracting Officer's Representative a complete list of individuals that require access to USAID facilities or information systems under this contract.

(2) Before an individual may obtain a USAID credential (new or replacement) authorizing the individual routine access to USAID facilities, or logical access to USAID's information systems, the individual must physically present two forms of identity source documents in original form to the Enrollment Office personnel when undergoing processing. To obtain a PIV card, one identity source document must be a valid Federal or State Government-issued picture ID from the I–9 list available at *https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents.* For other types of credentials the Contractor can obtain the list of acceptable forms from the Contracting Officer's Representative. Submission of these documents, as well as documentation of any applicable security background investigation, is mandatory in order for the individual to receive a credential granting facilities and/or logical access.

(d) (1) No later than the 5th day of each month, the Contractor must provide the Contracting Officer's Representative with the following:

(i) a list of individuals with access who were separated in the past sixty (60) calendar days, and

(ii) a list of individuals hired in the past sixty (60) calendar days who require access under this contract.

(2) This information must be submitted even if no separations or hiring occurred during the past sixty (60) calendar days.

(3) Failure to comply with the requirements in paragraph (d)(1) may result in the suspension of all facilities and/or logical access associated with this contract.

(e) The Contractor must ensure that individuals do not share logical access to USAID information systems and sensitive information.

(f) USAID may suspend or terminate the access to any systems and/or facilities in the event of any violation, abuse, or misuse. The suspension or termination may last until the situation has been corrected or no longer exists.

(g) The Contractor must notify the Contracting Officer's Representative and the USAID Service Desk (*CIO-HELPDESK@usaid.gov* or 202–712–1234) at least five (5) business days prior to the removal of any individuals with credentials from the contract. For unplanned terminations, the Contractor must immediately notify the Contracting Officer's Representative and the USAID Service Desk. Unless otherwise instructed by the Contracting Officer, the Contractor must return all credentials and remote authentication tokens to the Contracting Officer's Representative prior to departure of the individual or upon completion or termination of the contract, whichever occurs first.

(h) The Contractor must insert this clause, including this paragraph (h), in any subcontracts that require the subcontractor or a subcontractor employee to have routine physical access to USAID facilities or logical access to USAID's information systems. The Contractor is responsible for providing the Contracting Officer's Representative with the information required under paragraphs (c)(1) and (d)(1) of this clause for any applicable subcontractor or subcontractor employee.

(End of clause)

■ 7. Add section 752.239–70 to read as follows:

752.239–70 Information Technology Authorization.

As prescribed in AIDAR 739.106(b), insert the following clause in Section I of solicitations and contracts:

Information Technology Authorization (May 2024)

(d) *Definitions.* As used in this contract:

Information Technology means

(1) Any services or equipment, or interconnected system(s) or subsystem(s) of equipment, that are used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency; where

(2) such services or equipment are ''used by an agency'' if used by the agency directly or if used by a contractor under a contract with the agency that requires either use of the services or equipment or requires use of the services or equipment to a significant extent in the performance of a service or the furnishing of a product.

(3) The term ''information technology'' includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including provisioned services such as cloud computing and support services that support any point of the lifecycle of the equipment or service), and related resources.

(4) The term ''information technology'' does not include any equipment that is acquired by a contractor incidental to a contract that does not require use of the equipment.

(b) *Approval Requirements.* The Federal Information Technology Acquisition Reform Act (FITARA) requires Agency Chief Information Officer (CIO) review and approval of acquisitions of information technology and information technology services. Any information technology specified in the Schedule of this contract has already been approved by the CIO. The Contractor must not acquire any additional information technology without the prior written approval of the Contracting Officer as specified in this clause.

(c) *Request for Approval Procedure.*

(1) If the Contractor determines that any information technology not specified in the Schedule will be necessary in the performance of the contract, the Contractor must request prior written approval from the Contracting Officer, including the Contracting Officer's Representative and the Office of the CIO (*ITAuthorization@usaid.gov*) on the request.

(2) In the request, the Contractor must provide an itemized description of the information technology to be procured. For equipment (including hardware and software), the Contractor must include any applicable brand names, model/version numbers, quantities, and estimated unit and total cost information. For services, the Contractor must provide a detailed description of the services, name(s) of the service provider(s), and estimated cost information.

(3) The Contracting Officer will approve or deny in writing the Contractor's request. If granted, the Contracting Officer will specify in writing the information technology approved by the CIO for purchase.

(d) *Subcontracts.* The Contractor must insert the substance of this clause, including this paragraph (d), in all subcontracts. The Contractor is responsible for requesting any approval required under paragraphs (b) and (c) of this clause for any applicable subcontractor information technology acquisition.

(End of clause)

■ 8. Add § 752.239–71 to read as follows:

§ 752.239–71 Information and Communication Technology Accessibility.

As prescribed in AIDAR 739.106(c), insert the following clause in Section I of solicitations and contracts:

Information and Communication Technology Accessibility (May 2024)

(a) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d) requires (1) Federal agencies to offer access to information and communication technology (ICT) to individuals with disabilities who are Federal employees or members of the public seeking information or services, and (2) that this access be comparable to that which is offered to Federal employees or members of the public who are not individuals with disabilities. Standards for complying with this law are prescribed by the Architectural and Transportation Barriers Compliance Board (''Access Board'') in 36 CFR part 1194, are viewable at *https://www.access-board.gov/ict/.*

(b) Except as indicated elsewhere in the contract, all ICT supplies, services, information, documentation, and deliverables developed, acquired, maintained, or delivered under this contract must meet the applicable Section 508 accessibility standards at 36 CFR part 1194, as amended by the Access Board.

(c) The Section 508 accessibility standards applicable to this contract are identified in Section C or other applicable sections of this contract.

(d) The Contractor must, upon written request from the Contracting Officer, or if so designated, the Contracting Officer's Representative, provide the information necessary to assist the Government in determining that the ICT supplies or services conform to Section 508 accessibility standards.

(e) If it is determined by the Government that any ICT supplies or services delivered by the Contractor do not conform to the required accessibility standards, remediation of the supplies or services to the level of conformance specified in the contract will be the responsibility of the Contractor at its own expense.

(f) The Contractor must insert this clause in all subcontracts that involve the acquisition of ICT supplies and/or services. The Contractor is responsible for the submission of any information as required under paragraph (e) of this clause.

(End of clause)

■ 9. Add § 752.239–72 to read as follows:

§ 752.239–72 USAID-Financed Project Websites.

As prescribed in AIDAR 739.106(d), insert the following clause in Section I of solicitations and contracts:

USAID-Financed Project Websites (May 2024)

(a) *Definitions.* As used in this contract:

Project Website means a website that is:

(1) funded under this contract;

(2) hosted outside of a Federal Government domain (*i.e.,* ''*.gov*'');

(3) operated exclusively by the Contractor, who is responsible for all website content, operations and management, information security, and disposition of the website;

(4) not operated by or on behalf of USAID; and

(5) does not provide official USAID communications, information, or services.

(b) *Requirements.* The Contractor must adhere to the following requirements when developing, launching, or maintaining a Project website:

(1) *Domain name.* The domain name of the website must not contain the term ''USAID''. The domain name must be registered in the Contractor's business name with the relevant domain registrar on the relevant domain name registry.

(2) *Information to be collected.* In the website, the Contractor may collect only the amount of information necessary to complete the specific business need. The Contractor must not collect or store privacy information that is unnecessary for the website to operate, or is prohibited by statute, regulation, or Executive Order.

(3) *Disclaimer.* The website must be marked on the index page of the site and every major entry point to the website with a disclaimer that states: ''The information provided on this website is not official U.S. Government information and does not represent the views or positions of the U.S. Agency for International Development or the U.S. Government.''

(4) *Accessibility.* To comply with the requirements of the Section 508 of the Rehabilitation Act, as amended (29 U.S.C. 794d), the Contractor must ensure the website meets all applicable accessibility standards (''Web-based intranet and internet information and applications'') at 36 CFR part 1194, Appendix D.

(5) *Information security:* The Contractor is solely responsible for the information security of the website. This includes incident response activities as well as all security safeguards, including adequate protection from unauthorized access, alteration, disclosure, or misuse of information collected, processed, stored, transmitted, or published on the website. The Contractor must minimize and mitigate security risks, promote the integrity and availability of website information, and use state-of-the-art: system/software management; engineering and development; event logging; and secure-coding practices that are equal to or better than USAID standards and information security best practices. Rigorous security safeguards, including but not limited to, virus protection; network intrusion detection and prevention programs; and vulnerability management systems must be implemented and critical security issues must be resolved within 30 calendar days.

(c) *Disposition.* At least 120 days prior to the contract end date, unless otherwise approved by the Contracting Officer, the Contractor must submit for the Contracting Officer's approval a disposition plan that addresses how any Project website funded under this contract will be transitioned to another entity or decommissioned and archived. If the website will be transitioned to another entity, the disposition plan must provide details on the Contractor's proposed approach for the transfer of associated electronic records, technical documentation regarding the website's development and maintenance, and event logs. Prior to the end of the contract, the Contractor must comply with the disposition plan approved by the Contracting Officer.

(d) *Subcontracts.* The Contractor must insert this clause in all subcontracts that involve the development, launch, or maintenance of a Project website. The Contractor is responsible for the submission of any information as required under paragraphs (b) and (c) of this clause.

(End of clause)

Jami J. Rodgers,

Chief Acquisition Officer.

[FR Doc. 2024–05748 Filed 3–19–24; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 240315–0081]

RIN 0648–BM55

Fisheries of the Northeastern United States; Mid-Atlantic Blueline Tilefish and Golden Tilefish Fisheries; 2024 Specifications

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

ACTION: Final rule.

SUMMARY: This final rule implements status quo harvest limits for the 2024 golden tilefish and blueline tilefish fisheries north of the North Carolina/Virginia border, shifts the recreational season for blueline tilefish to May 15 through November 14, and modifies regulations to reflect the January 1 start date of the golden tilefish fishing year. The action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan.

DATES: This rule is effective April 19, 2024.

ADDRESSES: Copies of the supporting documents for this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Douglas Potts, *douglas.potts@noaa.gov,* 978–281–9241.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (the Council) manages the golden tilefish and blueline tilefish fisheries north of the North Carolina/Virginia border under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. The Tilefish FMP requires the Council to recommend the acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures for the commercial and recreational sectors of the fisheries. Detailed information about the development of these specifications was provided in the specifications proposed rule (88 FR 77944, November 14, 2023). That information is not repeated here.

Specifications

The 2024 specifications for blueline tilefish and golden tilefish are detailed in tables 1 and 2. The regulations at 50 CFR 648.293(b)(2) specify that commercial landings of blueline tilefish in excess of the commercial ACL will be deducted from the commercial ACL the following year. NMFS closed the 2023 commercial blueline tilefish fishery on September 5, 2023 (88 FR 60597), because 100 percent of the commercial TAL was projected to have been caught. Total commercial blueline tilefish landings in 2023 were 31,339 pounds (lb) (14,215 kilograms (kg)), which exceeded the 2023 commercial ACL by 4,470 lb (2,028 kg). Therefore, that amount is deducted from the 2024 commercial ACL.

TABLE 1—BLUELINE TILEFISH 2024 SPECIFICATIONS

ABC—North of NC/VA line	100,520 lb (45.6 mt).
Recreational ACL/ACT	73,380 lb (33.3 mt).

TABLE 1—BLUELINE TILEFISH 2024 SPECIFICATIONS—Continued

Commercial ACL/ACT	27,140 lb (12.3 mt).
2023 Overage Adjustment	−4,470 lb (−2.0 mt).
Adjusted Commercial ACL	22,670 lb (10.3 mt).
Recreational TAL	71,912 lb (32.6 mt).
Commercial TAL	22,399 lb (10.2 mt).

TABLE 2—GOLDEN TILEFISH 2024 SPECIFICATIONS

ABC	1,964,319 lb (891 mt).
ACL	1,964,319 lb (891 mt).
IFQ* fishery ACT	1,763,478 lb (800 mt).
Incidental fishery ACT	92,815 lb (42 mt).
IFQ fishery TAL = IFQ ACT (no discards permitted in fishery)	1,763,478 lb (800 mt).
Incidental fishery TAL = Incidental fishery ACT − discards	75,410 lb (42 mt).

*IFQ = Individual Fishing Quota.

The 2024 fishing year for golden tilefish and blueline tilefish began on January 1, 2024. The regulations include rollover provisions for both species that allow the fisheries to operate under status quo specifications until this action is effective.

Blueline Tilefish Recreational Season

This action shifts the recreational fishing season for blueline tilefish by two weeks. The recreational fishing season for blueline tilefish will now be May 15 through November 14. The blueline tilefish recreational possession limits are not changed and depend on the type of fishing vessel used. Anglers fishing from a private vessel that has been issued a valid Federal Tilefish Private Recreational Permit are allowed to keep up to three blueline tilefish per person per trip. Anglers fishing from a for-hire vessel that has been issued a valid Federal Tilefish Party/Charter Permit, but does not have a current U.S. Coast Guard safety inspection sticker, can retain up to five blueline tilefish per person per trip. Finally, anglers on for-hire vessels that have both a valid Federal Tilefish Party/Charter Permit and a current U.S. Coast Guard safety inspection sticker can retain up to seven blueline tilefish per person per trip.

Corrections

The final rule to implement Framework Adjustment 7 to the Tilefish FMP (87 FR 67830, November 10, 2022) moved the start of the fishing year for golden tilefish from November 1 to January 1. However, the rule did not change the following ancillary dates in the regulations that derive from the start of the fishing year, including: (1) the date by which an IFQ permit application must be submitted to ensure the IFQ permit is issued before the start of the fishing year; (2) the date when an IFQ permit ceases to be valid (*i.e.,* the last day of the fishing year); and (3) the cut-off date for submitting an IFQ transfer application for the current fishing year. This rule adjusts those dates in the regulations based on January 1 being the start of the fishing year.

Comments

On November 14, 2023, we published a proposed rule (88 FR 77944) requesting comment on these measures. The comment period was open through December 14, 2023. We received three comments. Two comments were from members of the for-hire fishing industry, and one comment was submitted anonymously.

Comment 1: Two comments were submitted by head boat operators in New York and New Jersey. Both commenters disagree with the rationale for changing the blueline tilefish recreational season. In their experience, the bycatch of black sea bass on fishing trips targeting blueline tilefish that prompted the Council to recommend the change only occurs farther south, primarily in the waters off Virginia. They also mention that for-hire fishing trips for blueline tilefish in the first two weeks of May are important to their businesses because there are few other species available during that time.

Response: The type and extent of bycatch and incidental catch often varies based on numerous factors including location and fishing method. The Council used an analysis of the coast-wide bycatch of black sea bass in blueline tilefish recreational trips to assess the need for, and likely effect of, changing the recreational season. While this analysis may not fully reflect the conditions observed at a given location, it can be useful in understanding the likely impact of a management change overall. Based on that analysis, adjusting the recreational season for blueline tilefish is likely to reduce the number of black sea bass discarded by anglers who are fishing for blueline tilefish. NMFS and the Council will continue to monitor the blueline tilefish recreational fishery and may make further adjust measures in the future, including the recreational season, if warranted.

Comment 2: One commenter asserted that specifications need to be revised in light of the development of offshore wind projects. However, the commenter did not specify how they believe offshore wind development might affect blueline tilefish and golden tilefish populations or what changes to the specifications might be necessary.

Response: NMFS is closely involved in assessing the potential impact of offshore wind development on a broad range of marine resources. No specific impacts on blueline tilefish and golden tilefish populations from the construction or operation of offshore wind turbines have been identified and, therefore, no changes to current specifications are necessary. If an issue does arise, NMFS will work with the Council to make any needed changes to management measures.

Changes From Proposed Rule

The commercial blueline tilefish ACL and TAL have each been reduced by 4,470 lb (2,028 kg) from what appeared in the proposed rule. This change reflects the small overage that occurred in 2023 and the requirement of § 648.293(b)(1) that such overages be deducted from the commercial ACL in the next fishing year. The calculation of this overage was not available at the time the proposed rule was published.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Tilefish FMP, other provisions of the

Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 15, 2024.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, NMFS amends 50 CFR part 648 as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.294, revise paragraphs (b)(1)(ii), (b)(2) and (3), and (e)(4) introductory text to read as follows:

§ 648.294 Golden tilefish individual fishing quota (IFQ) program.

* * * * *

(b) * * *

(1) * * *

(ii) *Renewal applications.* Applications to renew an IFQ allocation permit must be received by November 15 to be processed in time for the January 1 start of the next fishing year. Renewal applications received after this date may not be approved, and a new permit may not be issued before the start of the next fishing year. An IFQ allocation permit holder must renew his/her IFQ allocation permit on an annual basis by submitting an application for such permit prior to the end of the fishing year for which the permit is required. Failure to renew an IFQ allocation permit in any fishing year will result in any IFQ quota share held by that IFQ allocation permit holder to be considered abandoned and relinquished.

(2) *Issuance.* Except as provided in subpart D of 15 CFR part 904, and provided an application for such permit is submitted by November 15, as specified in paragraph (b)(1)(ii) of this section, NMFS shall issue annual IFQ allocation permits on or before December 31 to those who hold IFQ quota share as of November 1 of the current fishing year. From November 1 through December 31, permanent transfer of IFQ quota share is not permitted, as described in paragraph (e)(4) of this section.

(3) *Duration.* An annual IFQ allocation permit is valid until December 31 of each fishing year unless it is suspended, modified, or revoked pursuant to 15 CFR part 904; revised due to a transfer of all or part of the IFQ quota share or annual IFQ allocation under paragraph (e) of this section; or suspended for non-payment of the cost recovery fee as described in paragraph (h)(4) of this section.

* * * * *

(e) * * *

(4) *Application for an IFQ allocation transfer.* Any IFQ allocation permit holder applying for either permanent transfer of IFQ quota share or temporary transfer of annual IFQ allocation must submit a completed IFQ Allocation Transfer Form, available from NMFS. The IFQ Allocation Transfer Form must be submitted to the NMFS Greater Atlantic Regional Fisheries Office at least 30 days before the date on which the applicant desires to have the IFQ allocation transfer effective. The Regional Administrator shall notify the applicants of any deficiency in the application pursuant to this section. Applications for permanent IFQ quota share allocation transfers must be received by November 1 to be processed and effective before annual IFQ allocations are issued for the next fishing year. Applications for temporary IFQ allocation transfers must be received by December 10 to be processed for the current fishing year.

* * * * *

■ 3. In § 648.296, revise paragraph (b) introductory text to read as follows:

§ 648.296 Tilefish recreational possession limits and gear restrictions.

* * * * *

(b) *Blueline tilefish.* The recreational blueline tilefish fishery is open May 15 through November 14, and closed November 15 through May 14.

* * * * *

[FR Doc. 2024–05915 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 55
Wednesday, March 20, 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 33

[Docket No. FAA–2023–0587; Notice No. 33–23–01–SC]

Special Conditions: Safran Electric & Power S.A. Model ENGINe US100A1 Electric Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Safran Electric & Power S.A. (Safran) Model ENGINe™ US100A1 electric engines that operate using electrical technology installed on the aircraft for use as an aircraft engine. These engines have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards applicable to aircraft engines. The design feature is the use of an electric motor, motor controller, and high-voltage systems as the primary source of propulsion for an aircraft. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Send comments on or before April 19, 2024.

ADDRESSES: Send comments identified by Docket No. FAA–2023–0587 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Bouyer, Engine and Propulsion Standards Section, AIR–625, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service, 1200 District Avenue, Burlington, Massachusetts 01803; telephone (781) 238–7755; *mark.bouyer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the proposed special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these proposed special conditions based on the comments received.

Privacy

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information

Confidential Business Information 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 notice of proposed special conditions 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 notice of proposed special conditions, 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 the indicated comments will not be placed in the public docket of these proposed special conditions. Send submissions containing CBI to the individual listed in the For Further Information Contact section below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed special conditions.

Background

On November 27, 2020, Safran applied for FAA validation for a type certificate for their Model ENGINe™ US100A1 electric engine. The Safran Model ENGINe™ US100A1 electric engine will be used in a single-engine airplane that will be certified separately from the engine.

The Safran Model ENGINe™ US100A1 electric engine is comprised of a direct-drive, radial-flux, permanent magnet motor, divided in two sections, each section having a three-phase motor, and one electric power inverter controlling each three-phase motor.

Type Certification Basis

Under the provisions of 14 CFR 21.17(a)(1), generally, Safran must show that Model ENGINe™ US100A1 engines meet the applicable provisions of 14 CFR part 33 in effect on the date of application for a type certificate.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* part 33) do not contain adequate or appropriate safety standards for the Safran Model ENGINe™ US100A1 engines because of a novel or unusual

design feature, special conditions may be prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other engine model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other engine model under § 21.101.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

In addition to the applicable airworthiness regulations and special conditions, the Safran Model ENGINe™ US100A1 engines must comply with the noise certification requirements of 14 CFR part 36.

Novel or Unusual Design Features

The Safran Model ENGINe™ US100A1 engines will incorporate the following novel or unusual design features:

An electric motor, motor controller, and high-voltage electrical systems that are used as the primary source of propulsion for an aircraft.

Discussion

Electric propulsion technology is substantially different from the technology used in previously certificated turbine and reciprocating engines. Therefore, these engines introduce new safety concerns that need to be addressed in the certification basis.

A growing interest within the aviation industry involves electric propulsion technology. As a result, international agencies and industry stakeholders formed Committee F39 under ASTM International, formerly known as American Society for Testing and Materials, to identify the appropriate technical criteria for aircraft engines using electrical technology that has not been previously type certificated for aircraft propulsion systems. ASTM International is an international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services. ASTM International published ASTM F3338–18, ''Standard Specification for Design of Electric Propulsion Units for General Aviation Aircraft,'' in December 2018.[1] The FAA used the technical criteria from ASTM F3338–18, the published Special Conditions No. 33–022–SC for the magniX USA, Inc. Model magni350 and magni650 engines, and information from the Safran Model ENGINe™ US100A1 engine design to develop special conditions that establish an equivalent level of safety to that required by part 33.

Part 33 Was Developed for Gas-Powered Turbine and Reciprocating Engines

Aircraft engines make use of an energy source to drive mechanical systems that provide propulsion for the aircraft. Energy can be generated from various sources such as petroleum and natural gas. The turbine and reciprocating aircraft engines certificated under part 33 use aviation fuel for an energy source. The reciprocating and turbine engine technology that was anticipated in the development of part 33 converts oxygen and fuel to energy using an internal combustion system, which generates heat and mass flow of combustion products for turning shafts that are attached to propulsion devices such as propellers and ducted fans. Part 33 regulations set forth standards for these engines and mitigate potential hazards resulting from failures and malfunctions. The nature, progression, and severity of engine failures are tied closely to the technology that is used in the design and manufacture of aircraft engines. These technologies involve chemical, thermal, and mechanical systems. Therefore, the existing engine regulations in part 33 address certain chemical, thermal, and mechanically induced failures that are specific to air and fuel combustion systems operating with cyclically loaded, high-speed, high-temperature, and highly stressed components.

Safran's Proposed Electric Engines Are Novel or Unusual

The existing part 33 airworthiness standards for aircraft engines date back to 1965. As discussed in the previous paragraphs, these airworthiness standards are based on fuel-burning reciprocating and turbine engine technology. The Safran Model ENGINe™ US100A1 engines are neither turbine nor reciprocating engines. These engines have a novel or unusual design feature, which is the use of electrical sources of energy instead of fuel to drive the mechanical systems that provide propulsion for aircraft. The Safran aircraft engine is subjected to operating conditions produced by chemical, thermal, and mechanical components working together, but the operating conditions are unlike those observed in internal combustion engine systems. Therefore, part 33 does not contain adequate or appropriate safety standards for the Safran Model ENGINe™ US100A1 engine's novel or unusual design feature.

Safran's proposed aircraft engines will operate using electrical power instead of air and fuel combustion to propel the aircraft. These electric engines will be designed, manufactured, and controlled differently than turbine or reciprocating aircraft engines. They will be built with an electric motor, motor controller, and high-voltage electrical systems that draw energy from electrical storage or electrical energy generating systems. The electric motor is a device that converts electrical energy into mechanical energy by electric current flowing through windings (wire coils) in the motor, producing a magnetic field that interacts with permanent magnets mounted on the engine's main rotor. The controller is a system that consists of two main functional elements: the motor controller and an electric power inverter to drive the motor.[2] The high-voltage electrical system is a combination of wires and connectors that integrate the motor and controller.

In addition, the technology comprising these high-voltage and high-current electronic components introduces potential hazards that do not exist in turbine and reciprocating aircraft engines. For example, high-voltage transmission lines, electromagnetic shields, magnetic materials, and high-speed electrical switches are necessary to use the physical properties of an electric engine for propelling an aircraft. However, this technology also exposes the aircraft to potential failures that are not common to gas-powered turbine and reciprocating engines, technological differences which could adversely affect safety if not addressed through these proposed special conditions.

Safran's Proposed Electric Engines Require a Mix of Part 33 Standards and Special Conditions

Although the electric aircraft engines Safran proposes use novel or unusual design features that the FAA did not envisage during the development of its existing part 33 airworthiness standards, these engines share some basic similarities, in configuration and function, to engines that use the combustion of air and fuel, and therefore require similar provisions to prevent common hazards (*e.g.,* fire, uncontained high energy debris, and

[1] *https://www.astm.org/Standards/F3338.htm.*

[2] Sometimes the entire system is referred to as an inverter. Throughout this document, it is referred to as the controller.

loss of thrust control). However, the primary failure concerns and the probability of exposure to these common hazards are different for the proposed Safran Model ENGINe™ US100A1 electric engine. This creates a need to develop special conditions to ensure the engine's safety and reliability.

The requirements in part 33 ensure that the design and construction of aircraft engines, including the engine control systems, are proper for the type of aircraft engines considered for certification. However, part 33 does not fully address aircraft engines like the Safran Model ENGINe™ US100A1, which operates using electrical technology as the primary means of propelling the aircraft. This necessitates the development of special conditions that provide adequate airworthiness standards for these aircraft engines.

The requirements in part 33, subpart B, are applicable to reciprocating and turbine aircraft engines. Subparts C and D are applicable to reciprocating aircraft engines. Subparts E through G are applicable to turbine aircraft engines. As such, subparts B through G do not adequately address the use of aircraft engines that operate using electrical technology. Special conditions are needed to ensure a level of safety for electric engines that is commensurate with these subparts, as those regulatory requirements do not contain adequate or appropriate safety standards for electric aircraft engines that are used to propel aircraft.

FAA Proposed Special Conditions for the Safran Engine Design

Applicability: Proposed special condition no. 1 would require Safran to comply with part 33, except for those airworthiness standards specifically and explicitly applicable only to reciprocating and turbine aircraft engines.

Engine Ratings and Operating Limitations: Proposed special condition no. 2 would, in addition to compliance with § 33.7(a), require Safran to establish engine operating limits related to the power, torque, speed, and duty cycles specific to Safran Model ENGINe™ US100A1 engines. The duty or duty cycle is a statement of the load(s) to which the engine is subjected, including, if applicable, starting, no-load and rest, and de-energized periods, including their durations or cycles and sequence in time. This special condition also requires Safran to declare cooling fluid grade or specification, power supply requirements, and to establish any additional ratings that are necessary to define the Safran Model ENGINe™ US100A1 engine capabilities required for safe operation of the engine.

Materials: Proposed special condition no. 3 would require Safran to comply with § 33.15, which sets requirements for the suitability and durability of materials used in the engine, and which would otherwise be applicable only to reciprocating and turbine aircraft engines.

Fire Protection: Proposed special condition no. 4 would require Safran to comply with § 33.17, which sets requirements to protect the engine and certain parts and components of the airplane against fire, and which would otherwise be applicable only to reciprocating and turbine aircraft engines. Additionally, this proposed special condition would require Safran to ensure that the high-voltage electrical wiring interconnect systems that connect the controller to the motor are protected against arc faults. An arc fault is a high-power discharge of electricity between two or more conductors. This discharge generates heat, which can break down the wire's insulation and trigger an electrical fire. Arc faults can range in power from a few amps up to thousands of amps and are highly variable in strength and duration.

Durability: Proposed special condition no. 5 would require the design and construction of Safran Model ENGINe™ US100A1 engines to minimize the development of an unsafe condition between maintenance intervals, overhaul periods, and mandatory actions described in the Instructions for Continued Airworthiness (ICA).

Engine Cooling: Proposed special condition no. 6 would require Safran to comply with § 33.21, which requires the engine design and construction to provide necessary cooling, and which would otherwise be applicable only to reciprocating and turbine aircraft engines. Additionally, this proposed special condition would require Safran to document the cooling system monitoring features and usage in the engine installation manual (see § 33.5) if cooling is required to satisfy the safety analysis described in proposed special condition no. 17. Loss of cooling to an aircraft engine that operates using electrical technology can result in rapid overheating and abrupt engine failure, with critical consequences to safety.

Engine Mounting Attachments and Structure: Proposed special condition no. 7 would require Safran and the proposed design to comply with § 33.23, which requires the applicant to define, and the proposed design to withstand, certain load limits for the engine mounting attachments and related engine structure. These requirements would otherwise be applicable only to reciprocating and turbine aircraft engines.

Accessory Attachments: Proposed special condition no. 8 would require the proposed design to comply with § 33.25, which sets certain design, operational, and maintenance requirements for the engine's accessory drive and mounting attachments, and which would otherwise be applicable only to reciprocating and turbine aircraft engines.

Rotor Overspeed: Proposed special condition no. 9 would require Safran to establish by test, validated analysis, or a combination of both, that—

(1) the rotor overspeed must not result in a burst, rotor growth, or damage that results in a hazardous engine effect;

(2) rotors must possess sufficient strength margin to prevent burst; and

(3) operating limits must not be exceeded in service.

The proposed special condition associated with rotor overspeed is necessary because of the differences between turbine engine technology and the technology of these electric engines. Turbine rotor speed is driven by expanding gas and aerodynamic loads on rotor blades. Therefore, the rotor speed or overspeed results from interactions between thermodynamic and aerodynamic engine properties. The speed of an electric engine is directly controlled by electric current, and an electromagnetic field created by the controller. Consequently, electric engine rotor response to power demand and overspeed protection systems is quicker and more precise. Also, the failure modes that can lead to overspeed between turbine engines and electric engines are vastly different, and therefore this special condition is necessary.

Engine Control Systems: Proposed special condition no. 10(b) would require Safran to ensure that these engines do not experience any unacceptable operating characteristics, such as unstable speed or torque control, or exceed any of their operating limitations.

The FAA originally issued § 33.28 at amendment 33–15 to address the evolution of the means of controlling the fuel supplied to the engine, from carburetors and hydro-mechanical controls to electronic control systems. These electronic control systems grew in complexity over the years, and as a result, the FAA amended § 33.28 at amendment 33–26 to address these increasing complexities. The controller that forms the controlling system for these electric engines is significantly

simpler than the complex control systems used in modern turbine engines. The current regulations for engine control are inappropriate for electric engine control systems; therefore, the proposed special condition no. 10(b) associated with controlling these engines is necessary.

Proposed special condition no. 10(c) would require Safran to develop and verify the software and complex electronic hardware used in programmable logic devices, using proven methods that ensure that the devices can provide the accuracy, precision, functionality, and reliability commensurate with the hazard that is being mitigated by the logic. RTCA DO–254, ''Design Assurance Guidance for Airborne Electronic Hardware'' dated April 19, 2000, distinguishes between complex and simple electronic hardware.[3]

Proposed special condition no. 10(d) would require data from assessments of all functional aspects of the control system to prevent errors that could exist in software programs that are not readily observable by inspection of the code. Also, Safran must use methods that will result in the expected quality that ensures the engine control system performs the intended functions throughout the declared operational envelope.

The environmental limits referred to in proposed special condition no. 10(e) include temperature, vibration, high-intensity radiated fields (HIRF), and others addressed in RTCA DO–160G, ''Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments'' dated December 08, 2010, which includes ''DO–160G Change 1—Environmental Conditions and Test Procedures for Airborne Equipment'' dated December 16, 2014, and ''DO–357—User Guide: Supplement to DO–160G'' dated December, 16 2014.[4] Proposed special condition 10(e) would require Safran to demonstrate by systems or component tests in special condition no. 27 any environmental limits that cannot be adequately substantiated by the endurance demonstration, validated analysis, or a combination thereof.

Proposed special condition no. 10(f) would require Safran to evaluate various control system failures to assure that such failures will not lead to unsafe engine conditions. The FAA issued advisory circular (AC), AC 33.28–3, ''Guidance Material for 14 CFR 33.28, Engine Control Systems'' on May 23, 2014, for reciprocating and turbine engines.[5] Paragraph 6–2 of this AC provides guidance for defining an engine control system failure when showing compliance with the requirements of § 33.28. AC 33.28–3 also includes objectives for control system integrity requirements, criteria for a loss of thrust (or power) control (LOTC/LOPC) event, and an acceptable LOTC/LOPC rate. The electrical and electronic failures and failure rates did not account for electric engines when the FAA issued this AC, and therefore performance-based special conditions are proposed to allow fault accommodation criteria to be developed for electric engines.

The phrase ''in the full-up configuration'' used in proposed special condition no. 10(f)(2) refers to a system without any fault conditions present. The electronic control system must, when in the full-up configuration, be single fault-tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events.

The term ''local'' in the context of ''local events'' used in proposed special condition no. 10(f)(4) means failures or malfunctions, leading to events in the intended aircraft installation such as fire, overheat, or failures leading to damage to engine control system components. These local events must not result in a hazardous engine effect due to engine control system failures or malfunctions.

Proposed special condition no. 10(g) would require Safran to conduct a safety assessment of the control system to support the safety analysis in proposed special condition no. 17. This control system safety assessment provides engine response to failures, and rates of these failures that can be used at the aircraft-level safety assessment.

Proposed special condition no. 10(h) requires Safran to provide appropriate protection devices or systems to ensure that engine operating limits will not be exceeded in service.

Proposed special condition no. 10(i) is necessary to ensure that the controllers are self-sufficient and isolated from other aircraft systems. The aircraft-supplied data supports the analysis at the aircraft level to protect the aircraft from common mode failures that could lead to major propulsion power loss. The exception, ''other than power command signals from the aircraft'' noted in proposed special condition no. 10(i), is based on the FAA's determination that the engine controller has no reasonable means to determine the validity of any in-range signals from the electrical power system. In many cases, the engine control system can detect a faulty signal from the aircraft, but the engine control system typically accepts the power command signal as a valid value.

The term ''independent'' in the context of ''fully independent engine systems'' referenced in proposed special condition no. 10(i) means the controllers should be self-sufficient and isolated from other aircraft systems or provide redundancy that enables the engine control system to accommodate aircraft data system failures. In the case of loss, interruption, or corruption of aircraft-supplied data, the engine must continue to function in a safe and acceptable manner without hazardous engine effects.

The term ''accommodated'' in the context of ''detected and accommodated'' referenced in proposed special condition 10(i)(2) is to assure that, upon detecting a fault, the system continues to function safely.

Proposed special condition no. 10(j) would require Safran to show that the loss of electric power from the aircraft will not cause the electric engine to malfunction in a manner hazardous to the aircraft. The total loss of electric power to the electric engine may result in an engine shutdown.

Instrument Connection: Proposed special condition no. 11 would require Safran to comply with § 33.29(a), (e), and (g), which set certain requirements for the connection and installation of instruments to monitor engine performance. The remaining requirements in § 33.29 apply only to technologies used in reciprocating and turbine aircraft engines.

Instrument connections (wires, wire insulation, potting, grounding, connector designs, etc.) must not introduce unsafe features or characteristics to the aircraft. Proposed special condition no. 11 would require the safety analysis to include potential hazardous effects from failures of instrument connections to function properly. The outcome of this analysis might identify the need for design enhancements or additional ICA to ensure safety.

Stress Analysis: Section 33.62 requires applicants to perform a stress analysis on each turbine engine. This regulation is explicitly applicable only to turbine engines and turbine engine components, and it is not appropriate for the Safran Model ENGINe™ US100A1 engines. However, the FAA

[3] *https://my.rtca.org/NC__Product?id=a1B36000001IcjTEAS.*

[4] *https://my.rtca.org/NC__Product?id=a1B36000001IcnSEAS.*

[5] *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_33_28-3.pdf.*

proposes that a stress analysis particular to these electric engines is necessary to account for stresses resulting from electric technology used in the engine.

Proposed special condition no. 12 would require a mechanical, thermal, and electrical stress analysis to show that the engine has a sufficient design margin to prevent unacceptable operating characteristics. Also, the applicant must determine the maximum stresses in the engine by tests, validated analysis, or a combination thereof, and show that they do not exceed minimum material properties.

Critical and Life-Limited Parts: Proposed special condition no. 13 would require Safran to show whether rotating or moving components, bearings, shafts, static parts, and non-redundant mount components should be classified, designed, manufactured, and managed throughout their service life as critical or life-limited parts.

The term ''low-cycle fatigue,'' referenced in proposed special condition no. 13(a)(2) is a decline in material strength from exposure to cyclic stress at levels beyond the stress threshold the material can sustain indefinitely. This threshold is known as the ''material endurance limit.'' Low-cycle fatigue typically causes a part to sustain plastic or permanent deformation during the cyclic loading and can lead to cracks, crack growth, and fracture. Engine parts that operate at high temperatures and high mechanical stresses simultaneously can experience low-cycle fatigue coupled with creep. Creep is the tendency of a metallic material to permanently move or deform when it is exposed to the extreme thermal conditions created by hot combustion gasses and substantial physical loads, such as high rotational speeds and maximum thrust. Conversely, high-cycle fatigue is caused by elastic deformation, small strains caused by alternating stress, and a much higher number of load cycles compared to the number of cycles that cause low-cycle fatigue.

The engineering plan referenced in proposed special condition no. 13(b)(1) informs the manufacturing and service management processes of essential information that ensures the life limit of a part is valid. The engineering plan provides methods for verifying the characteristics and qualities assumed in the design data using methods that are suitable for the part criticality. The engineering plan informs the manufacturing process of attributes that affect the life of the part. The engineering plan, manufacturing plan, and service management plan are related in that assumptions made in the engineering plan are linked to how a part is manufactured and how that part is maintained in service. For example, environmental effects on life limited electric engine parts, such as humidity, might not be consistent with the assumptions used to design the part. Safran must ensure that the engineering plan is complete, available, and acceptable to the Administrator.

The term ''manufacturing plan,'' referenced in proposed special condition no. 13(b)(2), is the collection of data required to translate documented engineering design criteria into physical parts, and to verify that the parts comply with the properties established by the design data. Because engines are not intentionally tested to failure during a certification program, documents and processes used to execute production and quality systems required by § 21.137 guarantee inherent expectations for performance and durability. These systems limit the potential manufacturing outcomes to parts that are consistently produced within design constraints.

The manufacturing plan and service-management plan ensure that essential information from the engineering plan, such as the design characteristics that safeguard the integrity of critical and life-limited parts, is consistently produced, and preserved over the lifetime of those parts. The manufacturing plan includes special processes and production controls to prevent inclusion of manufacturing-induced anomalies, which can degrade the part's structural integrity. Examples of manufacturing-induced anomalies are material contamination, unacceptable grain growth, heat-affected areas, and residual stresses.

The service-management plan ensures the method and assumptions used in the engineering plan to determine the part's life remain valid by enabling corrections identified from in-service experience, such as service-induced anomalies and unforeseen environmental effects, to be incorporated into the design process. The service-management plan also becomes the ICA for maintenance, overhaul, and repairs of the part.

Lubrication System: Proposed special condition no. 14 would require Safran to ensure that the lubrication system is designed to function properly between scheduled maintenance intervals and to prevent contamination of the engine bearings. This proposed special condition would also require Safran to demonstrate the unique lubrication attributes and functional capability of the Safran Model ENGINe™ US100A1 engine design.

The corresponding part 33 regulations include provisions for lubrication systems used in reciprocating and turbine engines. The part 33 requirements account for safety issues associated with specific reciprocating and turbine engine system configurations. These regulations are not appropriate for the Safran Model ENGINe™ US100A1 engines. For example, electric engines do not have a crankcase or lubrication oil sump. Electric engine bearings are sealed, so they do not require an oil circulation system. The lubrication system in these engines is also independent of the propeller pitch control system. Therefore, proposed special condition no. 14 incorporates only certain requirements from the part 33 regulations.

Power Response: Proposed special condition no. 15 would require the design and construction of the Safran Model ENGINe™ US100A1 engines to enable an increase from the minimum—

(1) power setting to the highest rated power without detrimental engine effects, and

(2) within a time interval appropriate for the intended aircraft application.

The engine control system governs the increase or decrease in power in combustion engines to prevent too much (or too little) fuel from being mixed with air before combustion. Due to the lag in rotor response time, improper fuel/air mixtures can result in engine surges, stalls, and exceedances above rated limits and durations. Failure of the combustion engine to provide thrust, maintain rotor speeds below rotor burst thresholds, and keep temperatures below limits can have engine effects detrimental to the aircraft. Similar detrimental effects are possible in the Safran Model ENGINe™ US100A1 engines, but the causes are different. Electric engines with reduced power response time can experience insufficient thrust to the aircraft, shaft over-torque, and over-stressed rotating components, propellers, and critical propeller parts. Therefore, this proposed special condition is necessary.

Continued Rotation: Proposed special condition no. 16 would require Safran to design the Model ENGINe™ US100A1 engines such that, if the main rotating systems continue to rotate after the engine is shut down while in-flight, this continued rotation will not result in any hazardous engine effects.

The main rotating system of the Safran Model ENGINe™ US100A1 engines consists of the rotors, shafts, magnets, bearings, and wire windings that convert electrical energy to shaft torque. For the initial aircraft

application, this rotating system must continue to rotate after the power source to the engine is shut down. The safety concerns associated with this proposed special condition are substantial asymmetric aerodynamic drag that can cause aircraft instability, loss of control, and reduced efficiency; and may result in a forced landing or inability to continue safe flight.

Safety Analysis: Proposed special condition no. 17 would require Safran to comply with § 33.75(a)(1) and (a)(2) which require the applicant to conduct a safety analysis of the engine, and which would otherwise be applicable only to turbine aircraft engines. Additionally, this proposed special condition would require Safran to assess its engine design to determine the likely consequences of failures that can reasonably be expected to occur. The failure of such elements, and associated prescribed integrity requirements, must be stated in the safety analysis.

A primary failure mode is the manner in which a part is most likely going to fail. Engine parts that have a primary failure mode, a predictable life to the failure and a failure consequence that results in a hazardous effect are life-limited or critical parts. Some life-limited or critical engine parts can fail suddenly in their primary failure mode, from prolonged exposure to normal engine environments such as temperature, vibration, and stress, if those engine parts are not removed from service before the damage mechanisms progress to a failure. Due to the consequence of failure, these parts are not allowed to be managed by on-condition or probabilistic means because the probability of failure cannot be sensibly estimated in numerical terms. Therefore, the parts are managed by compliance with integrity requirements, such as mandatory maintenance (life limits, inspections, inspection techniques), to ensure the qualities, features, and other attributes that prevent the part from failing in its primary failure mode are preserved throughout its service life. For example, if the number of engine cycles to failure are predictable and can be associated with specific design characteristics, such as material properties, then the applicant can manage the engine part with life limits.

Complete or total power loss is not assumed to be a minor engine event, as it is in the turbine engine regulation § 33.75, to account for experience data showing a potential for higher hazard levels from power loss events in single-engine general aviation aircraft. The criteria in these proposed special conditions apply to an engine that continues to operate at partial power after a single electrical or electronic fault or failure. Total loss of power is classified at the aircraft level using proposed special condition nos. 10(g) and 33(h).

Ingestion: Proposed special condition no. 18 would require Safran to ensure that these engines will not experience unacceptable power loss or hazardous engine effects from ingestion. The associated regulations for turbine engines, §§ 33.76, 33.77, and 33.78, are based on potential performance impacts and damage from birds, ice, rain, and hail being ingested into a turbine engine that has an inlet duct, which directs air into the engine for combustion, cooling, and thrust. By contrast, the Safran electric engines are not configured with inlet ducts.

An ''unacceptable'' power loss, as used in proposed special condition no. 18(b), is such that the power or thrust required for safe flight of the aircraft becomes unavailable to the pilot. The specific amount of power loss that is required for safe flight depends on the aircraft configuration, speed, altitude, attitude, atmospheric conditions, phase of flight, and other circumstances where the demand for thrust is critical to safe operation of the aircraft.

Liquid and Gas Systems: Proposed special condition no. 19 would require Safran to ensure that systems used for lubrication or cooling of engine components are designed and constructed to function properly. Also, if a system is not self-contained, the interfaces to that system would be required to be defined in the engine installation manual. Systems for the lubrication or cooling of engine components can include heat exchangers, pumps, fluids, tubing, connectors, electronic devices, temperature sensors and pressure switches, fasteners and brackets, bypass valves, and metallic chip detectors. These systems allow the electric engine to perform at extreme speeds and temperatures for durations up to the maintenance intervals without exceeding temperature limits or predicted deterioration rates.

Vibration Demonstration: Proposed special condition no. 20 would require Safran to ensure the engine—

(1) is designed and constructed to function throughout its normal operating range of rotor speeds and engine output power without inducing excessive stress caused by engine vibration, and

(2) design undergoes a vibration survey.

The vibration demonstration is a survey that characterizes the vibratory attributes of the engine. It verifies that the stresses from vibration do not impose excessive force or result in natural frequency responses on the aircraft structure. The vibration demonstration also ensures internal vibrations will not cause engine components to fail. Excessive vibration force occurs at magnitudes and forcing functions or frequencies, which may result in damage to the aircraft. Stress margins to failure add conservatism to the highest values predicted by analysis for additional protection from failure caused by influences beyond those quantified in the analysis. The result of the additional design margin is improved engine reliability that meets prescribed thresholds based on the failure classification. The amount of margin needed to achieve the prescribed reliability rates depends on an applicant's experience with a product. The FAA considers the reliability rates when deciding how much vibration is excessive.

Overtorque: Proposed special condition no. 21 would require Safran to demonstrate that the engine is capable of continued operation without the need for maintenance if it experiences a certain amount of overtorque.

Safran's proposed electric engine converts electrical energy to shaft torque, which is used for propulsion. The electric motor, controller, and high-voltage systems control the engine torque. When the pilot commands power or thrust, the engine responds to the command and adjusts the shaft torque to meet the demand. During the transition from one power or thrust setting to another, a small delay, or latency, occurs in the engine response time. While the engine dwells in this time interval, it can continue to apply torque until the command to change the torque is applied by the engine control. The allowable amount of overtorque during operation depends on the engine's response to changes in the torque command throughout its operating range.

Calibration Assurance: Proposed special condition no. 22 would require Safran to subject the engine to calibration tests to establish its power characteristics and the conditions both before and after the endurance and durability demonstrations specified in proposed special condition nos. 23 and 26. The calibration test requirements specified in § 33.85 only apply to the endurance test specified in § 33.87, which is applicable only to turbine engines. The FAA proposes that the methods used for accomplishing those tests for turbine engines is not the best

approach for electric engines. The calibration tests in § 33.85 have provisions applicable to ratings that are not relevant to the Safran Model ENGINe™ US100A1 engines. Proposed special condition no. 22 would allow Safran to demonstrate the endurance and durability of the electric engine either together or independently, whichever is most appropriate for the engine qualities being assessed. Consequently, the proposed special condition applies the calibration requirement to both the endurance and durability tests.

Endurance Demonstration: Proposed special condition no. 23 would require Safran to perform an endurance demonstration test that is acceptable to the Administrator. The Administrator will evaluate the extent to which the test exposes the engine to failures that could occur when the engine is operated at up to its rated values, and determine if the test is sufficient to show that the engine design will not exhibit unacceptable effects in service, such as significant performance deterioration, operability restrictions, and engine power loss or instability, when it is run repetitively at rated limits and durations in conditions that represent extreme operating environments.

Temperature Limit: Proposed special condition no. 24 would require Safran to ensure the engine can endure operation at its temperature limits plus an acceptable margin. An ''acceptable margin,'' as used in the proposed special condition, is the amount of temperature above that required to prevent the least capable engine allowed by the type design, as determined by § 33.8, from failing due to temperature-related causes when operating at the most extreme engine and environmental thermal conditions.

Operation Demonstration: Proposed special condition no. 25 would require the engine to demonstrate safe operating characteristics throughout its declared flight envelope and operating range. Engine operating characteristics define the range of functional and performance values the Safran Model ENGINe™ US100A1 engines can achieve without incurring hazardous effects. The characteristics are requisite capabilities of the type design that qualify the engine for installation into aircraft and that determine aircraft installation requirements. The primary engine operating characteristics are assessed by the tests and demonstrations that would be required by these special conditions. Some of these characteristics are shaft output torque, rotor speed, power consumption, and engine thrust response. The engine performance data Safran will use to certify the engine must account for installation loads and effects. These are aircraft-level effects that could affect the engine characteristics that are measured when the engine is tested on a stand or in a test cell. These effects could result from elevated inlet cowl temperatures, aircraft maneuvers, flowstream distortion, and hard landings. For example, an engine that is run in a sea-level, static test facility could demonstrate more capability for some operating characteristics than it will have when operating on an aircraft in certain flight conditions. Discoveries like this during certification could affect proposed engine ratings and operating limits. Therefore, the installed performance defines the engine performance capabilities.

Durability Demonstration: Proposed special condition no. 26 would require Safran to subject the engine to a durability demonstration. The durability demonstration must show that the engine is designed and constructed to minimize the development of any unsafe condition between maintenance intervals or between engine replacement intervals if maintenance or overhaul is not defined. The durability demonstration also verifies that the ICA is adequate to ensure the engine, in its fully deteriorated state, continues to generate rated power or thrust, while retaining operating margins and sufficient efficiency, to support the aircraft safety objectives. The amount of deterioration an engine can experience is restricted by operating limitations and managed by the engine ICA. Section 33.90 specifies how maintenance intervals are established; it does not include provisions for an engine replacement. Electric engines and turbine engines deteriorate differently; therefore, Safran will use different test effects to develop maintenance, overhaul, or engine replacement information for their electric engine.

System and Component Tests: Proposed special condition no. 27 would require Safran to show that the systems and components of the engine would perform their intended functions in all declared engine environments and operating conditions.

Sections 33.87 and 33.91, which are specifically applicable to turbine engines, have conditional criteria to decide if additional tests will be required after the engine tests. The criteria are not suitable for electric engines. Part 33 associates the need for additional testing with the outcome of the § 33.87 endurance test because it is designed to address safety concerns in combustion engines. For example, § 33.91(b) requires the establishment of temperature limits for components that require temperature-controlling provisions, and § 33.91(a) requires additional testing of engine systems and components where the endurance test does not fully expose internal systems and components to thermal conditions that verify the desired operating limits. Exceeding temperature limits is a safety concern for electric engines. The FAA proposes that the § 33.87 endurance test might not be the best way to achieve the highest thermal conditions for all the electronic components of electric engines because heat is generated differently in electronic systems than it is in turbine engines. Additional safety considerations also need to be addressed in the test. Therefore, proposed special condition no. 27 would be a performance-based requirement that allows Safran to determine when engine systems and component tests are necessary and to determine the appropriate limitations of those systems and components used in the Safran Model ENGINe™ US100A1 electric engine.

Rotor Locking Demonstration: Proposed special condition no. 28 would require the engine to demonstrate reliable rotor locking performance and that no hazardous effects will occur if the engine uses a rotor locking device to prevent shaft rotation.

Some engine designs enable the pilot to prevent a propeller shaft or main rotor shaft from turning while the engine is running, or the aircraft is in-flight. This capability is needed for some installations that require the pilot to confirm functionality of certain flight systems before takeoff. The proposed Safran engine installations are not limited to aircraft that will not require rotor locking. Section 33.92 prescribes a test that may not include the appropriate criteria to demonstrate sufficient rotor locking capability for these engines. Therefore, this special condition is necessary.

The proposed special condition does not define ''reliable'' rotor locking but would allow Safran to classify the hazard as major or minor and assign the appropriate quantitative criteria that meet the safety objectives required by special condition no. 17 and the applicable portions of § 33.75.

Teardown Inspection: Proposed special condition no. 29 would require Safran to perform a teardown or non-teardown evaluation, after the endurance, durability, and overtorque demonstrations, based on the criteria proposed in special condition no. 29(a) or (b).

Proposed special condition no. 29(b) includes restrictive criteria for ''non-teardown evaluations'' to account for electric engines, sub-assemblies, and components that cannot be disassembled without destroying them. Some electrical and electronic components like Safran's are constructed in an integrated fashion that precludes the possibility of tearing them down without destroying them. The proposed special condition indicates that, if a teardown cannot be performed in a non-destructive manner, then the inspection or replacement intervals must be established based on the endurance and durability demonstrations. The procedure for establishing maintenance should be agreed upon between the applicant and the FAA prior to running the relevant tests. Data from the endurance and durability tests may provide information that can be used to determine maintenance intervals and life limits for parts. However, if life limits are required, the lifing procedure is established by special condition no. 13, Critical and Life-Limited Parts, which corresponds to § 33.70. Therefore, the procedure used to determine which parts are life-limited, and how the life limits are established, requires FAA approval, as it does for § 33.70. Sections 33.55 and 33.93 do not contain similar requirements because reciprocating and turbine engines can be completely disassembled for inspection.

Containment: Proposed special condition no. 30 would require the engine to have containment features that protect against likely hazards from rotating components unless Safran can show the margin to rotor burst does not justify the need for containment features. Rotating components in electric engines are typically disks, shafts, bearings, seals, orbiting magnetic components, and the assembled rotor core. However, if the margin to rotor burst does not unconditionally rule out the possibility of a rotor burst, then the condition would require Safran to assume a rotor burst could occur and design the stator case to contain the failed rotors and any components attached to the rotor that are released during the failure. In addition, Safran must also determine the effects of subsequent damage precipitated by a main rotor failure and characterize any fragments that are released forward or aft of the containment features. Further, decisions about whether the Safran engine requires containment features, and the effects of any subsequent damage following a rotor burst should be based on test or validated analysis. The fragment energy levels, trajectories, and size are typically documented in the installation manual because the aircraft will need to account for the effects of a rotor failure in the aircraft design. The intent of this special condition is to prevent hazardous engine effects from structural failure of rotating components and parts that are built into the rotor assembly.

Operation with a Variable Pitch Propeller: Proposed special condition no. 31 would require Safran to conduct functional demonstrations, including feathering, negative torque, negative thrust, and reverse thrust operations, as applicable, based on the propeller's or fan's variable pitch functions that are planned for use on these electric engines, using a representative propeller. The requirements of § 33.95 prescribe tests based on the operating characteristics of turbine engines equipped with variable pitch propellers, which include thrust response times, engine stall, propeller shaft overload, loss of thrust control, and hardware fatigue. The electric engines Safran proposes have different operating characteristics that substantially affect their susceptibility to these and other potential failures typical of turbine engines. Because Safran's proposed electric engines may be installed with a variable pitch propeller, the proposed special condition is necessary.

General Conduct of Tests: Proposed special condition no. 32 would require Safran to—

(1) include scheduled maintenance in the engine ICA;

(2) include any maintenance, in addition to the scheduled maintenance, that was needed during the test to satisfy the applicable test requirements; and

(3) conduct any additional tests that the Administrator finds necessary, as warranted by the test results.

For example, certification endurance test shortfalls might be caused by omitting some prescribed engine test conditions, or from accelerated deterioration of individual parts arising from the need to force the engine to operating conditions that drive the engine above the engine cycle values of the type design. If an engine part fails during a certification test, the entire engine might be subjected to penalty runs, with a replacement or newer part design installed on the engine, to meet the test requirements. Also, the maintenance performed to replace the part, so that the engine could complete the test, would be included in the engine ICA. In another example, if the applicant replaces a part before completing an engine certification test because of a test facility failure and can substantiate the part to the Administrator through bench testing, they might not need to substantiate the part design using penalty runs with the entire engine.

The term ''excessive'' is used to describe the frequency of unplanned engine maintenance, and the frequency of unplanned test stoppages, to address engine issues that prevent the engine from completing the tests in proposed special condition nos. 32(b)(1) and (2), respectively. Excessive frequency is an objective assessment from the FAA's analysis of the amount of unplanned maintenance needed for an engine to complete a certification test. The FAA's assessment may include the reasons for the unplanned maintenance, such as the effects test facility equipment may have on the engine, the inability to simulate a realistic engine operating environment, and the extent to which an engine requires modifications to complete a certification test. In some cases, the applicant may be able to show that unplanned maintenance has no effect on the certification test results, or they might be able to attribute the problem to the facility or test-enabling equipment that is not part of the type design. In these cases, the ICA will not be affected. However, if Safran cannot reconcile the amount of unplanned service, then the FAA may consider the unplanned maintenance required during the certification test to be excessive, prompting the need to add the unplanned maintenance to mandatory ICA to comply with the certification requirements.

Engine electrical systems: The current requirements in part 33 for electronic engine control systems were developed to maintain an equivalent level of safety demonstrated by engines that operate with hydromechanical engine control systems. At the time § 33.28 was codified, the only electrical systems used on turbine engines were low-voltage, electronic engine control systems (EEC) and high-energy spark-ignition systems. Electric aircraft engines use high-voltage, high-current electrical systems and components that are physically located in the motor and motor controller. Therefore, the existing part 33 control system requirements do not adequately address all the electrical systems used in electric aircraft engines. Proposed special condition no. 33 is established using the existing engine control systems requirement as a basis. It applies applicable airworthiness criteria from § 33.28 and incorporates airworthiness criteria that recognize and focus on the electrical power system used in the engine.

Proposed special condition no. 33(b) would ensure that all aspects of an electrical system, including generation, distribution, and usage, do not experience any unacceptable operating characteristics.

Proposed special condition no. 33(c) would require the electrical power distribution aspects of the electrical system to provide the safe transfer of electrical energy throughout the electric engine.

Proposed special condition no. 33(d) would require the engine electrical system to be designed such that the loss, malfunction, or interruption of the electrical power source, or power conditions that exceed design limits, will not result in a hazardous engine effect.

Proposed special condition no. 33(e) requires Safran to identify and declare, in the engine installation manual, the characteristics of any electrical power supplied from the aircraft to the engine, or electrical power supplied from the engine to the aircraft via energy regeneration, and any other characteristics necessary for safe operation of the engine.

Proposed special condition no. 33(f) requires Safran to demonstrate that systems and components will operate properly up to environmental limits, using special conditions, when such limits cannot be adequately substantiated by the endurance demonstration, validated analysis, or a combination thereof. The environmental limits referred to in this proposed special condition include temperature, vibration, HIRF, and others addressed in RTCA DO–160G, ''Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments.''

Proposed special condition 33(g) would require Safran to evaluate various electric engine system failures to ensure that these failures will not lead to unsafe engine conditions. The evaluation would include single-fault tolerance, would ensure no single electrical or electronic fault or failure would result in hazardous engine effects, and ensure that any failure or malfunction leading to local events in the intended aircraft application do not result in certain hazardous engine effects. The special condition would also implement integrity requirements, criteria for LOTC/LOPC events, and an acceptable LOTC/LOPC rate.

Proposed special condition 33(h) would require Safran to conduct a safety assessment of the engine electrical system to support the safety analysis in special condition no. 17. This safety assessment provides engine response to failures, and rates of these failures, that can be used at the aircraft safety assessment level.

These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards for reciprocating and turbine aircraft engines.

Applicability

As discussed above, these proposed special conditions are applicable to Safran Model ENGINe™ US100A1 engines. Should Safran apply at a later date for a change to the type certificate to include another model on the same type certificate incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only Safran Model ENGINe™ US100A1 engines. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 33

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Safran Electric & Power S.A. Model ENGINe™ US100A1 engines. The applicant must also comply with the certification procedures set forth in title 14, Code of Federal Regulations (14 CFR) part 21.

(1) Applicability.

(a) Unless otherwise noted in these special conditions, the engine design must comply with the airworthiness standards for aircraft engines set forth in 14 CFR part 33, except for those airworthiness standards that are specifically and explicitly applicable only to reciprocating and turbine aircraft engines or as specified herein.

(b) The applicant must comply with this part using a means of compliance, which may include consensus standards, accepted by the Administrator.

(c) The applicant requesting acceptance of a means of compliance must provide the means of compliance to the FAA in a form and manner acceptable to the Administrator.

(2) Engine Ratings and Operating Limits.

In addition to § 33.7(a), the engine ratings and operating limits must be established and included in the type certificate data sheet based on:

(a) Shaft power, torque, rotational speed, and temperature for:

(1) Rated takeoff power;

(2) Rated maximum continuous power; and

(3) Rated maximum temporary power and associated time limit.

(b) Duty cycle and the rating at that duty cycle. The duty cycle must be declared in the engine type certificate data sheet.

(c) Cooling fluid grade or specification.

(d) Power-supply requirements.

(e) Any other ratings or limitations that are necessary for the safe operation of the engine.

(3) Materials.

The engine design must comply with § 33.15.

(4) Fire protection.

The engine design must comply with § 33.17(b) through (g).

(a) The design and construction of the engine and the materials used must minimize the probability of the occurrence and spread of fire during normal operation and failure conditions and must minimize the effect of such a fire.

(b) High-voltage electrical wiring interconnect systems must be protected against arc faults that can lead to hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions. Any non-protected electrical wiring interconnects must be analyzed to show that arc faults do not cause a hazardous engine effect.

(5) Durability.

The engine design and construction must minimize the development of an unsafe condition of the engine between maintenance intervals, overhaul periods, or mandatory actions described in the applicable Instructions for Continued Airworthiness (ICA).

(6) Engine Cooling.

The engine design and construction must comply with § 33.21. In addition, if cooling is required to satisfy the safety analysis as described in special condition no. 17 of these special conditions, the cooling system monitoring features and usage must be documented in the engine installation manual.

(7) Engine mounting attachments and structure.

The engine mounting attachments and related engine structures must comply with § 33.23.

(8) Accessory Attachments.

The engine must comply with § 33.25.

(9) Overspeed.

(a) A rotor overspeed must not result in a burst, rotor growth, or damage that results in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions. Compliance with this paragraph must be shown by test, validated analysis, or a combination of both. Applicable assumed rotor speeds must be declared and justified.

(b) Rotors must possess sufficient strength with a margin to burst above certified operating conditions and above failure conditions leading to rotor overspeed. The margin to burst must be shown by test, validated analysis, or a combination thereof.

(c) The engine must not exceed the rotor speed operational limitations that could affect rotor structural integrity.

(10) Engine Control Systems.

(a) *Applicability.* The requirements of this special condition apply to any system or device that is part of the engine type design that controls, limits, monitors, or protects engine operation, and is necessary for the continued airworthiness of the engine.

(b) *Engine control.* The engine control system must ensure that the engine does not experience any unacceptable operating characteristics or exceed its operating limits, including in failure conditions where the fault or failure results in a change from one control mode to another, from one channel to another, or from the primary system to the back-up system, if applicable.

(c) *Design Assurance.* The software and complex electronic hardware, including programmable logic devices, must be—

(1) Designed and developed using a structured and systematic approach that provides a level of assurance for the logic commensurate with the hazard associated with the failure or malfunction of the systems in which the devices are located; and

(2) Substantiated by a verification methodology acceptable to the Administrator.

(d) *Validation.* All functional aspects of the control system must be substantiated by test, analysis, or a combination thereof, to show that the engine control system performs the intended functions throughout the declared operational envelope.

(e) *Environmental Limits.* Environmental limits that cannot be adequately substantiated by endurance demonstration, validated analysis, or a combination thereof must be demonstrated by the system and component tests in special condition no. 27 of these special conditions.

(f) *Engine control system failures.* The engine control system must—

(1) Have a maximum rate of loss of power control (LOPC) that is suitable for the intended aircraft application. The estimated LOPC rate must be specified in the engine installation manual;

(2) When in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events;

(3) Not have any single failure that results in hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions; and

(4) Ensure failures or malfunctions that lead to local events in the aircraft do not result in hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, due to engine control system failures or malfunctions.

(g) *System safety assessment.* The applicant must perform a system safety assessment. This assessment must identify faults or failures that affect normal operation, together with the predicted frequency of occurrence of these faults or failures. The intended aircraft application must be taken into account to assure that the assessment of the engine control system safety is valid. The rates of hazardous and major faults must be declared in the engine installation manual.

(h) *Protection systems.* The engine control devices and systems' design and function, together with engine instruments, operating instructions, and maintenance instructions, must ensure that engine operating limits that can lead to a hazard will not be exceeded in service.

(i) *Aircraft supplied data.* Any single failure leading to loss, interruption, or corruption of aircraft-supplied data (other than power-command signals from the aircraft), or aircraft-supplied data shared between engine systems within a single engine or between fully independent engine systems, must—

(1) Not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, for any engine installed on the aircraft; and

(2) Be able to be detected and accommodated by the control system.

(j) Engine control system electrical power.

(1) The engine control system must be designed such that the loss, malfunction, or interruption of the control system electrical power source will not result in a hazardous engine effect, unacceptable transmission of erroneous data, or continued engine operation in the absence of the control function. Hazardous engine effects are defined in special condition no. 17(d)(2) of these special conditions. The engine control system must be capable of resuming normal operation when aircraft-supplied power returns to within the declared limits.

(2) The applicant must identify and declare, in the engine installation manual, the characteristics of any electrical power supplied from the aircraft to the engine control system, including transient and steady-state voltage limits, and any other characteristics necessary for safe operation of the engine.

(11) Instrument connection.

The applicant must comply with § 33.29(a), (e), and (g).

(a) In addition, as part of the system safety assessment of special condition nos. 10(g) and 33(h) of these special conditions, the applicant must assess the possibility and subsequent effect of incorrect fit of instruments, sensors, or connectors. Where practicable, the applicant must take design precautions to prevent incorrect configuration of the system.

(b) The applicant must provide instrumentation enabling the flight crew to monitor the functioning of the engine cooling system unless evidence shows that:

(1) Other existing instrumentation provides adequate warning of failure or impending failure;

(2) Failure of the cooling system would not lead to hazardous engine effects before detection; or

(3) The probability of failure of the cooling system is extremely remote.

(12) Stress analysis.

(a) A mechanical and thermal stress analysis, as well as an analysis of the stress caused by electromagnetic forces, must show a sufficient design margin to prevent unacceptable operating characteristics and hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions.

(b) Maximum stresses in the engine must be determined by test, validated analysis, or a combination thereof, and must be shown not to exceed minimum material properties.

(13) Critical and life-limited parts.

(a) The applicant must show, by a safety analysis or means acceptable to the Administrator, whether rotating or moving components, bearings, shafts, static parts, and non-redundant mount components should be classified, designed, manufactured, and managed throughout their service life as critical or life-limited parts.

(1) Critical part means a part that must meet prescribed integrity specifications to avoid its primary failure, which is likely to result in a hazardous engine effect as defined in special condition no. 17(d)(2) of these special conditions.

(2) Life-limited parts may include but are not limited to a rotor or major structural static part, the failure of which can result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, due to a low-cycle fatigue (LCF) mechanism. A life limit is an operational limitation that specifies the maximum allowable number of flight cycles that a part can endure before the applicant must remove it from the engine.

(b) In establishing the integrity of each critical part or life-limited part, the applicant must provide to the Administrator the following three plans for approval:

(1) an engineering plan, as defined in § 33.70(a);

(2) a manufacturing plan, as defined in § 33.70(b); and

(3) a service-management plan, as defined in § 33.70(c).

(14) Lubrication system.

(a) The lubrication system must be designed and constructed to function properly between scheduled maintenance intervals in all flight attitudes and atmospheric conditions in which the engine is expected to operate.

(b) The lubrication system must be designed to prevent contamination of the engine bearings and lubrication system components.

(c) The applicant must demonstrate by test, validated analysis, or a combination thereof, the unique lubrication attributes and functional capability of (a) and (b).

(15) Power response.

(a) The design and construction of the engine, including its control system, must enable an increase—

(1) From the minimum power setting to the highest rated power without detrimental engine effects;

(2) From the minimum obtainable power while in-flight and while on the ground to the highest rated power within a time interval determined to be appropriate for the intended aircraft application; and

(3) From the minimum torque to the highest rated torque without detrimental engine effects in the intended aircraft application.

(b) The results of (a)(1), (a)(2), and (a)(3) of this special condition must be included in the engine installation manual.

(16) Continued rotation.

If the design allows any of the engine main rotating systems to continue to rotate after the engine is shut down while in-flight, this continued rotation must not result in any hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions.

(17) Safety analysis.

(a) The applicant must comply with § 33.75(a)(1) and (a)(2) using the failure definitions in special condition no. 17(d) of these special conditions.

(b) The primary failure of certain single elements cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous engine effects, then compliance may be shown by reliance on the prescribed integrity requirements of § 33.15 and special condition nos. 9 and 13 of these special conditions, as applicable. These instances must be stated in the safety analysis.

(c) The applicant must comply with § 33.75(d) and (e) using the failure definitions in special condition no. 17(d) of these special conditions, and the ICA in § 33.4.

(d) Unless otherwise approved by the Administrator, the following definitions apply to the engine effects when showing compliance with this condition:

(1) A minor engine effect does not prohibit the engine from performing its intended functions in a manner consistent with § 33.28(b)(1)(i), (b)(1)(iii), and (b)(1)(iv), and the engine complies with the operability requirements of special condition no. 15 and special condition no. 25 of these special conditions, as appropriate.

(2) The engine effects in § 33.75(g)(2) are hazardous engine effects with the addition of:

(i) Electrocution of the crew, passengers, operators, maintainers, or others; and

(ii) Blockage of cooling systems that could cause the engine effects described in § 33.75(g)(2) and special condition 17(d)(2)(i) of these special conditions.

(3) Any other engine effect is a major engine effect.

(e) The intended aircraft application must be taken into account when performing the safety analysis.

(f) The results of the safety analysis, and the assumptions about the aircraft application used in the safety analysis, must be documented in the engine installation manual.

(18) Ingestion.

(a) Rain, ice, and hail ingestion must not result in an abnormal operation such as shutdown, power loss, erratic operation, or power oscillations throughout the engine operating range.

(b) Ingestion from other likely sources (birds, induction system ice, foreign objects—ice slabs) must not result in hazardous engine effects defined by special condition no. 17(d)(2) of these special conditions, or unacceptable power loss.

(c) If the design of the engine relies on features, attachments, or systems that the installer may supply, for the prevention of unacceptable power loss or hazardous engine effects as defined in special condition no. 17(d)(2) of these special conditions, following potential ingestion, then the features, attachments, or systems must be documented in the engine installation manual.

(19) Liquid and gas systems.

(a) Each system used for lubrication or cooling of engine components must be designed and constructed to function properly in all flight attitudes and atmospheric conditions in which the engine is expected to operate.

(b) If a system used for lubrication or cooling of engine components is not self-contained, the interfaces to that system must be defined in the engine installation manual.

(c) The applicant must establish by test, validated analysis, or a combination of both that all static parts subject to significant pressure loads will not:

(1) Exhibit permanent distortion beyond serviceable limits, or exhibit leakage that could create a hazardous condition when subjected to normal and maximum working pressure with margin;

(2) Exhibit fracture or burst when subjected to the greater of maximum possible pressures with margin.

(d) Compliance with special condition no. 19(c) of these special conditions must take into account:

(1) The operating temperature of the part;

(2) Any other significant static loads in addition to pressure loads;

(3) Minimum properties representative of both the material and

the processes used in the construction of the part; and

(4) Any adverse physical geometry conditions allowed by the type design, such as minimum material and minimum radii.

(e) Approved coolants and lubricants must be listed in the engine installation manual.

(20) Vibration demonstration.

(a) The engine must be designed and constructed to function throughout its normal operating range of rotor speeds and engine output power, including defined exceedances, without inducing excessive stress in any of the engine parts because of vibration and without imparting excessive vibration forces to the aircraft structure.

(b) Each engine design must undergo a vibration survey to establish that the vibration characteristics of those components subject to induced vibration are acceptable throughout the declared flight envelope and engine operating range for the specific installation configuration. The possible sources of the induced vibration that the survey must assess are mechanical, aerodynamic, acoustical, internally induced electromagnetic, installation induced effects that can affect the engine vibration characteristics, and likely environmental effects. This survey must be shown by test, validated analysis, or a combination thereof.

(21) Overtorque.

When approval is sought for a transient maximum engine overtorque, the applicant must demonstrate by test, validated analysis, or a combination thereof, that the engine can continue operation after operating at the maximum engine overtorque condition without maintenance action. Upon conclusion of overtorque tests conducted to show compliance with this special condition, or any other tests that are conducted in combination with the overtorque test, each engine part or individual groups of components must meet the requirements of special condition no. 29 of these special conditions.

(22) Calibration assurance.

Each engine must be subjected to calibration tests to establish its power characteristics, and the conditions both before and after the endurance and durability demonstrations specified in special conditions nos. 23 and 26 of these special conditions.

(23) Endurance demonstration.

The applicant must subject the engine to an endurance demonstration, acceptable to the Administrator, to demonstrate the engine's limit capabilities. The endurance demonstration must include increases and decreases of the engine's power settings, energy regeneration, and dwellings at the power settings or energy regeneration for sufficient durations that produce the extreme physical conditions the engine experiences at rated performance levels, operational limits, and at any other conditions or power settings that are required to verify the limit capabilities of the engine.

(24) Temperature limit.

The engine design must demonstrate its capability to endure operation at its temperature limits plus an acceptable margin. The applicant must quantify and justify the margin to the Administrator. The demonstration must be repeated for all declared duty cycles and ratings, and operating environments, that would impact temperature limits.

(25) Operation demonstration.

The engine design must demonstrate safe operating characteristics, including but not limited to power cycling, starting, acceleration, and overspeeding throughout its declared flight envelope and operating range. The declared engine operational characteristics must account for installation loads and effects.

(26) Durability demonstration.

The engine must be subjected to a durability demonstration to show that each part of the engine has been designed and constructed to minimize any unsafe condition of the system between overhaul periods, or between engine replacement intervals if the overhaul is not defined. This test must simulate the conditions in which the engine is expected to operate in service, including typical start-stop cycles, to establish when the initial maintenance is required.

(27) System and component tests.

The applicant must show that systems and components that cannot be adequately substantiated in accordance with the endurance demonstration or other demonstrations will perform their intended functions in all declared environmental and operating conditions.

(28) Rotor locking demonstration.

If shaft rotation is prevented by locking the rotor(s), the engine must demonstrate:

(a) Reliable rotor locking performance;

(b) Reliable rotor unlocking performance; and

(c) That no hazardous engine effects, as specified in special condition no. 17(d)(2) of these special conditions, will occur.

(29) Teardown inspection.

(a) Teardown evaluation.

(1) After the endurance and durability demonstrations have been completed, the engine must be completely disassembled. Each engine component and lubricant must be eligible for continued operation in accordance with the information submitted for showing compliance with § 33.4.

(2) Each engine component, having an adjustment setting and a functioning characteristic that can be established independent of installation on or in the engine, must retain each setting and functioning characteristic within the established and recorded limits at the beginning of the endurance and durability demonstrations.

(b) Non-Teardown evaluation. If a teardown cannot be performed for all engine components in a non-destructive manner, then the inspection or replacement intervals for these components and lubricants must be established based on the endurance and durability demonstrations and must be documented in the ICA in accordance with § 33.4.

(30) Containment.

The engine must be designed and constructed to protect against likely hazards from rotating components as follows—

(a) The design of the stator case surrounding rotating components must provide for the containment of the rotating components in the event of failure, unless the applicant shows that the margin to rotor burst precludes the possibility of a rotor burst.

(b) If the margin to burst shows that the stator case must have containment features in the event of failure, then the stator case must provide for the containment of the failed rotating components. The applicant must define by test, validated analysis, or a combination thereof, and document in the engine installation manual, the energy level, trajectory, and size of fragments released from damage caused by the main-rotor failure, and that pass forward or aft of the surrounding stator case.

(31) Operation with variable pitch propeller.

The applicant must conduct functional demonstrations including feathering, negative torque, negative

thrust, and reverse thrust operations, as applicable, with a representative propeller. These demonstrations may be conducted in a manner acceptable to the Administrator as part of the endurance, durability, and operation demonstrations.

(32) General conduct of tests.

(a) Maintenance of the engine may be made during the tests in accordance with the service and maintenance instructions submitted in compliance with § 33.4.

(b) The applicant must subject the engine or its parts to any additional tests that the Administrator finds necessary if—

(1) The frequency of engine service is excessive;

(2) The number of stops due to engine malfunction is excessive;

(3) Major engine repairs are needed; or

(4) Replacement of an engine part is found necessary during the tests, or due to the teardown inspection findings.

(c) Upon completion of all demonstrations and testing specified in these special conditions, the engine and its components must be—

(1) within serviceable limits;

(2) safe for continued operation; and

(3) capable of operating at declared ratings while remaining within limits.

(33) Engine electrical systems.

(a) *Applicability.* Any system or device that provides, uses, conditions, or distributes electrical power, and is part of the engine type design, must provide for the continued airworthiness of the engine, and must maintain electric engine ratings.

(b) *Electrical systems.* The electrical system must ensure the safe generation and transmission of power, and electrical load shedding, and that the engine does not experience any unacceptable operating characteristics or exceed its operating limits.

(c) *Electrical power distribution.*

(1) The engine electrical power distribution system must be designed to provide the safe transfer of electrical energy throughout the electrical power plant. The system must be designed to provide electrical power so that the loss, malfunction, or interruption of the electrical power source will not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions, or detrimental engine effects in the intended aircraft application.

(2) The system must be designed and maintained to withstand normal and abnormal conditions during all ground and flight operations.

(3) The system must provide mechanical or automatic means of isolating a faulted electrical energy generation or storage device from affecting the safe transmission of electric energy to the electric engine.

(d) *Protection systems.* The engine electrical system must be designed such that the loss, malfunction, interruption of the electrical power source, or power conditions that exceed design limits will not result in a hazardous engine effect, as defined in special condition no. 17(d)(2) of these special conditions.

(e) *Electrical power characteristics.* The applicant must identify and declare, in the engine installation manual, the characteristics of any electrical power supplied from—

(1) the aircraft to the engine electrical system, for starting and operating the engine, including transient and steady-state voltage limits, or

(2) the engine to the aircraft via energy regeneration, and any other characteristics necessary for safe operation of the engine.

(f) *Environmental limits.* Environmental limits that cannot adequately be substantiated by endurance demonstration, validated analysis, or a combination thereof must be demonstrated by the system and component tests in special condition no. 27 of these special conditions.

(g) *Electrical system failures.* The engine electrical system must—

(1) Have a maximum rate of loss of power control (LOPC) that is suitable for the intended aircraft application;

(2) When in the full-up configuration, be single-fault tolerant, as determined by the Administrator, for electrical, electrically detectable, and electronic failures involving LOPC events;

(3) Not have any single failure that results in hazardous engine effects; and

(4) Ensure failures or malfunctions that lead to local events in the intended aircraft application do not result in hazardous engine effects, as defined in special condition no. 17(d)(2) of these special conditions, due to electrical system failures or malfunctions.

(h) *System safety assessment.* The applicant must perform a system safety assessment. This assessment must identify faults or failures that affect normal operation, together with the predicted frequency of occurrence of these faults or failures. The intended aircraft application must be taken into account to assure the assessment of the engine system safety is valid.

Issued in Kansas City, Missouri, on March 6, 2024.

Patrick R. Mullen,

Manager, Technical Policy Branch, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2024–05101 Filed 3–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 125, 135, 137, and 145

[Docket No.: FAA–2024–0025; Notice No. 24–08A]

RIN 2120–AL20

Inspection Programs for Single-Engine Turbine-Powered Airplanes and Unmanned Aircraft; and Miscellaneous Maintenance-Related Updates; Correction

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); correction; extension of comment period.

SUMMARY: The FAA is correcting an NPRM published on January 31, 2024. In that document, the FAA proposed to amend its regulations to revise certain aircraft maintenance inspection rules for small, corporate-sized, and unmanned aircraft. This document corrects errors in the preamble of that document.

DATES: The comment period for the proposed rule published January 31, 2024, at 89 FR 6056, is extended. The comment period originally scheduled to close on April 1, 2024, is extended to close on May 1, 2024.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Bryan B. Davis, Airmen & Special Projects Branch, AFS–320, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–1675; email *Bryan.Davis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2024, the FAA published an NPRM titled, ''Inspection Programs for Single-Engine Turbine-Powered Airplanes and Unmanned Aircraft; and Miscellaneous Maintenance-Related Updates'' (89 FR 6056).

In that NPRM, the FAA proposed to amend its regulations to revise certain

aircraft maintenance inspection rules for small, corporate-sized, and unmanned aircraft. The proposed changes include additional inspection program options for owners of single-engine turbine-powered airplanes and unmanned aircraft, relaxed mechanical reliability reporting requirements for part 91, subpart K aircraft, and several changes to clarify and simplify various maintenance-related regulations. These proposed amendments would relieve aircraft owners, operators, maintenance providers, and the FAA. The proposed amendments would provide greater flexibility for aircraft maintenance, standardized reporting requirements, and provide clarification of various maintenance-related regulations.

Extension of the Comment Period

When the NPRM published on January 31, 2024, the comment period was scheduled to close on April 1, 2024. The FAA recognizes that the NPRM had incorrect information for approximately thirty (30) days and that the Preliminary Regulatory Impact Analysis that supports the NPRM had not been placed on the docket. The FAA has placed the Preliminary Regulatory Impact Analysis in the docket (FAA–2024–0025) and it is now available for review and comment. Based on this, the FAA has determined that it is appropriate to extend the comment period to May 1, 2024.

After publishing the NPRM, the FAA became aware that certain information in the preamble, specifically in the Regulatory Notices and Analyses section, was incorrect. This document corrects those errors.

Correction

In FR Doc. 2024–00763, beginning on page 6067 in the **Federal Register** of January 31, 2024, make the following corrections:

1. On page 6607, in the sentence in the Summary of Benefits and Costs section in the third column correct ''Table 1 below presents a summary of estimated costs and cost savings for this proposal's manned aircraft maintenance programs over a 10-year time period'' to read ''Table 3 below presents a summary of estimated costs and cost savings for this proposal's manned aircraft maintenance programs over a 10-year time period.''

2. On page 6067, in the second to last column to the right in Table 3—Summary of Costs and Cost Savings correct ''Annualized net cost savings 7%—$7,372,660'' to read ''Annualized net cost savings 7%—$7,411,916.''

3. On page 6067, in the last column to the right of Table 3—Summary of Cost and Cost Savings correct ''Annualized net cost savings 3%—$7,392,755'' to read ''Annualized net cost savings 3%—$7,418,122.''

4. On page 6068, in the sentence in the Costs and Cost Savings section in the third column correct ''Table 2 presents undiscounted cost savings, costs, net costs, discounted net cost savings, and annualized cost savings based on only one manufacturer offering its recommended inspection program'' to read ''Table 4 presents undiscounted cost savings, costs, net costs, discounted net cost savings, and annualized cost savings based on only one manufacturer offering its recommended inspection program.''

5. On page 6068, in the sentences starting at the bottom of the second column correct ''For Year 1 in Table 3, using 2022 forecast estimates, the annual potential cost savings of the proposed rule would be $38,652,509 [$7,974 (estimated cost savings per aircraft) × 4,847 (estimated single turboprops)]. In the remaining years in the 10-year period of analysis in Table 3, annual potential cost savings are calculated in the same manner as in Year 1 by multiplying $7,974 cost savings per aircraft with the number of forecasted aircrafts'' to read ''For Year 1 in Table 5, using 2022 forecast estimates, the annual potential cost savings of the proposed rule would be $38,652,509 [$7,974 (estimated cost savings per aircraft) × 4,847 (estimated single turboprops)]. In the remaining years in the 10-year period of analysis in Table 5, annual potential cost savings are calculated in the same manner as in Year 1 by multiplying $7,974 cost savings per aircraft with the number of forecasted aircrafts.''

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44707 in Washington, DC.

Brandon Roberts,

Executive Director, Office of Rulemaking.

[FR Doc. 2024–05825 Filed 3–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 216

[Docket No. FDA–2023–N–0061]

RIN 0910–AI31

Drug Products or Categories of Drug Products That Present Demonstrable Difficulties for Compounding Under Sections 503A or 503B of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration is proposing to establish criteria for the lists of drug products or categories of drug products that present demonstrable difficulties for compounding (Demonstrable Difficulties for Compounding Lists or DDC Lists) under certain sections of the Federal Food, Drug, and Cosmetic Act. Additionally, the Agency is proposing to identify the first three categories of drug products on both DDC Lists. Drug products or categories of drug products that appear on the DDC Lists cannot qualify for certain statutory exemptions, and therefore may not be compounded under, either section 503A or section 503B, respectively.

DATES: Either electronic or written comments on the proposed rule must be submitted by June 18, 2024.

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 June 18, 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–N–0061 for ''Drug Products or Categories of Drug Products That Present Demonstrable Difficulties for Compounding Under Sections 503A or 503B of the Federal Food, Drug, and Cosmetic Act.'' 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 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, the plain language summary of the proposed rule of not more than 100 words as required by the ''Providing Accountability Through Transparency Act,'' 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: Dorcas Ann Taylor, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–0611.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

A. Purpose of the Proposed Rule

The Food and Drug Administration (FDA, Agency, or we) is proposing to implement parts of the Federal Food, Drug, and Cosmetic Act (FD&C Act) to establish criteria the Agency will use in evaluating drug products or categories of drug products considered for inclusion on the lists of drug products or categories of drug products that present demonstrable difficulties for compounding (DDC Lists) under each section. FDA also proposes to identify three categories of drug products on both DDC Lists. Drug products or categories of drug products that appear on the DDC Lists cannot qualify for the statutory exemptions under the applicable section. Additional drug products or categories of drug products are under consideration and may be addressed in future rulemaking.

B. Summary of the Major Provisions of the Proposed Rule

FDA is proposing to amend its regulations to add two lists identifying drug products or categories of drug products that present demonstrable difficulties for compounding under the FD&C Act. FDA is also proposing to establish criteria for evaluating drug products or categories of products for inclusion on one or both of these lists.

For evaluating drug products or categories of drug products for inclusion on the DDC Lists, FDA is proposing to establish the following criteria: the formulation complexity, drug delivery mechanism complexity, dosage form complexity, complexity of achieving or assessing bioavailability, compounding process complexity, and complexity of physicochemical or analytical testing of the drug product or category of drug products. FDA proposes to consider these criteria and the risks and benefits to patients of the compounded drug product or category of drug products in determining whether to add the drug product or category of drug products to one or both lists.

Based on the results of FDA's evaluation of certain categories of drug products that the public has nominated for consideration as presenting demonstrable difficulties for compounding, as well as in consultation with the Pharmacy Compounding Advisory Committee (PCAC), FDA is proposing to include the following three categories of drug products on the DDC Lists: (1) oral solid modified-release

drug products that employ coated systems (MRCs), (2) liposome drug products (LDPs), and (3) drug products produced using hot melt extrusion (HMEs). Before finalizing this rulemaking, FDA intends to consider whether any changes to the proposed criteria would alter FDA's analysis of whether the categories of drug products addressed in this notice of proposed rulemaking present demonstrable difficulties for compounding within the meaning of sections 503A or 503B of the FD&C Act. As discussed below, the final rule may include some or all of the categories of drug products proposed here for inclusion on the DDC Lists, depending on the comments received.

C. Legal Authority

Sections 503A and 503B of the FD&C Act, in conjunction with our general rulemaking authority in the FD&C Act, serve as our principal legal authority for this proposed rule.

D. Costs and Benefits

FDA evaluated three categories of drug products for this proposed rule (MRCs, LDPs, and HMEs) and is currently proposing to place all three of these categories of drug products on the DDC Lists. We expect that this proposed rule may create benefits for compounders by reducing regulatory uncertainty. At this time, we are not aware of any compounding and marketing of the three proposed categories of drug products for human use. Therefore, we expect that the proposed rule would only create administrative costs to read and understand the rule. We estimate that, over 10 years, the annualized costs of the proposed rule would equal $0.42 million at a 7 percent discount rate and $0.36 million at a 3 percent discount rate.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/ acronym	What it means
ANDA	Abbreviated New Drug Applications.
API	Active Pharmaceutical Ingredient.
CGMP	Current Good Manufacturing Practice.
CFR	Code of Federal Regulations.
DDC	Demonstrable Difficulties for Compounding.
FD&C Act	Federal Food, Drug, and Cosmetic Act.
FDA	Food and Drug Administration.
GI	Gastrointestinal.
HME	Hot Melt Extrusion.
LDP	Liposome Drug Product.
MRC	Oral Solid Modified-Release Drug Product That Employs Coated Systems.
PCAC	Pharmacy Compounding Advisory Committee.
NDA	New Drug Application.
PEG	Polyethylene Glycol.

III. Background

A. FDA's Current Regulatory Framework and Need for DDC Lists

Under sections 503A and 503B of the FD&C Act (21 U.S.C. 353a and 353b), certain conditions must be satisfied for compounded drug products to qualify for the exemptions set forth in each section from statutory requirements that may otherwise apply. Section 503A of the FD&C Act describes the conditions that must be satisfied for a human drug product compounded by a licensed pharmacist in a State licensed pharmacy or a Federal facility, or by a licensed physician, to qualify for exemptions from section 501(a)(2)(B) (concerning current good manufacturing practice (CGMP) requirements), section 502(f)(1) (concerning the labeling of drugs with adequate directions for use), and section 505 (concerning the approval of drugs under new drug applications (NDAs) or abbreviated new drug applications (ANDAs)) of the FD&C Act (21 U.S.C. 351(a)(2)(B), 352(f)(1), and 355). Section 503B of the FD&C Act describes the conditions that must be satisfied for a drug product compounded by or under the direct supervision of a licensed pharmacist in an outsourcing facility to qualify for exemptions from section 502(f)(1) (concerning the labeling of drugs with adequate directions for use), section 505 (concerning the approval of drugs under NDAs or ANDAs), and section 582 (concerning drug supply chain security requirements) of the FD&C Act (21 U.S.C. 360eee-1). Both sections contain conditions that concern whether the compounded drug product is one identified by the Secretary of Health and Human Services (the Secretary) as presenting demonstrable difficulties for compounding (see generally sections 503A(b)(3)(A) and 503B(a)(6) of the FD&C Act).[1] A drug product that the Secretary has identified as presenting demonstrable difficulties for compounding pursuant to section 503A(b)(3)(A) or section 503B(a)(6) may not be compounded under either section 503A or section 503B.

Specifically, a condition for the statutory exemptions in section 503A of the FD&C Act is that a drug product is not identified by the Secretary by regulation as a drug product that presents demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product (see section 503A(b)(3)(A) of the FD&C Act). Section 503A(c)(1) of the FD&C Act provides that before issuing regulations to implement paragraph (b)(3)(A), the Secretary shall convene and consult an advisory committee on compounding unless the Secretary determines that the issuance of such regulations before consultation is necessary to protect the public health.

Similarly, a condition for the statutory exemptions in section 503B of the FD&C Act is that a drug compounded by an outsourcing facility is not identified (directly or as part of a category of drugs) on a list published by the Secretary of drugs or categories of drugs that present demonstrable difficulties for compounding that are reasonably likely to lead to an adverse effect on the safety or effectiveness of the drug or category of drugs, taking into account the risks and benefits to patients, or the drug is compounded in accordance with all applicable conditions identified on the list as conditions that are necessary to prevent the drug or category of drugs from presenting such demonstrable difficulties (see section 503B(a)(6) of the FD&C Act). Section 503B(c) of the FD&C Act provides that the Secretary will implement the list described in paragraph (a)(6) through regulations and that before issuing regulations to implement paragraph (a)(6), the Secretary will convene and consult an advisory committee on compounding.

This proposed rule, if finalized, would implement sections 503A(b)(3)(A) and 503B(a)(6) of the FD&C Act.

B. History of This Rulemaking and Request for Nominations

In July 2000, the PCAC discussed and provided FDA with advice about the Agency's efforts to develop a list of drugs that present demonstrable difficulties for compounding. FDA published a notice of that meeting in the **Federal Register** of June 29, 2000 (65 FR 40104). However, before a list could be developed, the constitutionality of provisions of section 503A of the FD&C Act concerning restrictions on the advertising or promotion of the compounding of any particular drug, class of drug, or type of drug and the solicitation of prescriptions for compounded drugs were challenged in court. These provisions were held unconstitutional by the U.S. Supreme Court in 2002 (see *Thompson* v. *Western*

[1] The functions of the Secretary described herein have been delegated to FDA. Delegations of authority are available on FDA's website at *https://www.fda.gov/about-fda/staff-manual-guides/delegations-authority-volume-ii-1400.* Please see Delegations of Authority to the Commissioner of Food and Drugs in Staff Manual Guide 1410.10.

States Med. Ctr., 535 U.S. 357 (2002)). After the court decision, FDA suspended its efforts to develop the difficult-to-compound list.

The Drug Quality and Security Act, enacted in 2013, removed from section 503A of the FD&C Act the provisions that had been held unconstitutional and added new section 503B to the FD&C Act. In the **Federal Register** of December 4, 2013 (78 FR 72840), FDA established a docket and invited interested persons to nominate drug products or categories of drug products to be identified as ones that present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act. Approximately 70 unique drug products or categories of drug products were nominated. In the **Federal Register** of July 28, 2017 (82 FR 35214), FDA established another public docket so that interested parties could nominate drug products or categories of drug products that were not previously nominated, resubmit previous nominations with additional supporting information, or submit comments. Since establishing the new public docket, several new unique drug products or categories of drug products have been nominated and additional information regarding previous nominations and general comments has been submitted.

On June 18, 2015, March 9, 2016, November 3, 2016, May 9, 2017, and November 21, 2017, FDA consulted with the PCAC (see sections 503A(c)(1) and 503B(c)(2) of the FD&C Act) about criteria for evaluating whether drug products and categories of drug products present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act and the three categories of drug products that are addressed in this proposed rule (Refs. 1 to 10). The criteria were presented and discussed at the June 2015 PCAC meeting. The criteria were subsequently revised to clarify the description of each factor and were then presented and discussed at the March 2016 PCAC meeting (Ref. 7). In general, the PCAC agreed with the proposed criteria and the approach taken by the Agency in evaluating the proposed categories of products that present demonstrable difficulties for compounding under sections 503A and 503B. In addition, the PCAC agreed with FDA's recommendation to identify each of the categories of drug products described in this proposed rule as ones that present demonstrable difficulties for compounding. Since the PCAC meetings, FDA is not aware of information regarding the difficulties presented by compounding the categories of drug products addressed in this proposed rule that would change the analysis the Agency last presented to the PCAC. The Agency has considered the PCAC's recommendations in developing this proposed rule, and the Agency intends to continue to consult with the PCAC in evaluating drug products or categories of drug products for the DDC Lists.

IV. Legal Authority

Section 503A of the FD&C Act describes the conditions that must be satisfied for a human drug product compounded by a licensed pharmacist in a State licensed pharmacy or a Federal facility, or by a licensed physician, to qualify for exemptions from section 501(a)(2)(B) (concerning CGMP requirements), section 502(f)(1) (concerning the labeling of drugs with adequate directions for use), and section 505 (concerning the approval of drugs under NDAs or ANDAs) of the FD&C Act. Section 503B of the FD&C Act describes the conditions that must be met for a drug product compounded by or under the direct supervision of a licensed pharmacist in a facility registered as an outsourcing facility to qualify for exemptions from section 502(f)(1) (concerning the labeling of drugs with adequate directions for use), section 505 (concerning the approval of drugs under NDAs or ANDAs), and section 582 (concerning drug supply chain security requirements) of the FD&C Act. Sections 503A and 503B of the FD&C Act contain conditions concerning drug products that have been identified as presenting demonstrable difficulties for compounding and address how lists of drug products or categories of drug products that present demonstrable difficulties for compounding must be established under each section. Specifically, section 503A(c)(1) of the FD&C Act requires that FDA issue regulations to implement paragraph (b)(3)(A), which refers to the DDC List under section 503A, and section 503B(c)(1) of the FD&C Act states that FDA must implement the list described in paragraph (a)(6) that refers to the DDC List under section 503B, through regulations. Thus, sections 503A and 503B of the FD&C Act, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)), serve as our principal legal authority for this proposed rule.

V. Description of the Proposed Rule

FDA is proposing to add § 216.25 to title 21 of the Code of Federal Regulations (CFR) (21 CFR 216.25) to establish criteria to evaluate drug products and categories of drug products for inclusion on one or both of the DDC Lists in § 216.25(a), and to codify the initial DDC List for section 503A and the initial DDC List for section 503B of the FD&C Act in § 216.25(b) and (c), respectively. FDA is proposing to create two separate DDC Lists, a 503A DDC List and a 503B DDC List, that would implement the DDC statutory provisions and reflect the differences in compounding standards under each section. Having two separate lists will make it easier to address situations that could arise where a drug product or category of drug products would present demonstrable difficulties for compounding under section 503A but may not present demonstrable difficulties for compounding under section 503B of the FD&C Act. For example, in certain situations, FDA may determine in its consideration of the DDC criteria that a drug product or category of drug products presents demonstrable difficulties for compounding unless it is made in accordance with the manufacturing controls over safety, identity, strength, quality, and purity required under CGMP. In such cases, because drug products compounded in accordance with the conditions of section 503A, but not section 503B, are exempt from CGMP requirements, FDA may decide to include a drug product or category of drug products on the DDC List for section 503A but not the DDC List for section 503B of the FD&C Act.[2] The initial lists, if finalized as proposed, would include three categories of drug products that present demonstrable difficulties for compounding under both sections 503A and 503B of the FD&C Act and, therefore, would not qualify for the exemptions in either section. The proposed criteria and categories of drug products are described below.

As discussed below, to determine whether a drug product or category of drug products presents demonstrable difficulties for compounding FDA may consider the criteria in this proposed rule individually and collectively, and take into account the risks and benefits to patients of the compounded drug product or categories of drug products. Additionally, FDA is proposing three categories of drug products that were, independently of each other, evaluated by FDA and presented to the PCAC to be included on the DDC List for section 503A and the DDC List for section 503B of the FD&C Act. In the event of a stay or invalidation of any criterion or of any entry on a DDC List, those criteria and entries that remain in effect would

[2] See section 501(a)(2)(B) of the FD&C Act.

continue to function sensibly [3] to advance the statutory objectives. It is FDA's intent to preserve each of the criteria and entries on the DDC Lists, if finalized, to the fullest possible extent, to help advance the objectives described in section III.A.

A. Criteria for Evaluating Drug Products or Categories of Drug Products for the DDC Lists (Proposed § 216.25(a))

FDA has identified six criteria it proposes to consider in determining whether drug products or categories of drug products present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act:

1. Complex formulation,
2. Complex drug delivery mechanism,
3. Complex dosage form,
4. Bioavailability achievement complexity,
5. Compounding process complexity, and
6. Physicochemical or analytical testing complexity.

In evaluating drug products or categories of drug products for the DDC Lists, the Agency proposes to consider these criteria individually and collectively, and to take into account the risks and benefits to patients of the compounded drug product or categories of drug products. The criteria are not mutually exclusive. A drug product or category of drug products may meet one or more of these criteria that indicate it presents demonstrable difficulties for compounding. FDA proposes to apply the same criteria when considering drug products or categories of drug products for inclusion on either the DDC List for section 503A or the DDC List for section 503B of the FD&C Act, although the application of the criteria may lead to different conclusions for each list. The three categories of drug products identified in this proposed rule are proposed to be included on both the initial 503A and 503B DDC Lists, but this may not always be the case given the differences in the statutory standards that apply to compounding under sections 503A and 503B of the FD&C Act. We also note that these criteria for determining whether a drug product presents demonstrable difficulties for compounding are not intended to provide FDA's interpretation of which drugs are considered complex products in other circumstances, including for purposes of determining whether a proposed generic drug is a complex product as defined in the Generic Drug User Fee Amendments Commitment Letters and which, as appropriate, may use scientifically valid in vivo or in vitro test methods to demonstrate bioequivalence.

In its evaluations for the DDC Lists, FDA intends to take into account the risks and benefits to patients of the compounded drug product or category of drug products under consideration. In doing so, FDA may use available information such as reports submitted to FDA about adverse drug experiences and FDA's scientific and medical expertise to inform its analysis, as well as information about FDA-approved drug products. FDA may consider actual or potential risks and benefits to patients posed by a drug product or category of drug products. In particular, FDA intends to consider actual or potential risks to patients in connection with the six criteria described in this proposed rule.

The Agency does not intend to consider cost and convenience as factors that would be relevant to the risk-benefit analysis for the DDC Lists.

There may be situations in which FDA's findings, with respect to whether a drug product or category of drug products presents demonstrable difficulties for compounding, indicate that the difficulty in compounding is limited to a subset of such drug products or categories of drug products. In those cases, the Agency may tailor the entry on the DDC Lists to reflect its findings and conditions that the Agency determines are necessary to prevent the drug or category of drugs from presenting the demonstrable difficulties. For example, if the Agency were to find a drug product or category of drug products presents demonstrable difficulties for compounding at a specific strength for topical use, it could choose to limit the entry of that drug product or category of drug products on the DDC Lists to a specified strength for topical use.

B. Description of Criteria for the Evaluation of Drug Products or Categories of Drug Products for Inclusion on the DDC Lists [4]

The following is a discussion of the criteria the Agency proposes to codify, in proposed § 216.25(a), for including a drug product or category of drug products on the section 503A or section 503B DDC List. A drug product or category of drug products that meets one or more of the criteria may present demonstrable difficulties for compounding under section 503A or 503B of the FD&C Act.

1. Complex Formulation

Complex formulation refers to a formulation in which the ingredients (active pharmaceutical ingredients (APIs) or excipients) possess (or are required to possess) certain physicochemical characteristics or properties that are necessary to achieve or maintain the proper performance of the drug product. Generally, these attributes may include the solid state (crystalline, amorphous, or a combination thereof), chirality, molecular weight (dispersity/distributions), or particle size distribution of ingredients. For example, for some APIs, the solid state, chirality, or particle size might be critical to the safety and efficacy of certain drug products, whereas for some excipients, the molecular weight, intrinsic viscosity, or relative proportion of the release controlling polymer to an API might be critical to the safety and efficacy of certain drug products. The compatibility or stability (physical and chemical) of the API(s) or excipients in the final dosage form may also contribute to determining whether the compounded drug product has a complex formulation.

2. Complex Drug Delivery Mechanism

Complex drug delivery mechanism refers to the way in which the drug is released from the dosage form or targeted for delivery in the body to achieve the desired therapeutic effect. Complex drug delivery mechanisms include, for example, formulations designed to release the drug at specific onset, rate, and extent through specific region(s) within the gastrointestinal (GI) tract; formulations designed to achieve permeation through the skin at a specific rate; and formulations containing coated beads or liposomes.

3. Complex Dosage Form

Complex dosage form refers to physical dosage units with unique characteristics that are difficult to consistently achieve or maintain. Complex dosage form also refers to container closure systems that may interact with the compounded drug and affect its intended use, either through physical (inconsistent dose administration) or chemical interactions between the compounded drug and the

[3] *See, e.g., Belmont Mun. Light Dep't* v. *FERC,* 38 F.4th 173, 188 (D.C. Cir. 2022) (finding severability of portion of an administrative action, applying principle that severability is appropriate where ''the agency prefers severability to overturning the entire regulation'' and where the remainder of the regulation ''could function sensibly without the stricken provision'') (citations omitted).

[4] These proposed descriptions of terms apply only to those terms when used in proposed 21 CFR part 216 for purposes of determining whether drug products or categories of drug products present demonstrable difficulties for compounding.

container closure system. Drug products may have very simple formulations, such as a single API, and a simple delivery mechanism, such as an injection, but the drug product may be complex because the physical properties of the dosage form are difficult to achieve or maintain. Examples of complex dosage forms include coated beads, osmotic-controlled release systems, and liposomes.

4. Bioavailability Achievement Complexity

Bioavailability refers to the rate and extent to which the active ingredient or active moiety is absorbed from a drug product and becomes available at the site of action. Drug products may present demonstrable difficulties for compounding if bioavailability is challenging to achieve because of the characteristics of the API or compounded formulation such as low permeability or low solubility. Examples of drug products for which consistent bioavailability is difficult to achieve include Biopharmaceutics Classification System Class 2 drugs (*e.g.,* naproxen, lansoprazole, rifampin, and carbamazepine) and Class 4 drugs (*e.g.,* azathioprine, clarithromycin, oxcarbazepine, and modafinil).

5. Compounding Process Complexity

Compounding process complexity refers to whether compounding the drug requires multiple, complicated, or interrelated steps or specialized facilities or equipment to achieve the appropriate drug product. An example of a complex compounding process includes multistep and highly interrelated processes such as wet granulation, extrusion, spheronization, fluid bed drying, coating, compression, or curing before processing into the final dosage form.

6. Physicochemical or Analytical Testing Complexity

Physicochemical or analytical testing complexity refers to the challenges presented with confirming the drug product will perform as expected with regard to certain characteristics. Drug products may demonstrate testing complexity when specialized analytical instruments or special training is necessary to show that the drug product will perform as expected. Some examples of complex testing include cell-based assays and use of nuclear magnetic resonance, mass spectrometry, or X-ray powder diffraction to identify constituents of complex formulations.

C. Evaluation of Drug Products or Categories of Drug Products Proposed for Inclusion on the DDC Lists

FDA is proposing three categories of drug products that were evaluated by FDA and presented to the PCAC to be included on the initial DDC List for section 503A and the initial DDC List for section 503B of the FD&C Act. The following three categories of drug products are being proposed to be included in § 216.25(b) and (c): MRCs, LDPs, and HMEs. FDA may propose additional drug products or categories of drug products for inclusion on the DDC Lists as it continues its evaluations.

The information that FDA assessed under each of the proposed evaluation criteria for each of the categories of drug products included in this proposed rule was obtained from publicly available sources, including peer-reviewed medical literature. Some of this information was referenced in the nominations, and the remainder was gathered through independent searches of medical and pharmaceutical databases. The nature, quantity, and quality of the information FDA assessed varied considerably from drug product category to drug product category. For some categories of drug products, reports in the literature were more plentiful and sometimes comprised hundreds or thousands of articles. In those cases, generally, the Agency limited its review to a sample of the best literature sources available (*e.g.,* review articles in widely known, peer-reviewed journals; meta-analyses; reports of randomized controlled trials). The Agency intends to use a similar process when evaluating other drug products or categories of drug products for inclusion on the DDC Lists in future rulemakings.

Three categories of drug products that were nominated as presenting demonstrable difficulties for compounding under sections 503A and 503B, and that FDA evaluated in consultation with the PCAC, are not included in this proposed rule: (1) drug products that employ transdermal or topical delivery systems; (2) metered-dose inhalers; and (3) dry powder inhalers. FDA may address these categories in future rulemaking.

After evaluating the comments on this proposed rule, FDA intends to issue the evaluation criteria and DDC Lists as a final rule, which will be codified at § 216.25. The final rule may include some or all of the categories of drug products proposed here for inclusion on the DDC Lists, depending on the comments received.

Individuals and organizations may nominate drug products or categories of drug products for the DDC Lists or comment on nominated categories of products. For access to the docket to nominate products or comment on nominated products, go to *https://www.regulations.gov* and insert Docket No. FDA–2017–N–2562 into the ''Search'' box and follow the prompts.

FDA intends to consider reevaluating products or categories of products for the DDC Lists if there is a change in circumstances that alters the Agency's analysis. FDA may consider reevaluating products or categories of products for the DDC Lists at any time on its own initiative. Requests for updates to the DDC Lists may be submitted to FDA at any time. With respect to a drug product or category of drug products that has not been addressed in rulemaking, individuals and organizations may submit nominations of new substances or comments on nominated substances to Docket No. FDA–2017–N–2562. With respect to a drug product or category of drug products addressed in a final rule, individuals and organizations may petition FDA to amend the DDC Lists (see 21 CFR 10.30). FDA will review the section 503B DDC List at least once every 4 years and update the DDC List as necessary.[5]

D. Drug Products or Categories of Drug Products Proposed for Inclusion on the DDC Lists

1. Oral Solid Modified-Release Drug Products That Employ Coated Systems (MRCs)

For purposes of this proposed rule, the Agency defines MRCs as oral solid drug products that consist of, or are intended to consist of, a drug-containing core enclosed within a polymeric coating to release an API at specified rates, patterns, or onsets through the GI tract to produce systemic, enteric, or local action.[6] There are two types of

[5] See section 503B(c)(4) of the FD&C Act.

[6] Modified release solid oral dosage forms include both delayed and extended release drug products. See FDA's guidance for industry on ''(SUPAC–MR) Scale-Up and Postapproval Changes for Modified Release Solid Oral Dosage Forms.'' For this proposed rulemaking, the Agency does not consider matrix-type tablets and capsules to be MRCs, provided that drug release and delivery of an active ingredient from such products is controlled solely by disintegration or dissolution through the polymeric matrix. Moreover, with regard to certain fillable capsules, the Agency does not consider enteric coated capsules of immediate release formulations to be MRCs because of the fact that such enteric coating is designed to control disintegration onset of the coated capsule and not the release rate of active ingredient at a targeted location in the GI tract. In addition, as noted above, this proposed rule is not intended to provide FDA's interpretation of which drugs are considered

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MRCs that affect the rate of API release: diffusion and osmotic systems. The diffusion systems consist of a hydrophilic and/or water-insoluble polymeric coating enclosing a core tablet or multiple cores of active ingredient and excipient. The osmotic systems consist of a semipermeable polymeric membrane coating enclosing a compressed core that is composed of active ingredient, osmotic agent, and other excipients, and one or more mechanical or laser drilled orifices for drug release.

MRCs were evaluated using the six criteria that FDA proposes to use to determine whether drug products or categories of drug products present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act explained in section V.A. above. MRC formulations are complex because they are required to release a specified amount of active ingredient over a specified period of time for a given therapy. Developed properly, MRCs must be physically stable and exhibit consistent functional properties of active ingredient release rate, pattern, and location within the GI tract. If MRCs are not produced correctly, sub- or supra-therapeutic release, GI mucosa irritation, and variability in performance within and across batches may occur. The mechanism by which active ingredient is released from the MRCs throughout the GI tract is complex because, to perform properly, it requires the design and formation of a system that delivers a specific amount of active ingredient per unit time and, in some cases, in specific regions of the GI tract. Depending on the type of MRC systems, the drug (API) delivery mechanism for an MRC can either be diffusion controlled through polymeric coating or osmotic controlled through a polymeric semipermeable membrane, and, in either case, the delivery mechanism depends on several factors, including the intended time/location of API release in the GI tract and the types of materials used for coating. In addition, because the dose-release profile is impacted by several factors, precise control of the attributes of raw materials, the manufacturing process, and the final product is necessary for ensuring the specifications of the drug product are met.

MRCs' complex formulations and complex drug delivery mechanisms also affect the complexity of their dosage forms for compounding. They require well-designed controls of component attributes and process parameters for predictable release of the active ingredient. In addition, MRCs are designed to maintain their integrity in vivo to minimize local irritation to the GI tract and to ensure that dose dumping does not occur. Various components play a critical role in the dosage form performance. Extensive product development and precise control over raw material selection and the production process are essential for evaluating the active ingredient release mechanism and profile, and overall MRC performance characteristics. Characterizing and controlling bioavailability of MRCs are also critical. Subtle changes to any of the product's components or manufacturing processes could significantly impact its bioavailability and performance characteristics. In general, for MRCs, in vitro assessments, such as in vitro dissolution testing, alone are insufficient to accurately predict bioavailability and overall clinical effect; rather, in vivo assessments are needed.

Because specialized equipment under appropriate controls is critical for the automated processing and precise control over the manufacturing process, the compounding processes for MRCs are also complex. These processes include technically complex mixing, fluidization coating and drying, compression, filling, and orifice drilling. Poor technique or control during any of these processes will likely result in variable performance of the drug product. MRCs additionally require complex physicochemical and analytical testing of raw material, product quality/performance, and stability because evaluating the physical and chemical properties of the raw materials and finished dosage form, as well as the product-critical performance parameters, requires specialized analytical devices and procedures for accurate measurement. Furthermore, to assess and ensure consistent purity of the drug product, chemical impurities must be quantitated through various sensitive analytical techniques developed specifically for these impurities.

With respect to the risks and benefits to patients, compounded MRCs present a significant safety risk given the complexities described above. MRC design and the relationship between excipient and active ingredient directly impact release rate and pattern and performance. Release rate and pattern and performance in turn affect drug product effectiveness and safety. Substituting or removing excipients, such as release retarding polymers, plasticizers, solubilizers, and permeation enhancers, would likely change the release characteristics of the product and, in turn, may adversely impact product performance. Also, precise and consistent quality controls of raw materials, the manufacturing process, and final product are essential for predictable and reproducible active ingredient release, performance, and safety profiles. MRCs are designed to release a specified amount of active ingredient to a specific region of the GI tract over a specified period of time, for a given therapy. MRCs are designed to maintain their integrity in vivo to minimize local irritation to the GI tract and to ensure that dose dumping does not occur. The complexities associated with the manufacture of MRCs create a heightened risk that compounded products would not deliver the active ingredient as intended, which would present a safety concern to patients. The Agency is not aware of compounded MRCs for human use. However, FDA requests comments regarding availability of and potential access to compounded MRCs. FDA is also not aware of a rationale for why a patient would have a medical need for compounded MRCs, as opposed to an FDA-approved product, nor is it aware of any actual or potential benefit that would outweigh the risks to patient safety that would be presented by compounded MRCs.

Based on an analysis of the evaluation criteria, taking into account the risks and benefits to patients, FDA proposes to include MRCs on the lists of drug products or categories of drug products that present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act. On May 9, 2017, FDA proposed to the PCAC that MRCs be identified as presenting demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act (Ref. 9). The PCAC voted to agree with FDA's proposal (Ref. 4).

In applying the six criteria discussed above, FDA considered whether MRCs should be added to the 503A DDC List and to the 503B DDC List. FDA has tentatively concluded that MRCs meet the statutory criteria for inclusion on both lists. As discussed above, MRCs are solid oral dosage form drug products that consist of, or are intended to consist of, a drug-containing core enclosed within a polymeric coating to release an active ingredient at specified rates, patterns, or onsets through the GI tract to produce systemic, enteric, or local action. The complexities associated with the manufacture of MRCs create a

complex products in other circumstances, including for purposes of determining whether a proposed generic drug is a complex product.

heightened risk that compounded products would not deliver the active ingredient as intended, which would present a safety concern to patients. FDA does not believe an outsourcing facility's compliance with CGMP requirements would address the concerns described above regarding formulation complexity, drug delivery mechanism complexity, dosage form complexity, complexity of achieving or assessing bioavailability, compounding process complexity, and complexity of physicochemical or analytical testing of the drug product or category of drug products. FDA's CGMP regulations contain the minimum current good manufacturing practice for methods to be used in, and the facilities or controls to be used for, the manufacture, processing, packing, or holding of a drug to assure that such drug meets the requirements of the FD&C Act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess (see 21 CFR 210.1(a)). The potential quality and safety concerns raised by MRCs would typically be evaluated as part of the premarket approval process, based on the assessment of a broader range of drug development data including certain safety, clinical, and bioavailability or bioequivalence information as appropriate. Since compounded drug products that meet the conditions of sections 503A and 503B are exempt from premarket approval requirements, compounded MRCs would not be subject to such evaluation based on a broader range of drug development data. Therefore, compliance with CGMP standards, alone, is unlikely to provide sufficient assurance that compounded MRCs can deliver product of intended characteristics with reliable quality and consistent performance. However, FDA is soliciting comments about whether this entry should be added to only the 503A DDC List or only the 503B DDC List.

2. Liposome Drug Products (LDPs)

For this proposed rule, the Agency defines an LDP as a drug product in which the API is generally contained in or intended to be contained in liposomes.[7] The Agency has broadly evaluated LDPs, including those containing liposomes that would not fall within what is commonly considered to be the nanoscale-size range, for inclusion on the DDC Lists.[8]

Liposomes are vesicles composed of a bilayer and/or a concentric series of multiple bilayers separated by aqueous compartments formed by amphipathic molecules such as phospholipids that enclose a central aqueous compartment. LDPs were evaluated using the six criteria explained in section V.A. above. Because of: (1) the attributes of lipids, including chemistry and structure; (2) the attributes of inactive ingredients (*e.g.,* cholesterol and polyethylene glycol (PEG) or PEG derivatives), including grade, ratio, and concentration range; and (3) the stability of the liposome, which can be affected by a number of formulation-related factors (*e.g.,* the size and size distribution of the lipid vesicles, morphology, surface coating, pH, buffer, or counter ions), LDPs have complex formulations. LDPs also have a complex drug delivery mechanism. The mechanism by which an API is released from an LDP is complex because it involves precisely designing and formulating a system that delivers a specific amount of API per unit time and, in most cases, in a specific region (*e.g.,* tumor tissues, intracellular compartments). In addition, because the in vivo biodistribution and release characteristics are affected by several factors, precise control of raw materials, the manufacturing process, and the final product is critical to achieving a safe and effective drug product.

LDPs are complex dosage forms because they have complex formulations and mechanisms by which the API is delivered in vivo. Characteristics of the physical dosage units of liposome suspensions or lyophilized powders for suspension are difficult to consistently achieve or maintain, including: (1) well-defined and controlled particle size and particle size distribution; (2) the status of the API (*e.g.,* whether it is contained within the liposome); and (3) the surface chemistry of the liposomes. These characteristics have a significant impact on the safety and effectiveness of LDPs. In addition, various formulation components play a critical role in dosage form performance and product stability. Such components can vary for different drug products that have different routes of administration. For example, the components of an injectable drug product may include different inactive ingredients than potential topical or inhalation drug products. Extensive product development and precise control over raw materials and optimization of the process parameters are essential to produce safe, effective, and high-quality LDPs.

Characterizing and controlling the bioavailability of LDPs is also a contributing factor to the complexity of LDPs. Subtle changes to the formulation composition, lipid raw material purity, or manufacturing processes could significantly impact the biodistribution and release characteristics of an API from liposomes, which in turn influence the availability of an API in systemic circulation at tissue or subcellular targets. Different API forms may have different absorption, distribution, metabolism, and elimination, and the difficulty in determining the amount of various forms of API makes it complex to characterize and control bioavailability. Depending on the types of lipids used in formulating liposomes, interactions between liposome surface and blood proteins may affect the drug release and pharmacological properties of a liposome drug product in vivo. Such interactions can have safety implications because of ''dose dumping.'' For parenteral LDPs, in vitro assessments (*e.g.,* in vitro drug release testing) are often used in conjunction with in vivo testing to predict the availability of drug at its intended target. LDPs involve complex compounding processes. The production of LDPs is complex because of unique equipment and unit operations involved and the critical need for in-process controls to ensure consistent product quality. Poor control over these unit operations may lead to variability in product quality, which may potentially lead to a negative impact on product efficacy and safety. In addition, LDPs involve comprehensive and complex physicochemical testing to ensure quality of the raw material, consistency of the product quality, and predictable in vivo performance. Furthermore, suitable analytical methods need to be employed to properly characterize LDPs, which can often be difficult given the complexity of liposome formulations. Use of inappropriate methods could produce false results,

[7] With respect to FDA-approved liposome drug products, see the guidance for industry ''Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation.'' See also FDA's final guidance for industry ''Drug Products, Including Biological Products, That Contain Nanomaterials.''

[8] Within the context of this rule, preparations such as liposomal creams or gels are not considered LDPs, provided that, the principal use of amphipathic molecules such as phospholipids in the form of liposome alone or in combination with other inactive components (*i.e.,* other than the drug or active pharmaceutical ingredient) in such preparations is intended for other than cure, mitigation, treatment or prevention of any underlying human disease; or intended not to affect, the structure or any function of a human body.

thereby calling data reliability and, hence, product quality into question.

With respect to the risks and benefits to patients, compounded LDPs present a significant safety risk for compounding given the complexities described above. Many of the APIs used in LDPs are cytotoxic. In addition, improper selection of inactive ingredients or improper mixing of liposomes with APIs present safety risks that the APIs will not be encapsulated properly or be released prematurely, causing the drug product to be potentially ineffective or hazardous. LDPs are used to alter the biodistribution of an API and can improve drug dissolution, stability, deliverability, biodistribution, and bioavailability. The Agency is not aware of compounded LDPs for human use; however, FDA requests comments regarding availability of and potential access to compounded LDPs for human use. FDA is also not aware of any actual or potential benefit that would outweigh the risks to patient safety that would be presented by compounded LDPs.

Based on an analysis of the evaluation criteria, taking into account the risks and benefits to patients, FDA proposes to include LDPs on the lists of drug products or categories of drug products that present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act. On November 21, 2017, FDA proposed to the PCAC that LDPs be identified as presenting demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act (Ref. 10). The PCAC voted to agree with FDA's proposal (Ref. 5).

In applying the six criteria discussed above, FDA considered whether LDPs should be added to the 503A DDC List and to the 503B DDC List. FDA has tentatively concluded that LDPs meet the statutory criteria for inclusion on both lists. As discussed above, LDPs are drug products in which the active ingredient is generally contained in or intended to be contained in liposomes, which are vesicles composed of a bilayer and/or a concentric series of multiple bilayers separated by aqueous compartments formed by amphipathic molecules such as phospholipids that enclose a central aqueous compartment. Among FDA's concerns are that many of the active ingredients used in LDPs are cytotoxic and that there is a risk that improper selection of inactive ingredients or improper mixing of liposomes with active ingredients could cause the drug product to be potentially ineffective or hazardous. FDA does not believe an outsourcing facility's compliance with CGMP requirements would address the concerns described above regarding formulation complexity, drug delivery mechanism complexity, dosage form complexity, complexity of achieving or assessing bioavailability, compounding process complexity, and complexity of physicochemical or analytical testing of the drug product or category of drug products. FDA's CGMP regulations contain the minimum current good manufacturing practice for methods to be used in, and the facilities or controls to be used for, the manufacture, processing, packing, or holding of a drug to assure that such drug meets the requirements of the FD&C Act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess (see 21 CFR 210.1(a)). The potential quality and safety concerns raised by LDPs would typically be evaluated as part of the premarket approval process, based on the assessment of a broader range of drug development data including certain safety, clinical, and bioavailability or bioequivalence information as appropriate.[9] Since compounded drug products that meet the conditions of sections 503A and 503B are exempt from premarket approval requirements, compounded LDPs would not be subject to such assessment based on a broader range of drug development data. Therefore, compliance with CGMP standards, alone, is unlikely to provide sufficient assurance that compounded LDPs can deliver product of intended characteristics with reliable quality and consistent performance. However, FDA is soliciting comments about whether this entry should be added to only the 503A DDC List or only the 503B DDC List. FDA is aware that certain FDA-approved liposome drug products may have instructions in their approved labeling for certain manipulations. Accordingly, FDA is also soliciting comments about whether the entry for the 503B DDC List should include any limitations, such as, for example, to address certain LDPs that an outsourcing facility compounds from FDA-approved liposome drug products.

3. Drug Products Produced Using HMEs

For this proposed rule, the Agency defines HME as a continuous process operation that achieves or is intended to achieve the molecular mixing of APIs and inactive ingredients (*e.g.,* polymers) at temperatures above their glass transition temperatures and/or melting temperatures within an extruder. The objective of an HME process is to enhance the solubility of poorly water-soluble drugs by converting the formulation components into an amorphous phase (not crystalline) product with uniform content.

HME is a process by which heat and shear are applied to melt a mixture of API and inactive ingredients within an extruder that is then pushed through an orifice with the objective of converting the ingredients into an amorphous phase material with uniform content, referred to as the ''extrudate.'' HMEs were evaluated using the six criteria that FDA proposes to use to determine whether drug products or categories of drug products present difficulties for compounding under sections 503A and 503B of the FD&C Act explained in section V.A. above. HMEs have complex formulations because the extrudate must remain a stable and amorphous solid solution of API within a matrix throughout the shelf life of the final drug product in order to achieve proper product performance. This formulation is necessary to ensure that the API has higher solubility, resulting in the desired bioavailability of the drug product. To avoid a negative impact on the safety and efficacy of the product, the extrudate should have a uniform distribution of API in the matrix and a controlled level of impurities. It is critical for these formulations to be thermally stable during the extrusion process and physically stable afterwards. Raw material selection and control and ingredient ratios influence several attributes of the extrudate and, in turn, the final product. If HMEs are not formulated correctly, taking into account the principles discussed above, it could lead to significant variability in performance within and across batches, and may impact bioavailability. The drug delivery mechanism, or the mechanism by which API is released from the HMEs, can also be complex because it is dependent on a product design (*e.g.,* immediate or sustained) that implicates API dissolution and solubility in an amorphous state within the extrudate to ensure appropriate drug delivery. Product design involves achieving and maintaining an amorphous state of the API in the extrudate, extrudate incorporation into the final dosage form, and selection of a carrier/API matrix that will release the drug at a predetermined rate. In addition, in order to achieve a proper dose-release profile, precise control of

[9] For more information see the guidance for industry ''Liposome Drug Products: Chemistry, Manufacturing, and Controls; Human Pharmacokinetics and Bioavailability; and Labeling Documentation.'' See also FDA's final guidance for industry ''Drug Products, Including Biological Products, That Contain Nanomaterials.''

raw materials, the extrusion process, and the final product is critical.

Some dosage forms of HMEs are complex because of the structural arrangement or distribution of the extrudate within the dosage form, the function or role of the extrudate in the dosage form's drug delivery mechanism, or the interaction of extrudate with other ingredients within the dosage form. HMEs require well-designed controls of ingredient attributes and process parameters for predictable API release from a dosage form. These controls may vary from dosage form to dosage form, depending on what downstream incorporation steps the extrudate will undergo. Extensive product development and precise control over raw material selection and the production process are essential to evaluating the API release mechanism and profile, and other product performance characteristics. Characterizing and controlling the bioavailability of HMEs is also a contributing factor to the complexity of HMEs. Subtle changes to any components or production processes could significantly impact a drug product's solubility and intrinsic dissolution, which may in turn influence local and systemic bioavailability. In general, for compounded HMEs, in vitro assessments, such as dissolution testing, alone are insufficient to accurately predict bioavailability and overall clinical effect. Rather, in vivo assessments are needed.

The manufacturing process for HMEs typically requires specialized equipment under sophisticated controls, critical for ensuring product quality, and thereby making compounding of HMEs complex. To achieve and maintain critical product quality attributes, the extruder must be properly calibrated based on the characteristics of the ingredients fed into the extruder and desired characteristics of the extrudate. Poor technique or control at any step will likely result in a product that does not achieve or maintain critical quality attributes. Physicochemical and analytical testing before, during, and after HME to evaluate thermal properties, recrystallization, dissolution, and uniformity requires specialized analytical devices and procedures for accurate measurement. A rigorous characterization of the ingredients processed by HME is important to avoid a negative impact on the safety and effectiveness of HMEs. Physicochemical characterization of the extrudate formed during HME is complex and necessary to properly assess its properties and performance in the finished drug product. In addition, the measurement system to properly characterize the extrudate is complex because it incorporates multiple complementary methods to interpret similar properties, such as a limit of detection for crystallinity and thermal history of amorphous phase. Ensuring the stability of an HME is a major challenge during production, storage, and administration.

With respect to the risks and benefits to patients, compounded HMEs present a significant safety risk given the complexities described above, which include HME process-design complexities and the relationship between inactive ingredient and API of HMEs, which directly impacts bioavailability, release, and performance. Bioavailability, release, and performance in turn affect drug product effectiveness and safety. Substituting or removing inactive ingredients, such as polymers, plasticizers, or surfactants, would likely change the solubility and release characteristics of the product and, in turn, may adversely impact product performance. Also, consistent quality controls for raw materials, the extrusion process, and final product are essential for predictable and reproducible API release, which directly affects the safety and effectiveness of the product. HMEs can have enhanced bioavailability, controlled delivery rates, and stabilized formulations. Such products can be produced with taste-masking properties suitable for children or are in dosage forms that are suitable for patients with swallowing difficulties. The Agency is not aware of compounded HMEs for human use; however, FDA requests comments regarding availability of and potential access to compounded HMEs for human use. FDA is also not aware of a rationale for why patients would have a medical need for compounded HMEs, as opposed to an FDA-approved product; or of any actual or potential benefit that would outweigh the risks to patient safety that would be presented by compounded HMEs.

Based on an analysis of the evaluation criteria, taking into account the risks and benefits to patients, FDA proposes to include HMEs on the lists of drug products or categories of drug products that present demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act. On November 21, 2017, FDA proposed to the PCAC that HMEs be identified as presenting demonstrable difficulties for compounding under sections 503A and 503B of the FD&C Act (Ref. 10). The PCAC voted to agree with FDA's proposal (Ref. 5).

In applying the six criteria discussed above, FDA considered whether HMEs should be added to the 503A DDC List and to the 503B DDC List. FDA has tentatively concluded that HMEs meet the statutory criteria for inclusion on both lists. As discussed above, HME is a process by which heat and shear are applied to melt a mixture of API and inactive ingredients within an extruder that is then pushed through an orifice to convert the ingredients into an amorphous phase material with uniform content. FDA has identified, among other things, process-design complexities and found that the relationship between inactive ingredient and active ingredient of HMEs impacts bioavailability, release, and performance, which could affect safety and effectiveness. FDA does not believe an outsourcing facility's compliance with CGMP requirements would address the concerns described above regarding formulation complexity, drug delivery mechanism complexity, dosage form complexity, complexity of achieving or assessing bioavailability, compounding process complexity, and complexity of physicochemical or analytical testing of the drug product or category of drug products. FDA's CGMP regulations contain the minimum current good manufacturing practice for methods to be used in, and the facilities or controls to be used for, the manufacture, processing, packing, or holding of a drug to assure that such drug meets the requirements of the FD&C Act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess (see 21 CFR 210.1(a)). The potential quality and safety concerns raised by HMEs would typically be evaluated as part of the premarket approval process, based on the assessment of a broader range of drug development data including certain safety, clinical, and bioavailability or bioequivalence information as appropriate. Since compounded drug products that meet the conditions of sections 503A and 503B are exempt from premarket approval requirements, compounded HMEs would not be subject to such evaluation based on a broader range of drug development data. Therefore, compliance with CGMP standards, alone, is unlikely to provide sufficient assurance that compounded HMEs can deliver product of intended characteristics with reliable quality and consistent performance. However, FDA is soliciting comments about whether this entry should be added to only the

503A DDC List, or only the 503B DDC List.

VI. Proposed Effective Date

The Agency proposes that any final rule based on this proposal become effective 30 days after the date of publication of the final rule in the **Federal Register**.

VII. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14094, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866, 13563, and 14094 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Rules are ''significant'' under Executive Order 12866 Section 3(f)(1) (as amended by Executive Order 14094) if they ''have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of the 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.'' OIRA has determined that this proposed rule is not a significant regulatory action under Executive Order 12866 Section 3(f)(1).

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we expect that the proposed rule would have a small impact, if any, on small entities, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The 2022 threshold after adjustment for inflation is $177 million, using the 2022 Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

We evaluated three categories of drug products for this proposed rule. We are proposing to place all three of these categories of drug products on the DDC Lists for sections 503A and 503B of the FD&C Act. We expect that this proposed rule may create benefits for compounders by reducing regulatory uncertainty. Currently, we are not aware of any marketing of compounded drugs in the three proposed categories of drug products for human use. Therefore, we expect that the proposed rule would only create administrative costs for compounders to read and understand the rule. We seek comments on these assumptions.

In table 1, we summarize the impacts of the proposed rule. The present value of the costs of the proposed rule would equal $4.22 million at a 7 percent discount rate and $4.22 million at a 3 percent discount rate. The proposed rule would result in annualized costs of $0.56 million at a 7 percent discount rate, or $0.48 million at a 3 percent discount rate.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized ($m/year)	.....	.....	.....	.....	.....	.....	
	.....	.....	.....	.....	.....	.....	
Annualized Quantified	.....	.....	.....	.....	.....	.....	
Qualitative							
Costs:							
Annualized Monetized ($m/year)	$0.56	$0.51	$0.63	2021	7	10	
	0.48	0.43	0.54	2021	3	10	
Annualized Quantified	.....	.....	.....	.....	.....	.....	
Qualitative							
Transfers:							
Federal Annualized Monetized ($m/year)	.....	.....	.....	.....	.....	.....	
	.....	.....	.....	.....	.....	.....	
	From:			To:			
Other Annualized Monetized ($m/year)	.....	.....	.....	.....	.....	.....	
	.....	.....	.....	.....	.....	.....	
	From:			To:			
Effects:							
State, Local, or Tribal Government: None.							
Small Business: None.							
Wages: None.							
Growth: None.							

We have developed a comprehensive Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 11) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information as defined by the Paperwork Reduction Act of 1995.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The Agency solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, Transcript of the June 18, 2015, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://wayback.archive-it.org/7993/20170403224128/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM458514.pdf*), accessed January 10, 2023.
2. FDA, Transcript of the March 9, 2016, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/content/FDA/04-03-2022T19:30/https://www.fda.gov/media/98783/download*), accessed January 10, 2023.
3. FDA, Transcript of the November 3, 2016, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/content/FDA/04-03-2022T19:30/https://www.fda.gov/media/105599/download*), accessed January 10, 2023.
4. FDA, Transcript of the May 9, 2017, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/content/FDA/04-03-2022T19:30/https://www.fda.gov/media/106182/download*), accessed January 10, 2023.
5. FDA, Transcript of the November 21, 2017, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/content/FDA/04-03-2022T19:30/https://www.fda.gov/media/112399/download*), accessed January 10, 2023.
6. FDA, Briefing Information for the June 17–18, 2015, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://wayback.archive-it.org/7993/20170404155225/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/PharmacyCompoundingAdvisoryCommittee/UCM449535.pdf*), accessed January 10, 2023.
7. FDA, Briefing Information for the March 8–9, 2016, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/browse/FDA/01-03-2022T00:42/https://www.fda.gov/advisory-committees/pharmacy-compounding-advisory-committee/briefing-information-march-8-9-2016-meeting-pharmacy-compounding-advisory-committee-pcac*), accessed January 10, 2023.
8. FDA, Briefing Information for the November 3, 2016, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/content/FDA/01-03-2022T00:42/https://www.fda.gov/media/100283/download*), accessed January 10, 2023.
9. FDA, Briefing Information for the May 8–9, 2017, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/content/FDA/01-03-2022T00:42/https://www.fda.govmedia/104134/download*), accessed January 10, 2023.
10. FDA, Briefing Information for the November 20–21, 2017, Meeting of the Pharmacy Compounding Advisory Committee (available at *https://public4.pagefreezer.com/browse/FDA/01-03-2022T00:42/https://www.fda.gov/advisory-committees/pharmacy-compounding-advisory-committee/briefing-information-november-20-21-2017-meeting-pharmacy-compounding-advisory-committee-pcac*), accessed January 10, 2023.
11. FDA, Preliminary Regulatory Impact Analysis, ''Drug Products That Present Demonstrable Difficulties for Compounding Under Section 503A or 503B of the Federal Food, Drug, and Cosmetic Act '' (available at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations*).

List of Subjects in 21 CFR Part 216

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 216 be amended as follows:

PART 216—HUMAN DRUG COMPOUNDING

■ 1. The authority citation for part 216 is revised to read as follows:

Authority: 21 U.S.C. 351, 352, 353a, 353b, 355, and 371.

■ 2. Add § 216.25 to subpart B to read as follows:

§ 216.25 Drug products or categories of drug products that present demonstrable difficulties for compounding under section 503A or 503B of the Federal Food, Drug, and Cosmetic Act.

(a) FDA will use the following criteria in evaluating drug products or categories of drug products considered for inclusion on the lists set forth in paragraphs (b) and (c) of this section:

(1) The complexity of the drug product or category of drug products' formulation;

(2) The complexity of the drug product or category of drug products' drug delivery mechanism;

(3) The complexity of the drug product or category of drug products' dosage form;

(4) The complexity of achieving or assessing bioavailability of the drug product or category of drug products;

(5) The complexity of the drug product or category of drug products' compounding process; and

(6) The complexity of physicochemical or analytical testing of the drug product or category of drug products.

(b) After considering the criteria in paragraph (a) of this section and taking into account risks and benefits to patients, FDA has determined that the following drug products or categories of drug products present demonstrable difficulties for compounding that reasonably demonstrate an adverse effect on the safety or effectiveness of that drug product and therefore cannot be compounded under section 503A of the Federal Food, Drug, and Cosmetic Act:

(1) Drug products produced using hot melt extrusion.

(2) Liposome drug products.

(3) Oral solid modified-release drug products that employ coated systems.

(c) After considering the criteria in paragraph (a) of this section and taking into account risks and benefits to patients, FDA has determined that the following drug products or categories of drug products present demonstrable difficulties for compounding that are reasonably likely to lead to an adverse effect on the safety or effectiveness of the drug or category of drugs, and therefore cannot be compounded under section 503B of the Federal Food, Drug, and Cosmetic Act:

(1) Drug products produced using hot melt extrusion.

(2) Liposome drug products.

(3) Oral solid modified-release drug products that employ coated systems.

Dated: March 12, 2024.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2024–05801 Filed 3–19–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 1000

[245A2100DD/AAKC001030/A0A501010.999900]

Self-Governance PROGRESS Act Negotiated Rulemaking Committee; Notice of Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Self-Governance PROGRESS Act Negotiated Rulemaking Committee (Committee), will hold a public meeting to negotiate and advise the Secretary of the Interior (Secretary) on a proposed rule to implement the Practical Reforms and Other Goals To Reinforce the Effectiveness of Self-Governance and Self-Determination for Indian Tribes Act of 2019 (PROGRESS Act).

DATES: The meeting is open to the public and will be held virtually Thursday, April 4, 2024, from 1 p.m. to 5 p.m. ET. Interested persons are invited to submit comments on or before May 6, 2024.

ADDRESSES: Send your comments, within 30 days following the meeting, to the Designated Federal Officer, Vickie Hanvey, using the following methods:

- *Preferred method:* Email to *comments@bia.gov* with ''PROGRESS Act'' in subject line.
- *Alternate methods:* Mail, hand-carry or use an overnight courier service to the Designated Federal Officer, Ms. Vickie Hanvey, Office of Self-Governance, Office of the Assistant Secretary—Indian Affairs, 1849 C Street NW, Mail Stop 3624, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Designated Federal Officer, *comments@bia.gov,* (918) 931–0745. Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

SUPPLEMENTARY INFORMATION: These meetings will be held under the authority of the PROGRESS Act (Pub. L. 116–180), the Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*), and the Federal Advisory Committee Act (5 U.S.C. Ch. 10). The Committee is to negotiate and reach consensus on recommendations for a proposed rule that will replace the existing regulations at 25 CFR part 1000. The Committee will be charged with developing proposed regulations for the Secretary's implementation of the PROGRESS Act's provisions regarding the Department of the Interior's (DOI) Self-Governance Program.

The PROGRESS Act amends subchapter I of the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 5301 *et seq.,* which addresses Indian Self-Determination, and subchapter IV of the ISDEAA, which addresses DOI's Tribal Self-Governance Program. The PROGRESS Act also authorizes the Secretary to adapt negotiated rulemaking procedures to the unique context of self-governance and the government-to-government relationship between the United States and Indian Tribes. The **Federal Register** (87 FR 30256) notice published on May 18, 2022, discussed the issues to be negotiated and the members of the Committee.

Meeting Agenda

The virtual meeting is open to the public. Detailed information about the Committee, including meeting agendas can be accessed at *https://www.bia.gov/service/progress-act.* Topics for this meeting will include Committee priority setting, possible subcommittees and assignments, subcommittee reports, Committee report and draft NPRM documents, schedule and agenda setting for future meetings, Committee caucus, and public comment.

Plenary Meeting (Number 15)

- *Meeting date:* April 4, 2024.
- *Meeting time:* 1 p.m. to 5 p.m. ET.
- *Meeting location:* Hybrid (virtual link).
- *Virtual link: https:/teams.PAplenary15.*
- *Comments:* Submit by May 6, 2024.

Public Comments

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Requests to address the Committee during the meeting will be accommodated in the order the requests are received. Individuals who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written comments to the Designated Federal Officer up to 30 days following the meeting. Written comments may be sent to Vickie Hanvey listed in the **ADDRESSES** section above.

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.

(Authority: 5 U.S.C. Ch. 10)

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2024–05889 Filed 3–19–24; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 11

[PS Docket No. 15–94; FR ID 209369]

The Emergency Alert System; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the Synopsis and Initial Regulatory Flexibility Analysis to the proposed rule published in the **Federal Register** of March 7, 2024, regarding the Emergency Alert System. This correction clarifies the issues upon which the Commission seeks comment and condenses the Initial Regulatory Flexibility Analysis.

DATES: Comments on the NPRM are due on or before April 8, 2024, and reply comments are due on or before May 6, 2024.

ADDRESSES: You may submit comments, identified by PS Docket No. 15–94, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: For further information concerning the information contained in this document, send an email to David Munson, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at 202–418–2921 or *David.Munson@fcc.gov,* or George Donato, Associate Division Chief, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau at *George.Donato@fcc.gov* or call 202–418–0729.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 7, 2024, 89 FR 16504, on pages 16504–16509, the Synopsis and Initial Regulatory Flexibility Analysis should be replaced with the corrected Synopsis and Initial Regulatory Flexibility Analysis sections below.

Synopsis

In furtherance of the Commission's continued emphasis on improving the accessibility of alerts, we seek comment on additional measures to promote multilingual EAS. As the Commission observed in 2016, when it required reporting of multilingual activities as updates to State EAS Plans, ''[t]o the extent that the reports suggest that [those who do not have a proficiency in English] are not receiving critical emergency information, the Commission . . . can assess, if appropriate, what further steps should be taken.'' In light of the minimal issuance of EAS messages in languages other than English, we believe it is now appropriate to take further steps to promote multilingual alerting.

Accordingly, as detailed below, we seek comment on the efficacy and feasibility of distributing multilingual EAS messages in the form of brief, pre-scripted (or ''template'') alerts in Arabic, Chinese, French, German, Haitian Creole, Hindi, Italian, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, as well as in English. The template scripts (in all languages) would be stored in EAS devices, and the translated audio for each template would be provided as audio files or links to streaming audio. EAS Participants would be required to transmit template alerts using the template audio and script in the template language that correspond to the EAS Participants' primary language (*i.e.,* the language of their programming content); where the EAS Participant offers multiple channels, it would transmit on such channels the template audio and script in the template language that corresponds to the language of such channels.

Current CAP-Based Multilingual Approach. As an initial matter, we observe that the ECIG Implementation Guide provides a process through which alert originators can specify distribution of their alerts in multiple languages, and EAS Participants can elect to distribute—or not distribute—the alert in those languages. Under those procedures, the alert originator specifies in its CAP alert instructions the language in which it desires the alert to be transmitted to the public, and the EAS device then will process and transmit the alert in those languages if (i) the language is the EAS Participant's ''primary'' or ''secondary'' language that the EAS Participant has programmed its EAS device to process and transmit, and (ii) an audio file containing the translated audio or URL link to streaming translated audio is supplied by the alert originator, or TTS in that language has been configured in the EAS device. If the device is programmed to relay the primary language and secondary languages, the alert can be relayed in multiple languages as a single alert, provided the combined audio does not exceed 2 minutes and the combined visual crawl characters do not exceed 1,800 characters (including the required header code information). In those instances where the message cannot meet the 2-minute and/or 1,800 character limit, only the ''primary'' language is transmitted to the public as a self-contained alert—the ''secondary'' languages are transmitted after the original alert's End-of-Message codes (which terminates the alert) have run (*i.e.,* after the alert is over, at which point, the additional languages are essentially being aired as regular programming (*i.e.,* no EAS header

codes; no Attention signal; and no EOM codes—just a visual crawl and audio)). In either case, if translated audio for each language is not supplied or linked by the alert originator, TTS would be used, if TTS capable of verbalizing the language selected is configured in the EAS device. These procedures allow alert originators to effectively request transmission of alerts in non-English languages, but leave the decision as to which, if any, non-English language in which the alert will be transmitted to the EAS Participant (which it effects through programing its EAS device).

Multilingual template alert processing. We propose to implement and require transmission of multilingual template EAS alerts in Arabic, Chinese, French, German, Haitian Creole, Hindi, Italian, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese, as well as in English. We propose that alert originators would initiate the template alert in legacy or CAP like any other EAS alert, using the applicable template event code. We propose that a new template-specific event code would be added to the EAS protocol for each template alert type (earthquake, wildfire, etc.). For example, if a template alert for earthquakes was added, there would be two earthquake event codes in the EAS Protocol: the existing earthquake event code that would be processed under existing rules, and the template earthquake event code, which would be processed under the specific template processing model described herein. The EAS device would use that event code to render that template (earthquake, wildfire, etc.) using the stored template text (for the visual crawl) and stored or linked audio in the languages that correspond to the language of the EAS Participant's programming content.

We propose to require EAS Participants to transmit alerts in the language of the program content they transmit in instances where the alert originator elects to issue an alert using a template event code and the EAS Participant's programming content is in one of the 13 proposed non-English template languages; the EAS Participant would transmit the alert using the English language template script and stored or linked audio, if the EAS Participant's programming content is in English or in a non-English language that is not one of the proposed non-English template languages. For music-oriented radio stations, the station's primary language would be the language its announcements and spoken communications. We are not proposing to mandate carriage of state and local alerts, we are proposing only that if the EAS Participant relays state and local alerts, it must relay template alerts as proposed herein. EAS Participants must of course relay alerts categorized as national alerts, thus, if a template were developed for the NPT or RMT, EAS Participants would be required to process those using the multilingual template processing requirements. This requirement would apply to each channel of programming provided by the EAS Participant. Accordingly, EAS Participants that provide multiple channels of programming would be required to ensure that for template alerts received, they transmit that alert on each channel they offer using the template audio and script language that corresponds to the programming content delivered over such channel. For example, a cable service that offers channels with English and Spanish language programming, would transmit the template alert on the Spanish language channels using the Spanish language audio and script associated with that template event code, and would transmit the template alert on English language channels using the English language audio and script associated with that template event code.

Because multilingual alerts are likely to apply only to discrete geographic areas, and satellite providers transmit over nationwide footprints, we propose that DBS and SDARS providers would not be subject to these requirements, except that if a template is developed for the nationwide National Periodic Test (NPT) alert, DBS and SDARS providers would be required to overlay the NPT template English language audio and scroll on all channels.

We seek comment on the foregoing construct generally, and more specifically with respect to the various alerting elements involved below. We observe that while EAS Participants would be required to transmit the template alert on a given channel using the template audio and script language that corresponds to the programming content of that channel, they may also include template audio and script in languages that do not correspond to the programming content. Thus, for example, a station that broadcasts Spanish-language programming would be required to transmit the template alert using the Spanish-language audio and script associated with that template event code, but could, if it elected to, also transmit the English audio and script for that template alert code (as discussed below, the Spanish and English audio and scripts could be combined into a single alert). In all events, the alert originator need not identify the specific languages in which they desire to have the template issued, because the template would be transmitted to the public by EAS Participants in the template language that matches their programming (and possibly other language, if the EAS Participant so elected).

Should EAS Participants be allowed to transmit template alerts on channels in languages that do not correspond to the programming content offered on that channel? Or, to reduce the potential programming interruption, should we require EAS Participants to transmit templates only in the language that corresponds to their programming content (*e.g.,* the Spanish language template would be transmitted on channels carrying Spanish language programs)? Should English be the default language in cases where the program content is in a non-English language that is not one of the proposed 13 non-English template languages? In cases where the EAS Participant's programming content is in one of the proposed 13 non-English template languages, should EAS Participants be required to transmit the template alert using both the non-English language and English audio and script for that template event code (*i.e.,* as a combined alert), assuming the combined version meets the 2-minute and 1,800 character thresholds described above (or if the combined alert does not meet the 2-minute and 1,800 character thresholds, transmitting the non-English template audio and script as a single alert, and transmitting the English audio and script directly after the non-English version of the alert is completed)? NCTA suggests that Multichannel Video Programming Distributor (MVPD) architecture, as it presently exists, does not support the multilingual alerting approach outlined here. We seek comment on the particular considerations and steps associated with implementing template-based multilingual alerting for EAS in MVPD systems.

We also seek comment on whether additional languages to the 13 non-English languages specified above could and should be supported through this construct. Are there technical impediments to multichannel video programming providers, including DBS and SDARS providers, overlaying differing audio and script messages on different channels? Could these providers instead combine template audio and scripts in different languages into a single alert with template audio and script in different languages (but not exceeding the 2-minute limit for audio messages or the 1,800 character

limits for the scroll) that could be transmitted like any other alert? Seeing as the audio associated with a template alert received in legacy format would be discarded by the EAS device (which would use the stored or linked template audio appropriate to the EAS Participant's programming content), is the 2-minute limit on alert audio relevant to how each EAS Participant processes a template alert? Would it be necessary to increase the existing 2-minute for template alerts to accommodate transmission of template alerts that combine multiple languages? Could the 1,800 character limit also be increased for such purpose?

Should alert originators be able to request transmitting the template alert in one or more of the proposed 13 non-English template languages and/or English similar to how this capability is facilitated in the ECIG Implementation Guide multilingual procedures? For example, alert originators could initiate the template alert in CAP like any other EAS alert, using the applicable template event code. In the CAP instructions, the alert originator could identify the template language(s) in which it would like the alert to be transmitted. The EAS device would use that event code to render that template (earthquake, wildfire, etc.) using the stored template text and stored or linked audio in the languages (i) requested by the alert originator that (ii) correspond to the ''primary'' and ''secondary'' languages it is programmed to process. Under this construct, EAS Participants would be required to program into their EAS device the language of their programming content as their ''primary'' language and then could elect to program other template languages in which they are willing to transmit the template alert as ''secondary'' languages—meaning they would only be required to transmit the template in their primary programming language, but could voluntarily include other template languages. EAS Participants that provide multiple channels of programming would need to be able to program their EAS devices so that channels carrying non-English language programming were assigned as ''primary'' languages the template language that matches their programming content. The CAP-based template alert would be converted into an EAS protocol-compliant alert for transmission to the public just like any other CAP EAS alert, using the appropriate template event code. Because the EAS Protocol lacks any mechanism to specify or request a template language (including English), the EAS device receiving a template alert in legacy format would broadcast the alert using the script and audio that corresponds to whichever language is programmed as its ''primary'' language. Thus, for example, if a template alert were received in legacy form with Spanish language, the EAS device receiving that alert would process that alert like any EAS alert: first it would check IPAWS for a CAP version of that alert per the CAP prioritization requirement; then, if no CAP version was available, it would broadcast that alert anew using (i) the template script and audio that correspond to the template event code in the received legacy-formatted alert (the audio of the received legacy-based template alert would be discarded), (ii) in the EAS device's ''primary'' language. We seek comment on this approach.

Visual crawl. With respect to the visual message generated for EAS alerts, we observe that the EAS already uses a pre-scripted visual message for National Periodic Test (NPT) alerts received in legacy EAS format, and this approach suggests that multilingual templates with pre-scripted visual messages are feasible. For example, the NPT script states: ''This is a nationwide test of the Emergency Alert System, issued by the Federal Emergency Management Agency, covering the United States from [time] until [time]. This is only a test. No action is required by the public.'' The ''from [time] until [time]'' portion of the text is derived from the alert's release date/time and valid time period header codes. It appears viable to use a similar approach with pre-scripted text messages in non-English languages that would correspond to template event codes. First, as discussed further below, because providing audio translations (in pre-recorded audio files or links to streaming audio) that include location and time parameters is impractical, and reliable TTS for all template languages may not be available, one approach for the visual scroll would be to make template scripts that are static and provide only general information (*e.g.,* ''A wildfire alert has been issued for your area. Please contact local authorities or check local news sources for more information.''). In this case, the entirety of the script message could be scrolled (subject to any character generation limitations) and matching translated audio could be provided.

We seek comment on the feasibility and efficacy of this approach. Could generalized text lacking location and applicable time frames effectively warn the public of an impending emergency? Would transmitting such generalized alerts actually cause confusion to the public, particularly given the large geographic service areas associated with full-power broadcast stations? For example, the service areas and resolvable signal of full-power broadcast stations can span multiple states, thus, an alert that indicates that ''a wildfire alert has been issued for your area'' that was issued for a single county in Virginia might be received in upper New York State, with audiences throughout wondering whether the wildfire is a danger to their immediate areas. Would including a URL address (*e.g., www.moreinfo.com*), if feasible, where template alert audiences could obtain additional and more specific information make the generalized script approach more effective and reduce any potential for confusion? Alternatively, could the location and applicable time periods be conveyed in English? For example, could the visual messages for non-English language template alerts contain expressions of time using digit numbers (typically with a.m. or p.m. included) and locations in English, both of which the EAS device can provide?

We seek comment on which approach(s) could be feasibly and practically implemented in EAS devices. We observe, for example, that having variable information in the script could significantly impact the audio. As explained below, generating matching audio for fixed scripts involves only installing prerecorded audio files or links to streaming audio for each such script on the EAS device. Generating audio for scripts with variable information would effectively require use of TTS to capture each variation, but it is unclear whether cost-effective non-English language TTS reliable and accurate enough for emergency warning purposes is available at this time. The number of characters in a script also impact how it can be processed using the two-minute/1,800 character limits for audio and text. We seek comment on the interplay of these factors including the relative costs involved in implementing fixed scripts versus variable scripts. We also observe that visual scrolls in EAS Participant systems are typically generated by processing systems downstream from the EAS device. Are the character generators used in existing downstream processing systems of broadcasters and cable systems capable of generating the character and punctuation sets for all 13 of the proposed template languages? If not, what modifications to downstream processing systems would be required to reliably scroll all 13 languages, and what costs would be implicated in such modifications? Assuming that all

template scripts were stored on the EAS device, would initiating and posting template alerts present any technical issues for IPAWS?

American Sign Language (ASL). Approximately more than half a million people use ASL to communicate as their native language. We seek comment on the feasibility of developing and implementing ASL files for template alerts. Could video files of qualified ASL signers signing the template script for each template event type be developed and stored in the EAS device? Would ASL be processed like any other non-English language? How would the ASL be displayed? Would the potential variation in specific details of the alert (like applicable times, and location information), if included in the template version, present impediments to conveying the alert in ASL? If scripts were fixed, such that there would only be as many as there were template event types (earthquake, wildfire, etc.), how much memory capacity would be required (on average) to store, for example, 16 template ASL video files? Is sufficient spare memory capacity available in EAS device models in deployment today to accommodate such ASL file storage, or could these be stored in an external hard drive or thumb drive connected to the EAS device? In cases where the alerts are no longer static, are there ways to insert fillable video-based information using artificial intelligence driven technologies? Would the ASL be identical for non-English language script (*i.e.,* no variation based on the template language script and audio with which it is being transmitted)?

Template Audio. We propose that audio matching the template script would be prerecorded for each template, in all proposed 13 non-English languages as well as English; EAS Participants could download and store the prerecorded audio files for the language(s) of their programming content, and any other languages they wish to include in their template alerts, in their EAS device. What memory requirements would apply to storing prerecorded audio files for each template? For example, assuming the audio length did not exceed 30 seconds and there were 16 template audio files for each of the 13 proposed template languages, in addition to the English language version (for a total of 224 audio files), how much memory would be required to store such files? Is spare memory capacity sufficient to accommodate such storage available in EAS device models in deployment today, or could such files be stored on an external hard drive or thumb drive connected to the EAS device? Could a given template script be conveyed in a single audio version for each of the proposed 13 non-English languages? For example, there is no single ''Chinese'' language, but rather a multitude of dialects, such as Mandarin and Cantonese. What mechanism would be practical and efficient for the Commission to employ in identifying specific dialects in which to prerecord the audio messages? Which of the proposed 13 non-English languages might require development of dialect-specific audio? Prerecorded audio also could be made available via a URL link provided in a CAP-formatted alert. Because such a URL reference cannot be conveyed in a legacy-formatted alert, the relevant template alert audio would have to be stored on all EAS devices, or the URL addresses would need to be determined and relayed to EAS devices as software updates. We seek comment on the relative merits of using linked audio versus stored audio.

We propose to use static, pre-recorded audio messages for use in connection with template-based alerts. While TTS functionality developed for each template alert and language could be used in theory, and is one of the mechanisms for generating audio in the ECIG Implementation Guide's multilingual alerting procedures, we have concerns regarding the reliability of TTS for the template languages we propose to use for pre-scripted translations. We seek comment on whether TTS is available or could be developed in the 13 non-English template languages that would be sufficiently reliable and accurate to use in generating the audio portion of a multilingual template alert from its fixed script. Would inclusion of specific identifying alert elements—such as time periods, affected area names, and originating source of the alert—have any appreciable impact on the feasibility and reliability of using TTS to generate template audio for any of the 13 template non-English languages and the English language version? Would integrating the presumably limited TTS functionality required to verbalize the template scripts require anything more than software changes to the installed base of EAS devices? Would using existing TTS solutions or TTS developed specifically to verbalize the information in the template scripts be less costly to implement in EAS devices than storing audio files in the EAS device or providing links to streaming audio (assuming a source(s) for the streaming audio is operated independently from EAS Participants)? Could the installed base of EAS device models in use today be updated for either approach? Is streaming template audio from an external source an efficient and more cost-effective alternative to storing audio files on the EAS device? Would transport latencies create significant delays in completing these streaming sessions?

Simulcasting. Simulcasting configurations typically involve a single program stream that is transmitted from one source with remote (repeater) stations rebroadcasting 100% of that program stream. In these configurations, the EAS alert is overlaid onto the program stream at the originating source facilities—the remote (repeater) stations do not have EAS devices at their locations. Because the geographic areas in which the remote (repeater) stations are located often are not the same as the geographic area of the originating source of the program stream (wherein EAS is overlaid onto the program stream)—meaning EAS alerts issued for the originating source's county may not apply to the county in which the remote (repeater) station is located—the originating source typically only relays national alerts, and statewide alerts (if the originating source and remote (repeater) stations are all located in the same state). Given that multilingual alerting is highly location-specific, would it be useful to limit use of multilingual templates in these configurations to those issued nationally or on a statewide basis (where all counties are affected), assuming any template would ever be issued on such a basis?

Changes to Standards and Equipment. We seek comment on whether changes would be required to any IPAWS instructions or the ECIG Implementation Guide to facilitate the template alert processing approach described above. We also seek comment on what changes would be required to EAS devices and downstream or upstream processing systems to implement the template alert approach described above. What would be the costs of any such changes?

Integrating Consumer Choice Into Multilingual Template Alerting. As indicated above, EAS Participant transmissions typically are not processable by the end user devices that receive them. Thus, the template alert processing approach relies on alert originators and EAS Participants, who presumably both know the public segments they serve, to choose the template language version that is appropriate to their audiences. We seek comment on whether and how template alerting in EAS could be augmented, in

transmission or presentation over EAS Participant platforms, to provide end users with an ability to choose which template version language they experience individually. Could template alerts be transmitted on secondary channels and processed in accordance with end user preferences by compatible end user devices? Could cable systems transmit the template version(s) of an alert on force tuned channels and provide subscribers the choice of which version they would be force-tuned to in the set-top-box Graphic User Interface menus?

In the WEA Accessibility Order, we directed the Public Safety and Homeland Security Bureau (Bureau) to propose and seek comment on a set of emergency alert messages for support via multilingual templates. As part of this process, the Commission directed the Bureau to seek comment on which messages are most commonly used by alerting authorities, as well as those which may be most time-sensitive and thus critical for immediate comprehension. We seek comment on whether we should follow this approach for identifying which messages should be made available as EAS template alerts, and whether the Bureau should establish a process for ongoing updates to such templates as appropriate. We also seek comment on whether the WEA templates should be used, in whole or in part, in EAS, if feasible.

Benefits. As a general matter, improving access to alert information by people whose primary language is not English provides significant public safety benefits and is in the public interest. Our general findings concerning the benefits of improving accessibility to WEA alerts in different languages in the WEA Accessibility Order, which focused on template alert issuance to commercial mobile service end users, seems relevant in this regard. In that item, the Commission found significant benefits arising from enhancing language support through a template-based approach. The enhanced language support makes alerts comprehensible for some language communities for the first time, which helps to keep these vulnerable communities safer during disasters, and incentivizes emergency managers to become authorized by FEMA to distribute CAP-formatted alerts using IPAWS.

These general benefits are not specific to CMS architecture, and it seems reasonable to expect similar benefits in the EAS context. While the multilingual benefits of template alerting in EAS may to some extent hinge upon EAS Participants agreeing to transmit template alert languages other than their programmed primary language, the template processing approach described above—where the alert content and processing options are fully transparent to the EAS Participant and installed in their EAS devices for automated processing—should make it easier for EAS Participants to confidently do so. To the extent that the template alert processing approach described above increases participation by EAS Participants and emergency managers in getting multilingual template alerts out to the communities that might otherwise not have any understandable warning of an impending emergency situation, there will be an incremental increase in lives saved, injuries prevented, and reductions in the cost of deploying first responders. Such result is expected because the template alerts proposed above would, for those alerts suitable to be relayed in pre-scripted template form, be prepared by the Commission, thus, removing the burden of translation from alert originators.

The expected benefits from the template alert processing approach described above include prevention of property damages, injuries, and loss of life. These benefits are expected to affect over 26 million people in the United States who report that they do not speak English very well or at all. A significant percentage of this group of individuals would benefit from accessing alerts in their primary language. Those who communicate in non-English languages are at risk of not understanding alert information that could otherwise prevent property damage, injuries, and deaths. Reduced confusion and increased trust in EAS through the enhanced language support also increase the likelihood that the public will follow alert instructions in the future.

While it is difficult to quantify the precise dollar value of improvements to the public's safety, life, and health, making EAS alerts more accessible to people that might not otherwise understand their warning information or have alternate sources of such information in their primary language, would likely yield significant benefits to preservation of life and property in the event of such emergencies. There is great value in improved public safety for reducing the risk of avoidable deaths and injuries by better informing the public of pending emergencies. We seek comment on our assessment of the benefits and the potential for measuring those benefits.

Costs. Without knowing precisely what changes would be required in EAS devices and potentially involved in interconnected transmission processing systems, it is difficult to estimate the total costs of implementing template alert processing in EAS. We observe, however, that the Commission has implemented changes to EAS involving software changes to EAS devices, which seem relevant to estimating the costs of implementing multilingual templates. Most recently, in the Comprehensible Alerts Order, which adopted EAS header code changes as well as visual crawl script for the NPT code, the Commission estimated costs in line with the costs for EAS header code changes adopted in the 2016 Weather Alerts Order and the 2017 Blue Alerts Order. The Commission concluded in the Weather Alerts Order and the Comprehensible Alerts Order that the only costs to EAS Participants for installing the new event codes and EAS software, respectively, were the labor cost of downloading the software patches onto their devices and associated clerical work (the record indicated that the patches themselves would be provided free of charge). The Blue Alerts Order followed the same approach but also included relevant associated testing.

Assuming that template alert processing can be implemented via a regular software update patch that EAS Participants install in the normal course of business, we would expect the costs of software installation, labor, and testing to install the patch likely would be similar to the industry-wide estimate for mandatory software updates in the *Comprehensible Alerts Order.* The Commission estimates that software labor industry-wide would not exceed 5 hours of labor multiplied by 25,519 estimated broadcasters and cable head-ends, plus 1 SDARS provider and 2 DBS providers, for a total of 127,610 hours of software-related labor, a figure which is likely an over-estimate. Using an average hourly wage of $60.07 for software and web developers, programmers, and testers, and factoring in a 45% markup of hourly wage for benefits, and a 5.5% inflation adjustment between 2022 and 2023, we estimate an hourly wage of $91.89. Using these estimates of 5 hours labor time at a cost of $91.89 per hour would result in a total labor cost to each EAS Participant for installing a software patch that configures the template mechanism in the EAS device of approximately $460, and an aggregate labor cost of approximately $12 million. We seek comment on whether this estimate is too high or too low, and we ask commenters to provide data

supporting either our cost estimate or a different estimate.

We seek comment on the extent to which the changes required to implement the template alert processing approach described above could be implemented in a routine software update patch. Would a patch specific to the template mechanism (and not folded into a routine software update patch) be required, and at what cost to EAS Participants? How long would it take to develop, test and release such a patch? If existing EAS device models required adding memory capacity to enable in-device template audio file storage, could adding such memory be done in the field, and at what cost to EAS Participants? If TTS were used to generate the template audio from the script, would inclusion of the necessary TTS functionality require additional memory and at what cost? Are there any existing EAS device models in use in which implementing the template alert processing approach described above could not be effected using a software patch and instead would have to be replaced? What costs would be associated with such replacements? If changes would be required to transmission systems upstream or downstream from the EAS device, how long would those take to develop and implement, and at what cost to EAS Participants? Would changes be required to commercially available alert originating systems and software (*e.g.,* Everbridge)? Are there more efficient and less burdensome alternatives that might achieve the same results?

Based on the foregoing, assuming the template alert processing approach described above can be implemented via a routine software update patch, and other costs (including memory requirements or changes to upstream/downstream transmission) are relatively low, we would estimate that the total costs would be approximately $12 million. If accurate, that would in our view be far outweighed by the overall benefits to public safety and the public interest described above. We recognize, however, that there potentially could be costs associated with adding memory capacity, firmware and/or other modifications to EAS devices, and changes potentially could be required to downstream transmission processing systems. It is also conceivable that there are some older EAS devices in use today that could not be updated or modified to enable template alert processing and transmission. We seek comment on all of these factors. We observe that the record in this proceeding will clarify these issues, and we will revise our cost assessments accordingly. We seek comment on our estimates and any implementation costs we have not expressly contemplated above. If commenters disagree with our assessments, we seek alternative estimates with supporting data and information.

ECIG Implementation Guide. In the event that the template alert processing approach described above would necessitate revisions within or an amendment to the ECIG Implementation Guide to facilitate such processing, and how long would it take to effect any such changes?

EAS Devices. Assuming multilingual template alert text and audio can be integrated in EAS devices, and processing instructions can be implemented in such devices via software updates alone, how long would manufacturers require to develop, test and release such updates (and at what cost to EAS Participants)? If storage of template visual script and audio files in installed EAS device models were to require addition of memory capacity via firmware update or some other mechanism, how long would it take EAS Participants to acquire and install such memory capacity (and at what cost)? How much time likely would be required to implement a stored (audio and visual script) template alert mechanism?

EAS Participant Transmission Systems. Would implementing the template alert processing approach present any unique challenges or require modifications with respect to EAS Participant transmission processing systems upstream or downstream from the EAS device that would impact the time required for implementation? For example, in the Comprehensive Alerts Order, the Commission provided cable operators with additional time relative to all other EAS Participant categories to comply with the required change to the text associated with the EAN event code due to software-related complexities associated with implementing such text in cable system processing equipment downstream from the EAS device.

Providing Accountability Through Transparency Act. Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on *https://www.fcc.gov/proposed-rulemakings.*

Initial Regulatory Flexibility Analysis

In the NPRM, the Commission seeks comment on the efficacy and feasibility of implementing a process for distributing template-based EAS messages in the 13 most commonly spoken non-English languages (according to U.S. Census data)—Arabic, Chinese, French, German, Haitian Creole, Hindi, Italian, Korean, Portuguese, Russian, Spanish, Tagalog, and Vietnamese—as well as in English. The Commission proposes an approach for processing multilingual template EAS alerts that is fairly consistent with existing procedures for processing EAS alerts, and requests comment on specific relevant alerting elements, such as template-specific event codes, template script-based visual messages, and template audio. The Commission also proposes that EAS Participants would be required to transmit the template alerts in the non-English or English template language corresponds to the programming content of their channel(s); EAS Participants that provide multiple channels of programming (other than satellite-based EAS Participants that transmit on a nationwide basis) would transmit the template visual and audio messages on each channel in the language that corresponds to the programming content carried on such channel.

The proposed action is authorized pursuant to: sections 1, 2, 4(i), 4(n), 303, 335, 624(g), 706 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(n), 303, 335, 544(g), 606, and 613.

There are small entities among the current EAS Participants, which include 17,521 radio broadcasters and 8,133 other participants, including television broadcasters, cable operators, satellite operators, and other businesses in the industry segments that could be impacted by the changes proposed in the NPRM, as follows: Small Businesses, Small Organizations, and Small Governmental Jurisdictions; Radio Stations; FM Translator Stations and Low Power FM Stations; Television Broadcasting; Cable System Operators (Telecom Act Standard); Cable Companies and Systems (Rate Regulation); Satellite Telecommunications; All Other Telecommunications; Broadband Radio Service and Educational Broadband Service; Direct Broadcast Satellite (''DBS'') Service; Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.

The proposed changes would impose new or modified reporting, recordkeeping or other compliance obligations on certain small, as well as other, entities required to distribute EAS alerts to the public (*i.e.,* ''EAS Participants''), and entities that manufacture EAS equipment. The changes likely would require development and installation in existing

EAS equipment Text-to-Speech (TTS) functionalities, audio files, video files, text files and additional memory capacity, displaying EAS messages in a secondary language when requested by an alert originator, using predefined and installed text, audio and video files, that likely would require EAS equipment manufacturers to develop software updates to implement such changes in deployed EAS equipment and EAS equipment in production. EAS Participants would have to acquire, and install such software updates in their EAS devices.

There are no federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules. The Commission requests comment on alternatives.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2024–05912 Filed 3–19–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 55
Wednesday, March 20, 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–2023–0050]

Addition of Black Stem Rust-Resistant Barberry Plant Varieties to Regulated Articles List

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are proposing to add 32 varieties to the list of black stem rust-resistant barberry species and varieties. This change would allow for the interstate movement of these newly developed varieties without unnecessary restrictions.

DATES: We will consider all comments that we receive on or before May 20, 2024.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0050 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–2023–0050, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Any comments we receive on this docket may be viewed at *regulations.gov* 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.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Proxmire, National Policy Manager, Black Stem Rust, Specialty Crops and Cotton Pests, Emergency and Domestic Programs, PPQ, APHIS, USDA, 4700 River Road, Unit 133, Riverdale, MD 20737–1231; *allen.proxmire@usda.gov;* (480) 392–8754.

SUPPLEMENTARY INFORMATION: Black stem rust is a destructive plant disease caused by a fungus (*Puccinia graminis*) that reduces the quality and yield of infected wheat, oat, barley, and rye crops. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis, Mahoberberis,* and *Mahonia,* known as barberry plants.

The regulations in ''Subpart D—Black Stem Rust'' (7 CFR 301.38 through 301.38–8, referred to below as the regulations), quarantine the conterminous 48 States and the District of Columbia for black stem rust, and govern the interstate movement of plants of the genera *Berberis, Mahoberberis,* and *Mahonia,* known as barberry plants.

Species and varieties of these plants are categorized as either rust-resistant or rust-susceptible. Rust-susceptible plants pose a risk of spreading black stem rust or of contributing to the development of new races of the rust, and therefore are prohibited from moving interstate into or through any protected area listed in accordance with § 301.38–3. Rust-resistant plants do not pose such risks, and therefore may be moved into or through protected areas subject to the requirements in the regulations.

In accordance with § 301.38–2(a), the Animal and Plant Health Inspection Service (APHIS) maintains a list of *Berberis* species and varieties it has found to be rust-resistant at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry.*

Paragraph (c)(1) of § 301.38–2 provides that if the Administrator determines that an article not already listed is resistant to black stem rust, APHIS will publish a notice in the **Federal Register** proposing to add the article to the list of rust-resistant articles for black stem rust and request public comment. Following the close of the comment period, APHIS will review all comments received and will make a final determination regarding the designation that will be published in a second notice in the **Federal Register**.

Recent testing [1] by the Agricultural Research Service (ARS) of the United States Department of Agriculture (USDA) has found the following 32 varieties of *Berberis thunbergii* (Japanese barberry) to be resistant to the fungus (*Puccinia graminis*) that causes black stem rust:

- *Berberis thunbergii* 'Citral'
- *Berberis thunbergii* 'Coral Spice'
- *Berberis thunbergii* 'Crimson Cutie'
- *Berberis thunbergii* 'James Blonde'
- *Berberis thunbergii* 'Lemon Cutie®'
- *Berberis thunbergii* 'Lemon Glow®'
- *Berberis thunbergii* 'Mr. Green Genes™'
- *Berberis thunbergii* 'Purple Plume'
- *Berberis thunbergii* 'NCBT3 Himalayas'
- *Berberis thunbergii* 'NCBT4'
- *Berberis thunbergii* 'NCBT8 Pyrenees'
- *Berberis thunbergii* 'NCBT9'
- *Berberis thunbergii* 'NCBT10 Pichu'
- *Berberis thunbergii* 'NCBT11 Rockies'
- *Berberis thunbergii* 'NCBT12 Lanturn'
- *Berberis thunbergii* 'NCBT13 Crobat'
- *Berberis thunbergii* 'NCBT14'
- *Berberis thunbergii* 'Schu20022'
- *Berberis thunbergii* 'SMNBTAA Admir Askewpin 19'
- *Berberis thunbergii* 'SMNBTAB Admir Borakis 19'
- *Berberis thunbergii* 'SMNBTAC Admir Clopek 19'
- *Berberis thunbergii* 'SMNBTAJ Admir Jaramy 19'
- *Berberis thunbergii* 'SMNBTAK Admir Kidjip 19'
- *Berberis thunbergii* 'SMNBTSSR Sunjoy Safberuprt Ropek 19'
- *Berberis thunbergii* x *media* 'NCBX9 Chinchou'
- *Berberis thunbergii* x *B. sieboldii* 'NCBX10'
- *Berberis thunbergii* x *B. sieboldii* 'NCBX11'

[1] Testing is performed as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, *i.e.,* a known rust-susceptible variety of *Berberis.* Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100 percent humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20–80 percent relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

- *Berberis thunbergii* x *B. sieboldii* 'NCBX12'
- *Berberis thunbergii* x *B. sieboldii* 'NCBX13'
- *Berberis thunbergii* x *B. sieboldii* 'NCBX14'
- *Berberis thunbergii* x *B. sieboldii* 'NCBX15'
- *Berberis thunbergii* x *B. sieboldii* 'NCBX16'

After reviewing any comments we receive, we will announce our decision regarding the designation of these articles as rust-resistant in a second notice. If the Administrator's determination remains unchanged, we will designate the articles as rust-resistant and add them to the list of rust-resistant regulated articles for black stem rust at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry.*

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 12th day of March 2024.

Donna Lalli,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2024–05807 Filed 3–19–24; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Urban Agriculture and Innovative Production Advisory Committee Meeting

AGENCY: Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA).

ACTION: Notice of public and virtual meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a public meeting of the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). UAIPAC will convene to discuss proposed recommendations for the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agriculture production practices. UAIPAC is authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill) and operates in compliance with the Federal Advisory Committee Act, as amended.

DATES:

Meeting: The UAIPAC meeting will be held on Wednesday, April 10, 2024, from 2 p.m. to 4 p.m. Eastern Standard Time (EST).

Written Comments: Written comments will be accepted until 11:59 p.m. EDT on Wednesday, April 24, 2024.

ADDRESSES:

Meeting Location: The meeting will be held virtually via Zoom webinar. Pre-registration is required to attend the UAIPAC meeting and access informaton will be provided to registered individuals via email. Registration details can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

Written Comments: We invite you to send comments in response to this notice via email to *UrbanAgricultureFederalAdvisoryCommittee@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Guse; Designated Federal Officer; telephone: (202) 205–9723; email: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov*.

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Purpose

The Federal Advisory Committee for Urban Agriculture and Innovative Production is one of several ways that USDA is extending support and building frameworks to support urban agriculture, including issues of equity and food and nutrition access. Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334) directed the Secretary to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary of Agriculture on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services.

Meeting Agenda

The agenda items may include, but are not limited to, welcome and introductions; administrative matters; presentations from the UAIPAC or USDA staff; and deliberations for proposed recommendations and plans. The USDA UAIPAC website (*https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag*) will be updated with the final agenda at least 24 hours prior to the meeting.

Written Comments

Comments should address specific topics pertaining to urban agriculture and innovative production. Written comments will be accepted via email (*UrbanAgricutlureFederalAdvisoryCommittee@usda.gov*) until 11:59 p.m. EST on Wednesday, April 24, 2024.

Meeting Materials

All written comments received by Wednesday, April 24, 2024, will be compiled for UAIPAC review. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag* to view the agenda and minutes from the meeting.

Meeting Accommodations

If you require reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation, to the person listed under the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or 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.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). 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 FACA Committee: UAIPAC. To ensure that the recommendations of UAIPAC have taken in account the needs of the diverse groups served by USDA, membership will 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.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *OAC@usda.gov.USDA* is an equal opportunity provider, employer, and lender.

Dated: March 14, 2024.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2024–05872 Filed 3–19–24; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public briefing via Zoom at 3 p.m. MT on Monday, May 6, 2024. The purpose of the briefing is to collect testimony on the topic, *The Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System.*

DATES: Monday, May 6, 2024, from 3 p.m.–5 p.m. mountain time

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_vib6ARnoTQ-xZEhghgS1wQ

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 160 447 0864

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Introductory Remarks
III. Panelist Presentations & Committee Q&A
IV. Public Comment
V. Closing Remarks
VI. Adjournment

Dated: March 15, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–05909 Filed 3–19–24; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Briefing of the Utah Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of public briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Utah Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a public briefing via Zoom at 3 p.m. MT on Thursday, May 9, 2024. The purpose of the briefing is to collect testimony on the topic, *The Civil Rights Implications of Disparate Outcomes in Utah's K–12 Education System.*

DATES: Thursday, May 9, 2024, from 3 p.m.–5 p.m. mountain time

ADDRESSES: The meeting will be held via Zoom Webinar.

Registration Link (Audio/Visual): https://www.zoomgov.com/webinar/register/WN_k24yodx3TjOMOxyMIRUhqA

Join by Phone (Audio Only): (833) 435–1820 USA Toll-Free; Meeting ID: 161 873 2246

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Officer, at *dbarreras@usccr.gov* or (202) 656–8937.

SUPPLEMENTARY INFORMATION: This committee meeting is available to the public through the registration link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. Per the Federal Advisory Committee Act, public minutes of the meeting will include a list of persons who are present at the meeting. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Closed captioning will be available for individuals who are deaf, hard of hearing, or who have certain cognitive or learning impairments. To request additional accommodations, please email Liliana Schiller, Support Services Specialist, at *lschiller@usccr.gov* at least 10 business days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meetings will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Utah Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at *lschiller@usccr.gov.*

Agenda

I. Welcome & Roll Call
II. Introductory Remarks
III. Panelist Presentations & Committee Q&A
IV. Public Comment
V. Closing Remarks
VI. Committee Business
VII. Adjournment

Dated: March 15, 2024.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2024–05910 Filed 3–19–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–58–2023]

Foreign-Trade Zone (FTZ) 57; Authorization of Production Activity; M&M Labs LLC; (Packaging of Nutritional Supplements and Skin Care Products); Mill Spring, North Carolina

On November 15, 2023, M&M Labs LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 57 in Mill Spring, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 81042, November 21, 2023). On March 14, 2024, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: March 14, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–05800 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Thomas Allen Glomski, 8030 E Lakeside Parkway, Apt. 2207, Tucson, AZ 85730; Order Denying Export Privileges

On May 12, 2022, in the U.S. District Court for the District of Arizona, Thomas Allen Glomski (''Glomski'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554(a). Specifically, Glomski was convicted of conspiring to smuggle and smuggling ammunition from the United States to Mexico. As a result of his conviction, the Court sentenced Glomski to time served, 36 months of supervised release, and a $200 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Glomski's conviction for violating 18 U.S.C. 371 and 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Glomski to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Glomski.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Glomski's export privileges under the Regulations for a period of seven years from the date of Glomski's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Glomski had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 12, 2029, Thomas Allen Glomski, with a last known address of 8030 E Lakeside Parkway, Apt. 2207, Tucson, AZ 85730, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Glomski by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Glomski may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Glomski and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 12, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05818 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Hendel Laurent, Inmate Number: 13937–510, FPC Pensacola Federal Correctional Institution, P.O. Box 3949, Pensacola, FL 32516; Order Denying Export Privileges

On January 19, 2023, in the U.S. District Court for the Southern District of Miami, Hendel Laurent (''Laurent'') was convicted of violating 50 U.S.C. 4819. Specifically, Laurent was convicted of knowingly and willfully attempting to export and attempting to cause the export of firearms and related commodities, specifically, non-automatic and semi-automatic firearms equal to .50 caliber (12.7 mm) or less, and detachable magazines with a capacity of greater than 16 rounds specially designed for those firearms, from the United States to Haiti, without first having obtained the required licenses from the U.S. Department of Commerce. As a result of his conviction, the Court sentenced Laurent to 46 months of imprisonment, two years of supervised release and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 50 U.S.C. 4819, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Laurent's conviction for violating 50 U.S.C. 4819. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Laurent to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Laurent.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Laurent's export privileges under the Regulations for a period of ten years from the date of Laurent's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Laurent had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered*:

First, from the date of this Order until January 19, 2033, Hendel Laurent, with a last known address of Inmate Number: 13937–510, FPC Pensacola Federal Correctional Institution, P.O. Box 3949, Pensacola, FL 32516, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Laurent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Laurent may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Laurent and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 19, 2033.

John Sonderman

Director, Office of Export Enforcement.

[FR Doc. 2024–05812 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Oziel Zuniga, Inmate Number: 00783–579, Inmate Number: 00783–579, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720; Order Denying Export Privileges

On January 17, 2023, in the U.S. District Court for the Southern District of Texas, Oziel Zuniga (''Zuniga'') was convicted of violating 18 U.S.C. 554(a). Specifically, Zuniga was convicted of smuggling a Romarm/Cugir, Model Draco, 7.62x39 mm caliber pistol from the United States to Mexico. As a result of his conviction, the Court sentenced Zuniga to 51 months of imprisonment, three years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Zuniga's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Zuniga to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Zuniga.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Zuniga's export privileges under the Regulations for a period of 10 years from the date of Zuniga's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Zuniga had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until January 17, 2033, Oziel Zuniga, with last known addresses of Inmate Number: 00783–579, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26020, Beaumont, TX 77720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Zuniga by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Zuniga may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Zuniga and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 17, 2033.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05808 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Victor Avalos-Tavera a/k/a Leonardo Torres-Avalos, Inmate Number: 34749–013, FCI Herlong, Federal Correctional Institution, P.O. Box 800, Herlong, CA 96113; Order Denying Export Privileges

On June 21, 2023, in the U.S. District Court for the District of Colorado, Victor Avalos-Tavera (''Avalos-Tavera'') was convicted of violating 18 U.S.C. 554(a). Specifically, Avalos-Tavera was convicted of smuggling from the United States to Mexico several firearms. As a result of his conviction, the Court sentenced Avalos-Tavera to 57 months of imprisonment and a $200 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Avalos-Tavera's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Avalos-Tavera to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Avalos-Tavera.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Avalos-Tavera's export privileges under the Regulations for a period of eight years from the date of Avalos-Tavera's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Avalos-Tavera had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until June 21, 2031, Victor Avalos-Tavera, a/k/a Leonardo Torres-Avalos, with a last known address of Inmate Number: 34749–013, FCI Herlong, Federal Correctional Institution, P.O. Box 800, Herlong, CA 96113, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Avalos-Tavera by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Avalos-Tavera may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Avalos-Tavera and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until June 21, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05815 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Ron Rockwell Hansen, Inmate Number: 49078–086, FCI Safford, Federal Correctional Institution, P.O. Box 9000, Safford, AZ 85548; Order Denying Export Privileges

On September 24, 2019, in the U.S. District Court for the District of Utah, Ron Rockwell Hansen (''Hansen'') was convicted of violating 18 U.S.C. 794. Specifically, Hansen was convicted of attempting espionage by knowingly and unlawfully attempting to communicate, deliver, and transmit directly and indirectly to the People's Republic of China, documents and information relating to the national defense of the United States including documents marked as SECRET//NOFORN that related to military readiness in a particular region, with intent and reason to believe that such documents and information would be used to the injury of the United States and to the advantage of any foreign nation. As a result of his conviction, the Court sentenced Hansen to 10 years of imprisonment, 60 months of supervised release and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 794, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Hansen's conviction for violating 18 U.S.C. 794. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Hansen to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Hansen.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Hansen's export privileges under the Regulations for a period of 10 years from the date of Hansen's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Hansen had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until September 24, 2029, Ron Rockwell Hansen, with a last known address of Inmate Number: 49078–086, FCI Safford, Federal Correctional Institution, P.O. Box 9000, Safford, AZ 85548, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Hansen by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Hansen may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Hansen and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until September 24, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05810 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Noe De Hoyos, Inmate Number: 27637–509, FCI Beaumont Medium, Federal Correctional Institution, P.O. Box 26040, Beaumont, TX 77720; Order Denying Export Privileges

On April 13, 2023, in the U.S. District Court for the Southern District of Texas, Noe De Hoyos (''Hoyos'') was convicted of violating 18 U.S.C. 554(a). Specifically, Hoyos was convicted of smuggling from the United States to Mexico various firearms, various firearms accessories and various ammunition without the required license or written approval from the Department. As a result of his conviction, the Court sentenced Hoyos to 51 months of imprisonment, three years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Hoyos's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Hoyos to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Hoyos.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Hoyos's export privileges under the Regulations for a period of eight years from the date of Hoyos's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Hoyos had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until April 13, 2031, Noe De Hoyos, with last known addresses of Inmate Number: 27637–509, FCI Beaumont Low, Federal Correctional Institution, P.O. Box 26040, Beaumont, TX 77720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Hoyos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Hoyos may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Hoyos and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 13, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05816 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Alejandro Valles, 507 19 N Eagle Eye Rd., Aguila, AZ 85320 and P.O. Box 744, Aguila, AZ 85320 Order Denying Export Privileges

On February 14, 2022, in the U.S. District Court for the District of Arizona, Alejandro Valles (''Valles'') was convicted of violating 18 U.S.C. 554(a). Specifically, Valles was convicted of smuggling a M203 40mm grenade launcher barrel from the United States to Mexico. As a result of his conviction, the Court sentenced Valles to 15 months of imprisonment with credit for time served, three years of supervised release, and a special $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Valles's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Valles to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Valles.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Valles's export privileges under the Regulations for a period of five years from the date of Valles's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Valles had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until February 14, 2027, Alejandro Valles, with last known addresses of 507 19 N Eagle Eye Rd., Aguila, AZ 85320 and P.O. Box 744, Aguila, AZ 85320, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Valles by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Valles may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Valles and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 14, 2027.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05811 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Igor Panchernikov, 13870 Ellis Park Trl, Corona, CA 92880–3312; Order Denying Export Privileges

On June 26, 2023, in the U.S. District Court for the Central District of California, Igor Panchernikov (''Panchernikov'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C 2778) (''AECA''). Specifically, Panchernikov was convicted of conspiring to knowingly and willfully export from the United States to Russia defense articles, including thermal imaging riflescopes and night vision goggles, that were covered by the United States Munitions List without first obtaining the required license or written approval from United States Department of State. As a result of his conviction, the Court sentenced Panchernikov to 27 months in prison,

one year of supervised release and a $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''), the export privileges of any person who has been convicted of certain offenses, including, but not limited to, Section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. *See* 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Panchernikov's conviction for violating section 38 of the AECA. BIS provided notice and opportunity for Panchernikov to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a written submission from Panchernikov.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Panchernikov's export privileges under the Regulations for a period of 10 years from the date of Panchernikov's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Panchernikov had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until June 26, 2033, Igor Panchernikov, with a last known address of 13870 Ellis Park Trl, Corona, CA 92880–3312, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Panchernikov by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Panchernikov may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Panchernikov and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until June 26, 2033.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05814 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Martin Najera, Inmate Number: 00416–510, FCI Texarkana, Federal Correctional Institution, P.O. Box 7000, Texarkana, TX 75505; Order Denying Export Privileges

On December 19, 2022, in the U.S. District Court for the Western District of Texas, Martin Najera (''Najera'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554(a). Specifically, Najera was convicted of conspiring to smuggle firearms from the United States to Mexico. As a result of his conviction, the Court sentenced Najera to 37 months of imprisonment, three years of supervised release, restitution of $7,513.70 and a $100 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Najera's conviction for violating 18 U.S.C. 371 and 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Najera to make a

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Najera.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Najera's export privileges under the Regulations for a period of seven years from the date of Najera's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Najera had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until December 19, 2029, Martin Najera, with a last known address of Inmate Number: 00416–510, FCI Texarkana, Federal Correctional Institution, P.O. Box 7000, Texarkana, TX 75505, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Najera by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Najera may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Najera and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 19, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05817 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jonathan Guadalupe Almanza, 311 Sally Ave, San Juan, TX 78589; Order Denying Export Privileges

On July 19, 2022, in the U.S. District Court for the Southern District of Texas, Jonathan Guadalupe Almanza (''Almanza'') was convicted of violating 18 U.S.C. 554(a). Specifically, Almanza was convicted of smuggling one Glock 17 GEN5 pistol with three magazines, one Stoeger 9mm STR–9 pistol with one magazine, and one Springfield 9mm Hellcat pistol with two magazines without a license or written approval from the United States Department of Commerce. As a result of his conviction, the Court sentenced Almanza to 38 months of imprisonment, three years of supervised release, and $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Almanza's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Almanza to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Almanza.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Almanza's export privileges under the Regulations for a period of 10 years from the date of Almanza's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2023).

Almanza had an interest at the time of his conviction.[3]

Accordingly, it is hereby *Ordered:*

First, from the date of this Order until July 19, 2032, Jonathan Guadalupe Almanza, with a last known address of 311 Sally Ave, San Juan, TX 78589, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Almanza by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Almanza may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Almanza and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 19, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2024–05809 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR73411, November 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review.

SUMMARY: The deadline to file a complaint in the matter of Tin Mill Products from Canada; Final Affirmative Determination of Sales at Less than Fair Value and Final Negative Determination of Critical Circumstances was March 11, 2024. No complaint was timely filed pursuant to the *USMCA Rules of Procedure for Article 10.12 Binational Panel Reviews (Rules).* As such, this panel review has been completed.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: As a result of no complaint being timely filed pursuant to subrule 44(1) of the *USMCA Rules of Procedure for Article 10.12,* and in accordance with Rule 75(3), notice is hereby given that panel review of the Tin Mill Products from Canada AD dispute has been completed effective March 12, 2024.

Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

Dated: March 12, 2024.

Jamie Merriman,

Deputy U.S. Secretary, USMCA Secretariat.

[FR Doc. 2024–05662 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979, C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is revoking, in part, the antidumping duty and countervailing duty orders on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) with respect to certain off-grid small portable crystalline silicon photovoltaic (CSPV) panels as described below.

DATES: Applicable March 20, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Rivera, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0842.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, Commerce published the antidumping duty and countervailing duty orders on solar cells from China.[1] On June 13, 2023, SOURCE Global, PBC (SOURCE Global), an importer of the subject merchandise, requested, through changed circumstances reviews (CCR), revocation of the *Orders,* in part, with respect to certain off-grid small portable CSPV panels, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b).[2] SOURCE Global's CCR request included a letter from the American Alliance for Solar Manufacturing (the Alliance), a coalition of domestic producers of solar cells and petitioner in the underlying investigation, which stated that the Alliance did not oppose SOURCE Global's request for changed circumstances reviews and its proposed exclusion language.[3] On July 31, 2023, we published the notice of initiation of the requested CCRs.[4] In the *Initiation Notice,* we invited interested parties to provide comments and/or factual information regarding these CCRs, including comments on industry support and the proposed partial revocation language.[5] We received no comments or factual information.

In light of the Alliance's statement of lack of interest in maintaining the *Orders* with respect to the off-grid small portable CSPV panels described by SOURCE Global, and in the absence of any other interested party comments addressing the issue of domestic industry support, Commerce preliminarily found that producers accounting for substantially all of the domestic production of the products to which the *Orders* pertain lack interest in the relief provided by those *Orders* with respect to CSPV panels, and announced its intention to revoke, in part, the *Orders* with respect to these products.[6] On September 18, 2023 we published the *Preliminary Results* and provided interested parties an opportunity to comment and to request a public hearing.[7]

On October 16, 2023, Commerce received comments from SOURCE Global and the Alliance.[8] Commerce did not receive any hearing requests.

Final Results of Changed Circumstances Reviews and Revocation of the Orders, in Part

In its comments, SOURCE Global agreed with, and supported, Commerce's *Preliminary Results* and requested that Commerce apply a revocation date of December 1, 2021 for the *AD Order* and January 1, 2021 for the *CVD Order.*[9] The Alliance, in its comments, did not oppose Commerce's *Preliminary Results* and supported SOURCE Global's proposed effective dates of revocation of December 1, 2021 for the *AD Order* and January 1, 2021 for the *CVD Order.*[10] Because no party submitted comments opposing the *Preliminary Results* of these CCRs, and the record contains no other information or evidence that call the *Preliminary Results* into question, there is no decision memorandum accompanying this notice and Commerce continues to determine, pursuant to sections 751(d)(1) and 782(h)(2) of the Act and 19 CFR 351.222(g), that there are changed circumstances that warrant revocation of the *Orders,* in part. Specifically, because producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to the off-grid small portable CSPV panels, as described below, Commerce is revoking the *Orders,* in part, with respect to the following off-grid small portable CSPV panels:

Off-grid crystalline silicon photovoltaic panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water:

(A) A total power output of no more than 180 watts per panel at 155 degrees Celsius;

(B) A surface area of less than 16,000 square centimeters (cm^2) per panel;

(C) Include a keep-out area of approximately 1,200 cm^2 around the edges of the panel that does not contain solar cells;

(D) Do not include a built-in inverter;

(E) Do not have a frame around the edges of the panel;

(F) Include a clear glass back panel;

(G) Must include a permanently connected wire that terminates in a two-port rounded rectangular, sealed connector;

(H) Include a thermistor installed into the permanently connected wire before the two-port connector; and

(I) Include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

The scope description will, henceforth, include the exclusion language articulated above.

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[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 77 FR 73018 (December 7, 2012) (*AD Order*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order,* 77 FR 73017 (December 7, 2012) (*CVD Order*) (collectively, *Orders*).

[2] *See* SOURCE Global's Letter, ''Request for Changed Circumstances Review on Certain Off-Grid Small Portable Panels,'' dated June 13, 2023 (CCR Request).

[3] *Id.* at Exhibit 15.

[4] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Initiation of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders, in Part,* 88 FR 49448 (July 31, 2023) (*Initiation Notice*).

[5] *Id.,* 88 FR at 49450.

[6] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Intent To Revoke the Antidumping and Countervailing Duty Orders, in Part,* 88 FR 63934 (September 18, 2023) (*Preliminary Results*).

[7] *Id.,* 88 FR at 63936.

[8] *See* SOURCE Global's Letter, ''Comments on the Preliminary Results,'' dated October 16, 2023 (SOURCE Global's Comments); and the Alliance's Letter, ''Comments on Preliminary Results,'' dated October 16, 2023 (Alliance's Comments).

[9] *See* SOURCE Global's Comments at 5–7.

[10] *See* Alliance's Comments at 2.

Scope of the Orders

The merchandise covered by these *Orders* is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.

These *Orders* cover crystalline silicon photovoltaic cells of thickness equal to or greater than 20 micrometers, having a p/n junction formed by any means, whether or not the cell has undergone other processing, including, but not limited to, cleaning, etching, coating, and/or addition of materials (including, but not limited to, metallization and conductor patterns) to collect and forward the electricity that is generated by the cell.

Merchandise under consideration may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, modules, laminates, panels, building-integrated modules, building-integrated panels, or other finished goods kits. Such parts that otherwise meet the definition of merchandise under consideration are included in the scope of the *Orders.*

Excluded from the scope of the *Orders* are thin film photovoltaic products produced from amorphous silicon (a-Si), cadmium telluride (CdTe), or copper indium gallium selenide (CIGS).

Also excluded from the scope of the *Orders* are crystalline silicon photovoltaic cells, not exceeding 10,000mm2 in surface area, that are permanently integrated into a consumer good whose function is other than power generation and that consumes the electricity generated by the integrated crystalline silicon photovoltaic cell. Where more than one cell is permanently integrated into a consumer good, the surface area for purposes of this exclusion shall be the total combined surface area of all cells that are integrated into the consumer good.

Additionally, excluded from the scope of the *Orders* are panels with surface area from 3,450 mm2 to 33,782 mm2 with one black wire and one red wire (each of type 22 AWG or 24 AWG not more than 206 mm in length when measured from panel extrusion), and not exceeding 2.9 volts, 1.1 amps, and 3.19 watts. For the purposes of this exclusion, no panel shall contain an internal battery or external computer peripheral ports.

Also excluded from the scope of the *Orders* are:

1. Off grid CSPV panels in rigid form with a glass cover, with the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm2 per panel;

(C) do not include a built-in inverter;

(D) must include a permanently connected wire that terminates in either an 8mm male barrel connector, or a two-port rectangular connector with two pins in square housings of different colors;

(E) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and

(F) must be in individual retail packaging (for purposes of this provision, retail packaging typically includes graphics, the product name, its description and/or features, and foam for transport); and

2. Off grid CSPV panels without a glass cover, with the following characteristics:

(A) a total power output of 100 watts or less per panel;

(B) a maximum surface area of 8,000 cm2 per panel;

(C) do not include a built-in inverter;

(D) must include visible parallel grid collector metallic wire lines every 1–4 millimeters across each solar cell; and

(E) each panel is

1. permanently integrated into a consumer good;

2. encased in a laminated material without stitching, or

3. has all of the following characteristics: (i) the panel is encased in sewn fabric with visible stitching, (ii) includes a mesh zippered storage pocket, and (iii) includes a permanently attached wire that terminates in a female USB–A connector.

In addition, the following CSPV panels are excluded from the scope of the *Orders:* off-grid CSPV panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water:

(A) A total power output of no more than 80 watts per panel;

(B) A surface area of less than 5,000 square centimeters (cm2) per panel;

(C) Do not include a built-in inverter;

(D) Do not have a frame around the edges of the panel;

(E) Include a clear glass back panel; and

(F) Must include a permanently connected wire that terminates in a two-port rectangular connector.

Modules, laminates, and panels produced in a third-country from cells produced in China are covered by the *Orders;* however, modules, laminates, and panels produced in China from cells produced in a third-country are not covered by the *Orders.*

Additionally excluded from the scope of these *Orders* are off-grid small portable crystalline silicon photovoltaic panels, with or without a glass cover, with the following characteristics: (1) a total power output of 200 watts or less per panel; (2) a maximum surface area of 16,000 cm2 per panel; (3) no built-in inverter; (4) an integrated handle or a handle attached to the package for ease of carry; (5) one or more integrated kickstands for easy installation or angle adjustment; and (6) a wire of not less than 3 meters either permanently connected or attached to the package that terminates in an 8mm diameter male barrel connector.

Also excluded from the scope of these *Orders* are off-grid crystalline silicon photovoltaic panels in rigid form with a glass cover, with each of the following physical characteristics, whether or not assembled into a fully completed off-grid hydropanel whose function is conversion of water vapor into liquid water:

(A) A total power output of no more than 180 watts per panel at 155 degrees Celsius;

(B) A surface area of less than 16,000 square centimeters (cm^2) per panel;

(C) Include a keep-out area of approximately 1,200 cm^2 around the edges of the panel that does not contain solar cells;

(D) Do not include a built-in inverter;

(E) Do not have a frame around the edges of the panel;

(F) Include a clear glass back panel;

(G) Must include a permanently connected wire that terminates in a two-port rounded rectangular, sealed connector;

(H) Include a thermistor installed into the permanently connected wire before the two-port connector; and

(I) Include exposed positive and negative terminals at opposite ends of the panel, not enclosed in a junction box.

Merchandise covered by the *Orders* is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.80, 8541.40.6020, 8541.40.6030, and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Orders* is dispositive.[11]

[11] *See Orders.*

Application of the Final Results of These Reviews

SOURCE Global requested that Commerce retroactively apply the final results of these reviews to ''all unliquidated entries of the merchandise covered by the revocation that are not covered by the final results of an administrative review or an automatic liquidation instruction.'' [12] Section 751(d)(3) of the Act provides that ''{a} determination under this section to revoke an order . . . shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.'' Commerce's general practice is to instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties on, all unliquidated entries of the merchandise covered by a revocation that are not covered by the final results of an administrative review or automatic liquidation.[13]

Consistent with this practice, we are applying the final results of these CCRs to all unliquidated entries of the merchandise covered by the revocations which have been entered, or withdrawn from warehouse, for consumption on or after December 1, 2021 for the *AD Order* and January 1, 2021 for the *CVD Order.* These are the beginning dates of the earliest periods of review not covered by the final results of an administrative review or automatic liquidation instructions (*i.e.,* December 1, 2021, through November 30, 2022 for the *AD Order* and January 1, 2021, through December 31, 2021 for the *CVD Order*).

Instructions to CBP

Because we determine that there are changed circumstances that warrant the revocation of the *Orders,* in part, we will instruct CBP to liquidate without regard to antidumping and countervailing duties, and to refund any estimated antidumping and countervailing duties on, all unliquidated entries of the merchandise covered by this partial revocation on or after December 1, 2021 for the *AD Order* and January 1, 2021 for the *CVD Order.*

Commerce intends to issue instructions to CBP no earlier than 35 days after the date of publication of these final results of CCRs in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Administrative Protective Order

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to a 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

We are issuing and publishing these final results of CCRs in accordance with sections 751(b) and 777(i) of the Act, and 19 CFR 351.216, 19 CFR 351.221(c)(3), and 19 CFR 351.222(g).

Dated: March 14, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–05926 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DS–P

[12] *See* SOURCE Global's Comments at 5–6.

[13] *See, e.g., Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation, In Part,* 76 FR 27634 (May 12, 2011); *Stainless Steel Bar from the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order, in Part,* 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany,* 71 FR 66163 (November 13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Germany,* 71 FR 14498 (March 22, 2006); and *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People's Republic of China,* 68 FR 62428 (November 4, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–819]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From Ukraine: Final Results of Antidumping Duty Administrative Review, 2021–2022; Correction

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published notice in the **Federal Register** of March 6, 2024, in which Commerce issued the final results of the 2021–2022 administrative review of the antidumping duty order on seamless carbon and alloy steel standard, line, and pressure pipe (seamless pipe) from Ukraine. In that notice, Commerce incorrectly listed the name of the mandatory respondent in the rate table.

FOR FURTHER INFORMATION CONTACT: Reginald Anadio, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3166.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 2024, Commerce published in the **Federal Register** the final results of the 2021–2022 administrative review of the antidumping duty order on seamless pipe from Ukraine.[1] In that notice, Commerce incorrectly listed ''LJSC'' in one of the company names in the rate table when it should have listed ''PJSC.''

Correction

In the **Federal Register** of March 6, 2024, in FR Doc 2024–04707, on page 15974, in the second column, correct the exporter/producer name found in the rate table to ''Interpipe Ukraine LLC/PJSC Interpipe Niznedneprovsky Tube Rolling Plant/LLC Interpipe Niko Tube/Interpipe Europe S.A.''

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Tariff Act of 1930, as amended, and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: March 14, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2024–05799 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from Ukraine: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 15974 (March 6, 2024).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD773]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Friday, April 5, 2024, from 10 a.m. to 12 p.m. Pacific Time.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The purpose of this online meeting is for the EWG to discuss and draft the contents of a report with its recommendations for the Council Operations and Priorities agenda item that the Pacific Council will discuss at its April 2024 meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: March 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05874 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Region Permit Family of Forms

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on October 3, 2023 (88 FR 68110), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration (NOAA), Commerce.

Title: Alaska Region Permit Family of Forms.

OMB Control Number: 0648–0206.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 430.

Average Hours per Response: Application for Federal Fisheries Permit: 21 minutes; Application for Federal Processor Permit: 25 minutes; Exempted Fisheries Permit application: 100 hours.

Total Annual Burden Hours: 256 hours.

Needs and Uses: The National Marine Fisheries Services (NMFS), Alaska Region, is requesting extension of a currently approved information collection for the applications for the Federal Fisheries Permit (FFP), the Federal Processor Permit (FPP), and the Exempted Fishing Permit (EFP).

NMFS requires an FFP for U.S. vessels that are used to fish for groundfish in the Gulf of Alaska or Bering Sea and Aleutian Islands. An FFP is also required for vessels used to fish for any non-groundfish species and that are required to retain any bycatch of groundfish under 50 CFR 679.4(b). An FPP is required for stationary floating processors (processing vessels that operate solely within Alaska State waters) and is required for shoreside processors that receive and/or process groundfish harvested from Federal waters or from any federally permitted vessels. NMFS issues an EFP to allow groundfish fishing activities that would otherwise be prohibited under regulations for groundfish fishing. EFPs are issued to support projects that could benefit the groundfish fisheries and the environment and result in gathering information not otherwise available through research or commercial fishing operations. Regulations governing these permits are at 50 CFR 600.745, 679.4, and 679.6.

Section 303(b)(1) of the Magnuson-Stevens Fishery Conservation and Management Act specifically recognizes the need for permit issuance. Requiring a permit for marine resource users—mandated by 50 CFR 679.4(b), 679.4(f); 679.6; and 600.745(b)—is one of the regulatory steps taken to carry out conservation and management objectives. Permit issuance is essential in fishery resources management for identification of the participants and expected activity levels and for regulatory compliance. The information requested on the FFP, FPP, and EFP applications is used for fisheries management and regulatory compliance by NMFS Sustainable Fisheries Division, NMFS Restricted Access Management Program, NMFS Observer Program, NOAA Office of Law Enforcement, the U.S. Coast Guard, and the North Pacific Fisheries Management Council.

The type of information collected on the FFP application includes permit holder identification information, vessel information, permit information, and species endorsements. Information collected on the FPP application includes processor identification information, stationary floating processor or community quota entity vessel information, and vessel ownership information. An EFP application includes information on the applicant and a description of the project design including how it will vary from current fishing regulations, the species affected and targeted, when and where the fishing will take place, the vessel that will be used, and a

provision for public release of all obtained information.

Affected Public: Individuals or households; Business or other for-profit organizations.

Frequency: Annually; Every 3 years; On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits; Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0206.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–05844 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Foreign Fishing Vessel Permits, Vessel, and Gear Identification, and Reporting Requirements

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 20, 2024.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *NOAA.PRA@noaa.gov.* Please reference OMB Control Number 0648–0075 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jasmine Prat, Fishery Policy Analyst, Office of International Affairs and Seafood Inspection (F/IS5), 1315 East-West Highway, Silver Spring, Maryland 20910, 301–427–8364 or *jasmine.prat@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for the extension of an existing information collection.

The National Marine Fisheries Service (NMFS) issues permits, under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.;* MSA), to foreign fishing vessels fishing or operating in U.S. waters. MSA and associated regulations at 50 CFR part 600 require that vessels apply for fishing permits, that vessels and certain gear be marked for identification purposes, that observers be embarked on selected vessels, and that permit holders report their fishing effort and catch or, when processing fish under joint ventures, the amount and locations of fish received from U.S. vessels. These requirements apply to all foreign vessels fishing, transshipping, or processing fish in U.S. waters. Information is collected from persons who operate a foreign fishing vessel in U.S. waters to participate in a directed fishery or joint venture operation, transship fish harvested by a U.S. vessel to a location outside the U.S., or process fish in internal waters. Each person operating a foreign fishing vessel under MSA authority may be required to submit information for a permit, mark their vessels and gear, or submit information about their fishing activities.

To facilitate observer coverage, foreign fishing vessel operators must provide a quarterly schedule of fishing effort and upon request must also provide observers with copies of any required records. For foreign fishing vessels that process fish in internal waters, the information collected varies somewhat from other foreign fishing vessels that participate in a directed fishery or a joint venture operation. In particular, these vessels may not be required to provide a permit application or mark their vessels. The information submitted in applications is used to determine whether permits should be used to authorize directed foreign fishing, participation in joint ventures with U.S. vessels, or transshipments of fish or fish products within U.S. waters. The display of identifying numbers on vessels and gear aid in fishery law enforcement and allows other fishermen to report suspicious activity. Reporting of fishing activities allows monitoring of fish received by foreign vessels.

II. Method of Collection

Foreign fishing activity reports are made by radio when fishing begins or ceases, to report on transfers of fish, and to file weekly reports on the catch or receipt of fish. Weekly reports may be submitted by fax or email. Recordkeeping requirements for foreign vessels include a communications log, a transfer log, a daily fishing log, a consolidated fishing or joint venture log, and a daily joint venture log. These records must be maintained for three years. Paper forms are used for foreign fishing vessel permit applications. No information is submitted to NMFS for the vessel and gear marking requirements.

III. Data

OMB Control Number: 0648–0075.

Form Number: None.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 8.

Estimated Time per Response: For permit applications: One and one half hours for an application for a directed fishery; two hours for a joint venture application, and 45 minutes for a transshipment permit. For fishing activity reporting: 6 minutes for a joint venture report; 30 minutes per day for joint venture record-keeping; and 7.5 minutes per day for record-keeping by transport vessels. For weekly reports, 30 minutes per response. For foreign vessel and gear identification marking: 15 minutes per marking.

Estimated Total Annual Burden Hours: 82.

Estimated Total Annual Cost to Public: $3,337 in recordkeeping/reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: The National Marine Fisheries Service (NMFS) issues permits, under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.;* MSA) MSA and associated regulations at 50 CFR part 600.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2024–05845 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE:

National Oceanic and Atmospheric Administration

[RTID 0648–XD800]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting open to the public offering both in-person and virtual options for participation.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene Monday, April 8, 2024 through Thursday, April 11, 2024. Daily schedule is as follows: Monday, April 8, from 8 a.m.–5:30 p.m., Tuesday, April 9 through Thursday, April 11, from 8 a.m.–5 p.m., CDT.

ADDRESSES: The meeting will take place at The Lodge at Gulf State Park, located at 21196 East Beach Boulevard, Gulf Shores, AL 36542. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W. Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, April 8, 2024; 8 a.m.–5:30 p.m., CDT

The meeting will begin with the *Shrimp* Committee reviewing the Biological Review of the Texas Closure, Draft *Shrimp* Framework Action: Modification of the Vessel Position Data Collection Program for the Gulf of Mexico *Shrimp* Fishery and the 2022 Gulf *Shrimp* Fishery Effort. The committee will receive an update on Number of Valid and Renewable Gulf *Shrimp* Permits and Discussion of Management Implications and review of any remaining items from the March 19–20, 2024 *Shrimp* Advisory Panel Meeting Summary.

The Gulf SEDAR Committee will review and discuss the Gulf of Mexico SEDAR Schedule, SSC Discussions about the current SEDAR Process, and any remaining items from the March 2024 SEDAR Steering Committee Meeting.

The Data Collection Committee will receive presentations on Discussion of Fisheries Economic Data Collection Methods and Amendment Draft Options.

At approximately 4:15 p.m. until 5:30 p.m., the Council will convene the Full Council in a Closed Session to review Preliminary Appointments to the *Reef Fish* and *Shrimp* Advisory Panels, Appointments to the *Ad Hoc Red Snapper/Grouper Tilefish* Advisory Panel; and, selection of 2023 Law Enforcement Officer or Team of the Year.

Tuesday, April 9, 2024; 8 a.m.–5 p.m., CDT

The *Reef Fish* Committee will convene to review *Reef Fish* and Individual Fishing Quota (IFQ) Landings, receive presentation on 2024 *Red Grouper* and *Gag* Recreational Season Projections, Discuss Conservation and Management of Wenchman in the *Mid-water Snapper* Complex, including Background Draft Options: Modification of *Mid-Water Snapper* Complex Composition and Catch Limits. The committee also will review Draft Options: *Reef Fish* Amendment 58: Modifications to *Shallow-water Grouper* Complex Catch Limits and Management Measures. The committee will also hear the February 2023 Gulf SSC Meeting Summary Items: SEDAR 85: Gulf *Yellowedge Grouper* Assessment and Projections, Fishermen Feedback for SEDAR 85, Other *Deepwater Grouper* Landings Data and Catch Limits, Gulf of Mexico Red Snapper Research Track SEDAR 74, Comparison of the *Reef Fish* and *Snapper Grouper* Fisheries of the Southeastern U.S., and 2024 Gulf Red Group Interim Analysis Review. Lastly, the committee will receive a presentation on *Reef Fish* Amendment 60: Individual Fishing Quota.

Wednesday, April 10, 2024; 8 a.m.–5 p.m., CDT

The Mackerel Committee will review Coastal Migratory Pelagics (CMP) Landings, Draft Framework Amendment 14: Modifications to Gulf Migratory Group *Spanish Mackerel* Catch Limits including CMP AP Recommendations, Gulf Migratory Group *King Mackerel* Management Discussion, CMP Special Engagement Sessions, and any remaining CMP AP Meeting Recommendations.

The Council will reconvene at approximately 10:15 a.m., CDT with a Call to Order, Announcements and Introductions, Adoption of Agenda and Approval of Minutes.

The Council will receive presentations on a Brief Update on Recreational Initiative, Opportunities to Advance Equity and Environmental Justice (EEJ) in Gulf of Mexico Fisheries through the Southeast EEJ Implementation Plan and an Update from Bureau of Ocean Energy Management (BOEM) on Wind Energy Development in the Gulf of Mexico.

The Council will hold public testimony from 1:30 p.m. to 5 p.m., CDT for Comments on the Southeast EEJ Implementation Plan; and open testimony on other fishery issues or concerns. Public comment may begin earlier than 1:30 p.m. CDT, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up on the Council website on the day of public testimony. Registration for virtual testimony closes one hour (12:30 p.m. CDT) before public testimony begins.

Thursday, April 11, 2024; 8 a.m.–5 p.m., CDT

The Council will receive Committee reports from *Shrimp,* Gulf SEDAR, Data Collection, *Reef Fish;* and, Announcement of 2023 Officer/Team of the Year and committee report from *Mackerel* Committee. The Council will receive updates from the following supporting agencies: Alabama Law Enforcement Efforts; South Atlantic Fishery Management Council Liaison; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss Other Business items: Litigation Update and Federal Charter Vessel ID Marking Requirements.

—Meeting Adjourns

The meeting will be a hybrid meeting; both in-person and virtual participation available. You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions 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 that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

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

Dated: March 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05876 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD813]

Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will meet April 5–11, 2024 in Seattle, WA and via webinar. The Council meeting will be live streamed with the opportunity to provide public comment remotely. The following groups will meet in person in Seattle: Budget Committee, Salmon Technical Team, Salmon Advisory Subpanel, Enforcement Consultants, Coastal Pelagic Species Advisory Subpanel, Coastal Pelagic Species Management Team, Groundfish Management Team, and Groundfish Advisory Subpanel. The Scientific and Statistical Committee will meet remotely.

DATES: The Pacific Council meeting will begin on Saturday, April 6, 2024, at 9 a.m. Pacific Time, reconvening at 8 a.m. on Sunday, April 7 through Thursday, April 11, 2024. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Saturday, April 6, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be held at the Westin Seattle, 1900 5th Avenue, Seattle, WA; telephone: (206) 728–1000. Specific meeting information, including directions on joining the meeting, connecting to the live stream broadcast, and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at 503–820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Merrick Burden, Executive Director, Pacific Council; telephone: 503–820–2418 or 866–806–7204 toll-free, or access the Pacific Council website, *www.pcouncil.org,* for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The April 6–11, 2024 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PT, Saturday, April 6, and 8 a.m. Sunday, April 7 through Thursday, April 11, 2024. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. Additional information and instructions on joining or listening to the meeting can be found on the Pacific Council's website (see *www.pcouncil.org*).

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as ''Final Action'' refer to actions requiring the Pacific Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.3, Proposed Council Meeting Agenda, and will be in the advance April 2024 briefing materials and posted on the Pacific Council website at *www.pcouncil.org* no later than Monday, March 25, 2024.

A. Call to Order
  1. Opening Remarks
  2. Roll Call
  3. Agenda
  4. Executive Director's Report
B. Open Comment Period
  1. Comments on Non-Agenda Items
C. Habitat Issues
  1. Current Habitat Issues
D. Pacific Halibut Management

1. Incidental Catch Limits for the 2024 Salmon Troll Fishery—Final Action

E. Salmon Management
1. National Marine Fisheries Service Report
2. Tentative Adoption of the 2024 Management Measures for Analysis
3. Clarify Council Direction on 2024 Management Measures
4. Methodology Review Preliminary Topic Selection
5. Further Direction on 2024 Management Measures
6. 2024 Management Measures—Final Action

F. Groundfish Management
1. National Marine Fisheries Service Report Including a Take Reduction Team Overview
2. Biennial Harvest Specifications for 2025–26 Fisheries—Final Preferred Alternatives
3. Inseason Management—Final Action
4. Sablefish Gear Switching—Final Action and Fishery Management Plan Amendment
5. Preliminary Preferred Management Measure Alternatives for 2025–26 Fisheries

G. Administrative Matters
1. Fiscal Matters
2. Council Operations and Priorities
3. Membership Appointments and Council Operating Procedures
4. Future Council Meeting Agenda and Workload Planning

H. Cross Fishery Management Plan (FMP)
1. Office of National Marine Sanctuaries (ONMS) Report
2. U.S. Coast Guard Annual Report

I. Coastal Pelagic Species Management
1. National Marine Fisheries Service Report
2. 2024–25 Exempted Fishing Permits (EFP)—Final Action
3. Pacific Sardine Harvest Specifications and Management Measures for 2024–25—Final Action

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Pacific Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website, *www.pcouncil.org,* no later than Monday, March 25, 2024.

Schedule of Ancillary Meetings

Day 1—Friday, April 5, 2024

Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Scientific and Statistical Committee 8 a.m.
Groundfish Advisory Subpanel 1 p.m.
Groundfish Management Team 1 p.m.
Budget Committee 1 p.m.
Enforcement Consultants 2 p.m.

Day 2—Saturday, April 6, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary

Day 3—Sunday, April 7, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary

Day 4—Monday, April 8, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Coastal Pelagic Species Advisory Subpanel 8 a.m.
Coastal Pelagic Species Management Team 8 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary

Day 5—Tuesday, April 9, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Groundfish Advisory Subpanel 8 a.m.
Groundfish Management Team 8 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary

Day 6—Wednesday, April 10, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Salmon Advisory Subpanel 8 a.m.
Salmon Technical Team 8 a.m.
Enforcement Consultants As Necessary

Day 7—Thursday, April 11, 2024

California State Delegation 7 a.m.
Oregon State Delegation 7 a.m.
Washington State Delegation 7 a.m.
Salmon Technical Team 8 a.m.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 business days prior to the meeting date.

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

Dated: March 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05877 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD782]

Fisheries of the Gulf of Mexico and South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 79 Assessment Webinar II for Gulf of Mexico and South Atlantic Mutton Snapper.

SUMMARY: The SEDAR 79 assessment process of Gulf of Mexico and South Atlantic mutton snapper will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 79 Assessment Webinar II will be held April 4, 2024, from 9 a.m. to 12 p.m., Eastern Time. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR**

FURTHER INFORMATION CONTACT below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the webinar are as follows:

Panelists will review and discuss initial assessment modeling to date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: March 15, 2024.

Rey Israel Marquez,

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

[FR Doc. 2024–05875 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2023–0045]

Resources for Examining Means-Plus-Function and Step-Plus-Function Claim Limitations

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) issued a memorandum to the patent examining corps to assist patent examiners in addressing means-plus-function and step-plus-function claim limitations, and to create a clearer record for the applicant, the public, and the courts. The issued memorandum will help ensure consistent analysis by USPTO employees in addressing means-plus-function and step-plus-function limitations and will result in clearer communications to applicants from the USPTO as to the interpretation of means-plus-function and step-plus-function limitations and any related deficiencies. Clearer USPTO communications provide both the applicant and the public with notice as to the claim interpretation used by the patent examiner during prosecution, and if the applicant intends a different claim interpretation, the issue can be clarified early in prosecution.

DATES: Comment Deadline: Written comments must be received on or before June 18, 2024, to ensure consideration.

ADDRESSES: Comments must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, enter docket number PTO–P–2023–0045 on the homepage and select ''Search.'' The site will provide a search results page listing all documents associated with this docket. Find a reference to this document 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 (PDF) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Carolyn Kosowski, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Carolyn.Kosowski@uspto.gov* or 571–272–7755; or Brannon Smith, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, at *Brannon.Smith@uspto.gov* or 571–270–1601.

SUPPLEMENTARY INFORMATION: On March 18, 2024, the USPTO issued a memorandum to the patent examining corps titled ''Resources for Examining Means-Plus-Function and Step-Plus-Function Claim Limitations (35 U.S.C. 112(f))'' (memorandum). The memorandum is available at *www.uspto.gov/patents/laws/examination-policy/memoranda-examining-corps.*

As background, means-plus-function limitations appear in many claims across a wide variety of technologies, while step-plus-function limitations appear less frequently. It is critical to proper examination that patent examiners appreciate the unique statutory construction of means-plus-function and step-plus-function limitations and make the record clear as to the same. It is also incumbent upon patent examiners to make the prosecution history record clear for applicants, the public, and the courts (and for the USPTO for any post-grant determinations) when claims are examined under a means-plus-function

or step-plus-function construction, as the invocation of 35 U.S.C. 112(f) affects claim scope. Drafting claims with limitations that comply with 35 U.S.C. 112(f) can be beneficial to applicants by allowing them to recite a function in a claim and rely on the specification for the corresponding structure, material, or acts that perform the function and equivalents to the disclosed structure, material, or acts. This technique permits the claim drafter to avoid specific identification of the means or step for performing a claimed function in the claim itself by offering a shorthand that can point to a more robust description of the means or step in the specification.

When a patent examiner determines that, under the broadest reasonable interpretation of a claim, a limitation invokes 35 U.S.C. 112(f), the limitation must be limited to the structure, material, or acts described in the specification as performing the entire claimed function and equivalents to the disclosed structure, material, or acts. As a result, 35 U.S.C. 112(f) limitations will, in some cases, be afforded a narrower interpretation than a limitation that is not crafted in means-plus-function format. This is an important distinction when searching for and applying prior art. The memorandum highlights the special considerations for the examination of claims with 35 U.S.C. 112(f) limitations.

The memorandum also reminds patent examiners that the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) includes the latest examination guidance concerning 35 U.S.C. 112(f) in sections 2181–2187. The memorandum to patent examiners provides a summary of important points related to examining claims having 35 U.S.C. 112(f) limitations and provides the specific MPEP sections noted for more thorough information on each topic. The memorandum addresses: (1) the applicability of 35 U.S.C. 112(f); (2) claim interpretation and the importance of a clear record; and (3) adequate support, specifically to satisfy the requirements of definiteness, written description, and enablement.

Additionally, the memorandum explains that refresher training on 35 U.S.C. 112(f) is available to patent examiners. Training is also available to the public at *www.uspto.gov/patents/laws/examination-policy/examination-guidance-and-training-materials.*

Feedback on 35 U.S.C. 112(f) guidance is welcome. Instructions for submitting feedback are provided in the **ADDRESSES** section of this notice.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–05798 Filed 3–19–24; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on April 11, 2024, from 9:30 a.m. to 11:00 a.m. (Central Daylight Time), the Agricultural Advisory Committee (AAC or Committee) will hold an in-person public meeting at the Sheraton Overland Park Hotel in Overland Park, KS, with options for the public to attend virtually. At this meeting, the AAC will discuss topics related to the agricultural economy and recent developments in the agricultural derivatives markets.

DATES: The meeting will be held on April 11, 2024, from 9:30 a.m. to 11:00 a.m. (Central Daylight Time). Members of the public who wish to submit written statements in connection with the meeting should submit them by April 18, 2024.

ADDRESSES: The meeting will take place at the Sheraton Overland Park Hotel, 6100 College Blvd., Overland Park, KS. You may submit public comments, identified by ''Agricultural Advisory Committee,'' through the CFTC website at *https://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website. If you are unable to submit comments online, contact Swati Shah, Designated Federal Officer, via the contact information listed below to discuss alternate means of submitting your comments. Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Swati Shah, AAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC; (202) 418–5042; or *aac@cftc.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll-Free Numbers: 833–568–8864 or 833–435–1820.

Domestic Toll Numbers: 1–669–254–5252 or 1–646–964 1167 or 1–646–828–7666 or 1–669–216–1590 or 1–415–449–4000 or 1–551–285–1373.

International Toll- and Toll-Free Numbers: Will be posted on the CFTC's website, *https://www.cftc.gov,* on the page for the meeting, under Related Links.

Call-In/Webinar ID: 160 831 3224.

Pass Code/Pin Code: 031806.

Members of the public may also view a live webcast of the meeting via the *http://www.cftc.gov/* website. The meeting agenda may change to accommodate other Committee priorities. For agenda updates, please visit *https://www.cftc.gov/About/AdvisoryCommittees/AAC.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *http://www.cftc.gov.* Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. 1009(a)(2).)

Dated: March 14, 2024.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2024–05819 Filed 3–19–24; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans

AGENCY: White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans, Office of the Secretary, Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda for the April 4–5, 2024, open meeting of the Presidential Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans (PAC) and provides information to members of the public about how to attend the meeting and submit written comments related to the work of the PAC.

DATES: The PAC will meet on April 4, 2024, from 9:00 a.m. to 4:30 p.m. E.D.T. and on April 5, 2024, from 11 a.m. to 3:00 p.m.

ADDRESSES: The Laborer's District Council Training and Learning Center located at 1333 N Broad St., Philadelphia, PA 19122. The public may view the meeting virtually or attend in-person.

FOR FURTHER INFORMATION CONTACT: Monique Toussaint, Designated Federal Official, U.S. Department of Education, White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans, 400 Maryland Avenue SW, Washington, DC 20202; telephone: (202) 260–0964, email: *monique.toussaint@ed.gov.*

SUPPLEMENTARY INFORMATION:

PAC's Statutory Authority and Function: The PAC is established by Executive Order 14050 (October 19, 2021) and is continued by Executive Order 14109 (September 29, 2023). The PAC is governed by the provisions of 5 U.S.C. chapter 10, which sets forth standards for the formation and use of advisory committees. The purpose of the PAC is to advise the President, through the Secretary of the U.S. Department of Education, on all matters pertaining to advancing educational equity, excellence, and economic opportunity for Black Americans and communities.

The PAC shall advise the President in the following areas: (i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Black Americans; (ii) how to promote career pathways for in-demand jobs for Black students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives; (iii) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Black Americans face and the causes of these challenges; and (iv) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of Executive Order 14050, consistent with applicable law. Notice of the meeting is required by 5 U.S.C. chapter 10 (Federal Advisory Committees) and is intended to notify the public of its opportunity to attend.

Meeting Agenda: On April 4, 2024, the meeting agenda will include welcome remarks; a discussion of the PAC's function and mission; voting on Commission business as needed; panels by subject matter experts on topics that reflect the priorities outlined in the Executive Order; and a group discussion. The public comment period will begin immediately following the conclusion of panel discussions Members of the public should follow the instructions below for submitting written comment and providing oral comment at the meeting. On April 5, 2024, the meeting agenda will include working group updates and presentations.

Access to the Meeting: An RSVP is required in order to attend the meeting in-person and/or virtually. Please RSVP at *https://sites.ed.gov/whblackinitiative/our-commission/.* RSVPs for both meeting days must be received by 5:00 p.m. E.D.T. on March 31, 2024. Members of the public that RSVP will get information on how to attend the meeting virtually or in-person as indicated on their registration.

Submission of written comments: The public may submit written comments pertaining to the work of the PAC no later than 5:00 p.m. E.D.T. on March 31, 2024. Members of the public who submit written comments prior to the deadline may read their comments during the public comment segment of the meeting on April 4, 2024. Written comments must be submitted via the registration site or to the *whblackinitiative@ed.gov* mailbox and include in the subject line ''PAC Public Comment.'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to an electronic mail message (email) or provided in the body of an email message. Please do not send material directly to the PAC members.

Access to Records of the Meeting: The Department will post the official report of the meeting on the Initiative's website no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009, the public may also inspect the meeting materials and other PAC records at 400 Maryland Avenue SW, Washington, DC, by emailing *whblackinitiative@ed.gov* to schedule an appointment.

Reasonable Accommodations: The meeting sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Presidential Executive Order 14050.

Alexis Barrett,

Chief of Staff, Office of the Secretary.

[FR Doc. 2024–05892 Filed 3–19–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–83–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 7, 2024, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in the above referenced docket a prior notice request pursuant to sections 157.205, 157.208, 157.210, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and Northern's blanket certificate issued in Docket No. CP82–401–000, for authorization of its West Leg 2024 Expansion Project in Martin County, Minnesota and Dodge County, Nebraska (Project). Specifically, Northern proposes to: (1) construct an approximately 4.53-mile-long extension of its 16-inch-diameter MNM80511 C-line and associated aboveground

appurtenances; (2) construct the Columbus branch line tie-over regulator station; and (3) abandon by removal small segments of pipeline at both locations. Northern executed precedent agreements with nine customers for 12,960 dekatherms per day of firm transportation service. Northern estimates the cost of the Project to be $18,143,515, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

Any questions concerning this request should be directed to Donna Martens, Senior Regulatory Analyst, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124, by phone at (402) 398–7138, or by email at *donna.martens@nngco.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on May 13, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is May 13, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is May 13, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before May 13, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–83–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–83–000.

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Donna Martens, Senior Regulatory Analyst, Northern Natural Gas Company, 1111 South 103rd Street, Omaha, Nebraska 68124 or by email at *donna.martens@nngco.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05885 Filed 3–19–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–57–000.
Applicants: Minnesota Energy Resources Corporation.
Description: § 284.123(g) Rate Filing: Revised Statement of Operating Conditions to be effective 3/1/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5067.
Comment Date: 5 p.m. ET 4/4/24.
§ 284.123(g) Protest: 5 p.m. ET 5/13/24.

Docket Numbers: RP24–524–000.
Applicants: National Fuel Gas Supply Corporation.
Description: § 4(d) Rate Filing: Update to Applicable Rates (Part 4) to be effective 4/1/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5030.
Comment Date: 5 p.m. ET 3/26/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: March 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05886 Filed 3–19–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–130–000.
Applicants: Al Pastor BESS LLC.
Description: Al Pastor BESS LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/24.
Accession Number: 20240313–5218.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: EG24–131–000.
Applicants: Citadel BESS LLC.
Description: Citadel BESS LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/24.
Accession Number: 20240313–5219.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: EG24–132–000.
Applicants: SMT Ironman BESS LLC.
Description: SMT Ironman BESS LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/24.
Accession Number: 20240313–5220.
Comment Date: 5 p.m. ET 4/3/24.

Docket Numbers: EG24–133–000.
Applicants: Widgeon Whistle BESS LLC.
Description: Widgeon Whistle BESS LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.
Filed Date: 3/13/24.
Accession Number: 20240313–5221.
Comment Date: 5 p.m. ET 4/3/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–2663–002.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to Filing, Original ISA, SA No. 7038 to be effective 7/21/2023.
Filed Date: 3/14/24.
Accession Number: 20240314–5141.
Comment Date: 5 p.m. ET 4/4/24.

Docket Numbers: ER24–796–002.
Applicants: Entergy Texas, Inc.
Description: Tariff Amendment: ETI–ETEC Second Revised LBA Agreement to be effective 2/27/2024.

Filed Date: 3/14/24.
Accession Number: 20240314–5073.
Comment Date: 5 p.m. ET 4/4/24.
Docket Numbers: ER24–1215–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to ISA, SA No. 1442; Queue No. NQ–123 (amend) Errata Filing to be effective 4/9/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5037.
Comment Date: 5 p.m. ET 4/4/24.
Docket Numbers: ER24–1482–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: Application for Authorization for Abandoned Plant Incentive Rate Treatment of Michigan Electric Transmission Company, LLC.
Filed Date: 3/13/24.
Accession Number: 20240313–5232.
Comment Date: 5 p.m. ET 4/3/24.
Docket Numbers: ER24–1483–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii: ATSI submits one Construction Agreement, SA No. 6934 to be effective 5/14/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5033.
Comment Date: 5 p.m. ET 4/4/24.
Docket Numbers: ER24–1489–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: § 205(d) Rate Filing: Filing of Construction, Operation and Maintenance Agreement to be effective 2/15/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5121.
Comment Date: 5 p.m. ET 4/4/24.
Docket Numbers: ER24–1490–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amended ISA; Service Agreement No. 6278; AD2–048 to be effective 5/14/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5131.
Comment Date: 5 p.m. ET 4/4/24.
Docket Numbers: ER24–1495–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Taylor Electric Cooperative 2nd Amended TSA to be effective 2/22/2024.
Filed Date: 3/14/24.
Accession Number: 20240314–5139.
Comment Date: 5 p.m. ET 4/4/24.

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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Dated: March 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05887 Filed 3–19–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2364–047]

Eagle Creek Madison Hydro, LLC; Notice of Effectiveness of Withdrawal of Application for Amendment of License

On June 20, 2023, Eagle Creek Madison Hydro, LLC (licensee) filed an application for non-capacity amendment of the license for the 18.8-megawatt Abenaki Hydroelectric Project No. 2364. On February 26, 2024, the licensee filed a notice of withdrawal of the amendment application. The project is located on the Kennebec River, Somerset County, Maine.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,[1] the withdrawal of the application became effective on March 12, 2024, and this proceeding is hereby terminated.

Dated: March 14, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–05884 Filed 3–19–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0525; FRL–11844–01–OMS]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers (EPA ICR Number. 1696.11, OMB Control Number 2060–0297) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2024. Public comments were previously requested via the **Federal Register** on July 5, 2023, during a 60-day comment period. This notice allows for 30 days for public comments.

DATES: Comments may be submitted on or before April 19, 2024.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2006–0525, to EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential

[1] 18 CFR 385.216(b) (2023).

Business Information (CBI) or other information whose disclosure is restricted by statute. Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, Mail Code: 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2800; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: This is a proposed extension of the ICR, which is currently approved through March 31, 2024. 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.

Public comments were previously requested via the **Federal Register** on July 5, 2023 during a 60-day comment period (88 FR 42939). This notice allows for an additional 30 days for public comments. Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: In accordance with the regulations at 40 CFR 79, Subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels, are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR 79, Subpart F, is the subject of this ICR. The information collection requirements for Subparts A through D, and the supplemental notification requirements of Subpart F (indicating how the manufacturer will satisfy the health-effects data requirements) are covered by a separate ICR (OMB Control Number 2060–0150). The health-effects data will be used to determine if there are any products which have evaporative or combustion emissions that may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations. For example, gasoline and gasoline additives which consist of only carbon, hydrogen, oxygen, nitrogen, and/or sulfur, and which involve a gasoline oxygen content of less than 1.5 weight percent, fall into a ''baseline'' group. Oxygenated additives, such as ethanol, when used in gasoline at an oxygen level of at least 1.5 weight percent, define separate ''non-baseline'' groups for each oxygenate. Additives which contain elements other than carbon, hydrogen, oxygen, nitrogen, and sulfur fall into separate ''atypical'' groups. There are similar grouping requirements for diesel fuel and diesel fuel additives.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Tier 1 data have been submitted for biodiesel, water/diesel emulsions, several atypical additives, and renewable gasoline and diesel fuels. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Tier 2 data have been submitted for baseline diesel, biodiesel, and water/diesel emulsions. Alternative Tier 2 requirements were established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. Tier 3 provides for follow-up research, at EPA's discretion, when remaining uncertainties as to the significance of observed health effects, welfare effects, and/or emissions exposures from a fuel or fuel/additive mixture interfere with EPA's ability to make reasonable estimates of the potential risks posed by emissions from a fuel or additive. Under regulations promulgated pursuant to Section 211 of the Clean Air Act, submission of the health-effects information is necessary for a manufacturer to obtain registration of a motor-vehicle gasoline, diesel fuel, or fuel additive, and be allowed to introduce that product into commerce and the information shall not be considered confidential.

Form Numbers: None.

Respondents/affected entities: Manufacturers of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels.

Respondent's obligation to respond: Mandatory per 40 CFR 79.

Estimated number of respondents: 2.

Frequency of response: On occasion.

Total estimated burden: 13,867 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $1.7 million per year, includes $0.6 million annualized capital or operation & maintenance costs.

Changes in the Estimates: There is a $2 million decrease in cost. This is due to an estimated decrease in the number of fuels and additives for which testing will be required.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2024–05931 Filed 3–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2023–0614; FRL–11723–02–OAR]

Technical Documentation for the Framework for Evaluating Damages and Impacts (FrEDI); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability and request for comments; extension of public comment period.

SUMMARY: On February 23, 2024, the Environmental Protection Agency (EPA) published a draft document titled, ''Technical Documentation for the Framework for Evaluating Damages and Impacts (FrEDI)'' (EPA 430–R–24–001). The EPA is extending the comment period.

DATES: The comment period for the document published on February 23, 2024, at 89 FR 13717, is extended. Comments must be received on or before April 24, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2023–0614, to the Federal Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. Do not submit electronically any information you consider to be Confidential

Business Information (CBI). EPA may publish any comment received to its public docket, submitted, or sent via email. For additional submission methods, the full EPA public comment policy, information about CBI, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Martinich, Environmental Protection Agency, Office of Air and Radiation, Office of Atmospheric Protection, Climate Change Division, (202) 343–9871, *cira@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 23, 2024, the Environmental Protection Agency (EPA) published a draft document titled, ''Technical Documentation for the Framework for Evaluating Damages and Impacts (FrEDI)'' (EPA 430–R–24–001). The public comment for this document was scheduled to end on March 25, 2024. The EPA is extending that deadline to April 24, 2024. This extension will provide the general public additional time for comment.

Dated: March 14, 2024.

Sharyn Lie,

Director, Climate Change Division.

[FR Doc. 2024–05828 Filed 3–19–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–11824–01–ORD]

Executive Committee Under the Board of Scientific Counselors (BOSC)—April 2024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a virtual meeting of the Board of Scientific Counselors (BOSC) Executive Committee (EC) to review and finalize the report from the Climate Change (CC) and the Social and Community Science (SCS) Subcommittees. The report responds to three charge questions posed to the Subcommittees at the BOSC informational meetings held in June 2023, which pertain to ORD's progress in the areas of social science research, climate science, and interdisciplinary place-based, community-engaged research.

DATES: The meeting will be held on Wednesday, April 24, 2024, from 11 a.m. to 2 p.m. All times noted are Eastern Time and approximate. The meeting may adjourn early if all business is finished. Attendees should register by Monday, April 22, 2024, at *https://us-epa-bosc-executive-committee-meeting.eventbrite.com.* Requests for making oral presentations at the meeting will be accepted through April 22, 2024. Comments may be submitted through April 22, 2024.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at: *https://us-epa-bosc-executive-committee-meeting.eventbrite.com.* Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Fax:* Fax comments to: (202) 566–0224, Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Mail:* Send comments by mail to: Board of Scientific Counselors (BOSC) Executive Committee Docket, Mail Code: 2822T, 1301 Constitution Ave. NW, Washington, DC 20004, Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Hand Delivery or Courier:* Deliver comments to: EPA Docket Center (EPA/DC), Room 3334, William Jefferson Clinton West Building, 1301 Constitution Ave. NW, Washington, DC, Attention Docket ID No. EPA–HQ–ORD–2015–0765. *Note:* This is not a mailing address. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov* including any personal information provided unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voicemail at: 919–541–4334; or via email at: *tracy.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information: The meeting is open to the public. Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting may contact Tom Tracy, the Designated Federal Officer (DFO), via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. Individuals making an oral presentation will be limited to a total of three minutes. Proposed agenda items for the meeting include but are not limited to the following: Review of charge questions about the progress ORD has made in three areas: (A) social science research and social scientists; (B) climate science in ORD with a focus on the new Integrated Climate Science Division (ICSD); and (C) the development of interdisciplinary place-based, community-engaged research to address pressing issues (such as climate change, environmental justice, and cumulative impacts).

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Tom Tracy (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2024–05840 Filed 3–19–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 20803]

Consumer Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces and provides an agenda for the first meeting of the twelfth term of its Consumer Advisory Committee (CAC or Committee).

DATES: Thursday, April 4, 2024, from 10 a.m. to 3:30 p.m. EDT.

ADDRESSES: The CAC meeting will be held in person. The public may attend at FCC Headquarters, Commission Meeting Room, 45 L Street NE, Washington, DC 20554. The meeting will also be available to the public for viewing via the internet at *www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Cara Grayer, Designated Federal Officer, Federal Communications Commission, Consumer and Governmental Affairs Bureau, (202) 418–2960, or email: *Cara.Grayer@fcc.gov,* or Diana Coho, Deputy Designated Federal Officer, (717) 338–2848, or email: *Diana.Coho@fcc.gov.* More information about the CAC is available at *https://www.fcc.gov/consumer-advisory-committee.*

SUPPLEMENTARY INFORMATION: This meeting is open to members of the general public. The meeting will be webcast with sign language interpreters and open captioning at: *www.fcc.gov/live.* In addition, a reserved amount of time will be available on the agenda for comments and inquiries from the public. Members of the public may comment or ask questions of presenters via *livequestions@fcc.gov.*

Requests for other reasonable accommodations or for materials in accessible formats for people with disabilities should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530. Such requests should include a detailed description of the accommodation needed and a way for the FCC to contact the requester if more information is needed to fill the request. Requests should be made as early as possible; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: At this meeting, the CAC is expected to receive briefings from Commission staff on issues of interest to the Committee and may discuss its proposed topic of interest to the Committee.

Federal Communications Commission.

Robert A. Garza,

Legal Advisor, Consumer and Government Affairs Bureau.

[FR Doc. 2024–05916 Filed 3–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1272; FR ID 209315]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 19, 2024.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1272.

Title: 3.7 GHz Band Space Station Operator Accelerated Relocation Elections and Transition Plans; 3.7 GHz Band Earth Station Lump Sum Payment Elections.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Estimated Number of Respondents and Responses: 3,010 respondents and 3,010 responses.

Estimated Time per Response: 16 hours per response for accelerated relocation elections, 2,720 hours per response for transition plans, and 32 hours per response for lump sum payment elections.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Total Annual Burden: 109,680 hours.

Total Annual Cost: $900,000.

Needs and Uses: Under this information collection, the Commission will collect information that will be used to determine when, how, and at what cost existing operations in the lower portion of the 3.7–4.2 GHz band will be relocated to the upper portion of the band. This collection will serve as the starting point for planning and managing the process of efficiently and expeditiously clearing of the lower portion of the band, so that this spectrum can be auctioned for flexible-use service licenses.

The transition relocation process began in 2020. Initial Transition Plans were filed on June 19, 2020 with final Transition Plans due August 14, 2020. Throughout the relocation process, the Wireless Telecommunications Bureau (Bureau) opened limited windows to amend their Transition Plans on several occasions. In addition to submitting and modifying Transition Plans during these periods, eligible space station operators were required to file quarterly status reports with the Commission beginning on December 31, 2020 to demonstrate their efforts to ensure a timely transition.

The 3.7 GHz band auction, Auction 107, took place from December 8, 2020 to February 17, 2021, and, on February 24, 2021, the Commission announced the winning bidders of the C-band auction for all 5,684 licenses. In the same year, the Bureau directed eligible space station operators to submit updates for their final Transition Plans during limited windows opened for operators to provide these updates.

Later that year, on August 4, 2021, the Bureau issued a Public Notice implementing filing procedures for Phase I Certifications. Originally, Phase I's deadline was set for December 5, 2021, but the deadline was met eleven days earlier than anticipated. On November 24, 2021, the Commission validated the certification of Phase I.

The C-band transition continued into 2023. On May 15, 2023, the Bureau announced procedures for filing C-band Phase II Certifications of Accelerated Relocation and implementation of the Commission's incremental reduction plan for Phase II Accelerated Relocation Payments as part of the ongoing transition. The C-Band Relocation Payment Clearinghouse (RPC) is responsible for disbursing the Accelerated Relocation Payments within a certain time period.

On June 1, 2023, all eligible space station operators were permitted to submit their Phase II certifications. Also on June 1, 2023, the Bureau opened a limited, final window for eligible space station operators to file modified Transition Plans to accurately account for any updates since September 30, 2021.

Phase II's deadline to complete the transition of space station operations to the upper 200 megahertz of the band was originally set for December 5, 2023. Instead, on August 10, 2023, the last of the Phase II Certifications was deemed granted. Even though Phases I and II of the satellite transition are complete, the Commission continues to work through the C-band relocation process. On October 13, 2023, the Bureau released a Public Notice seeking comment on proposed deadlines for claimants to submit reimbursement claims. The Public Notice stated that the RPC's operations are currently scheduled to conclude on June 30, 2025, which is still more than a year and a half away. The relocation of the fixed service licensees is also ongoing.

On December 5, 2023, the Commission issued a Public Notice adopting two final reimbursement claims submission deadlines for eligible incumbents and other eligible stakeholders to submit any outstanding transition-related claims to the RPC for processing as part of this ongoing transition. The two deadlines are: (1) February 5, 2024 as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants as of December 31, 2023, and (2) July 1, 2024 as the submission deadline to the RPC for all reimbursement claims for costs incurred and paid by claimants after December 31, 2023. In the Public Notice, the Commission stated that these adopted dates are important because they will aid in facilitating a timely conclusion of the C-band reimbursement program. Furthermore, the Commission highlighted the fact that all lump sum electees and many other eligible claimants and eligible stakeholders have had ample time within which to submit their claims to the RPC.

It is important to continue to collect information because it is crucial to ensure that managing this process is efficiently and quickly done, and that transition is still underway. Because this process remains ongoing, this information collection should be renewed to ensure that a complete set of information is maintained. If this collection were to expire now, stakeholders would be missing ongoing information about the transition process. Renewing this collection will provide stakeholders with complete information instead of an information collection that ends before the entire transition process is officially accomplished in 2025.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–05846 Filed 3–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 209487]

Information Collections Being Reviewed by the Federal Communications Commission

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 20, 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–XXXX.

Title: Part 25 Rules Addressing the Mitigation of Orbital Debris.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions.

Number of Respondents and Responses: 28 respondents and 28 responses.

Estimated Time per Response: 4–15 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under 47 U.S.C. 151, 154(i), 301, 303, 307, 308, 309, and 310.

Total Annual Burden: 341 hours.

Annual Cost Burden: $53,900.

Needs and Uses: The Federal Communications Commission requests that the Office of Management and Budget (OMB) approve a new information collection titled ''Part 25 Rules Addressing the Mitigation of Orbital Debris'' under OMB Control No. 3060–XXXX, as a result of three Commission rulemaking decisions, as discussed below.

On April 24, 2020, the Commission released a Report and Order, FCC 20–54, IB Docket No. 18–313, titled ''Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Report and Order*).[1] In *Orbital Debris Report and Order,* the Commission updated its rules related to orbital debris mitigation, including application requirements. The new rules are designed to ensure that the Commission's actions concerning radio communications, including licensing U.S. spacecraft and granting access to the U.S. market for non-U.S. spacecraft, mitigate the growth of orbital debris, while at the same time not creating undue regulatory obstacles to new satellite ventures. The action will help to ensure that Commission decisions are consistent with the public interest in space remaining viable for future satellites and systems and the many services that those systems provide to the public. The rule revisions also provide additional detail to applicants on what information is expected under the Commission's rules, which can help to increase certainty in the application filing process. While this information collection represents an overall increase in the burden hours, the information collection serves the public interest by ensuring that the Commission and public have necessary information about satellite applicants' plans for mitigation of orbital debris. Specifically *Orbital Debris Report and Order* contains the new or modified information collection requirements listed below.

(A) Non-streamlined space station applicants. The following are new or modified information collection requirements contained in *Orbital Debris Report and Order* and applicable to non-streamlined space station applicants submitting orbital debris mitigation plans under part 25 of the Commission's rules:

(1) Existing application disclosure requirements have been revised to include specific metrics in several areas, including: probability that the space stations will become a source of debris by collision with small debris and meteoroids that would cause loss of control and prevent disposal; probability of collision between any non-geostationary orbit (NGSO) space station and other large objects; and casualty risk associated with any individual spacecraft that will be disposed by atmospheric re-entry.

(2) Where relevant, applicants must disclose the following: use of separate deployment devices, distinct from the space station launch vehicle, that may become a source of orbital debris; potential release of liquids that will persist in droplet form; and any planned proximity operations and debris generation that will or may result from the proposed operations, including any planned release of debris, the risk of accidental explosions, the risk of accidental collision, and measures taken to mitigate those risks.

(3) The existing application disclosure requirement to analyze potential collision risk associated with space station(s) orbits has been modified to specify that the disclosure identify characteristics of the space station(s)' orbits that may present a collision risk, including any planned and/or operational space stations in those orbits, and indicate what steps, if any, have been taken to coordinate with the other spacecraft or system, or what other measures the operator plans to use to avoid collision.

(4) Applicants for NGSO space stations that will transit through the orbits used by any inhabitable spacecraft, including the International Space Station, must disclose as part of the application the design and operational strategies, if any, that will be used to minimize the risk of collision and avoid posing any operational constraints to the inhabitable spacecraft.

(5) The application disclosure must include a certification that upon receipt of a space situational awareness conjunction warning, the operator will review and take all possible steps to assess the collision risk, and will mitigate the collision risk if necessary. As appropriate, steps to assess and mitigate the collision risk should include, but are not limited to: contacting the operator of any active spacecraft involved in such a warning; sharing ephemeris data and other appropriate operational information with any such operator; and modifying space station attitude and/or operations.

(6) Applicants for NGSO space stations must describe the extent of satellite maneuverability.

(7) Applicants must address trackability of the space station(s). NGSO space station applicants must also disclose: (a) how the operator plans to identify the space station(s) following deployment and whether the space station tracking will be active or passive; (b) whether, prior to deployment the space station(s) will be registered with the 18th Space Control

[1] The Commission previously published a notice in the **Federal Register** seeking comments from the public on the Part 25 information collection requirements contained in the *Orbital Debris Report and Order* on July 13, 2020 (see 85 FR 41980) (*July 2020 Notice*). On September 11, 2020, five parties jointly submitted comments in response to the *July 2020 Notice. See* Paperwork Reduction Act Comments of The Boeing Company, Echostar Satellite Services, LLC, Hughes Network Services, LLC, Planet Labs Inc. and Spire Global, Inc. filed on September 11, 2020 in IB Docket No. 18–313. The five parties, together with Telesat Canada, also filed a petition for reconsideration of the *Orbital Debris Report and Order.* As discussed below, the Commission denied that petition for reconsideration on January 26, 2024. *See* Order on Reconsideration, FCC 24–6, IB Docket No. 18–313, titled ''Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Reconsideration Order*).

Squadron or successor entity; and (c) the extent to which the space station operator plans to share information regarding initial deployment, ephemeris, and/or planned maneuvers with the 18th Space Control Squadron or successor entity, other entities that engage in space situational awareness or space traffic management functions, and/or other operators.

(8) NGSO space station applicants must provide additional disclosures regarding spacecraft disposal, including, for some applicants, a demonstration that the probability of success of the chosen disposal method is 0.9 or greater for any individual space station, and for multi-satellite systems, a demonstration including additional information regarding efforts to achieve a higher probability of success.

(B) Space station applicants qualifying for small satellite streamlined processing. The following are new or modified information collection requirements contained in *Orbital Debris Report and Order* and applicable to those space station applicants qualifying for small satellite streamlined processing under part 25 of the Commission's rules:

(1) Applicants must certify that the probability that any individual space station will become a source of debris by collision with small debris or meteoroids that would cause loss of control and prevent disposal is 0.01 (1 in 100) or less.

(2) Applicants must certify that upon receipt of a space situational awareness conjunction warning, the licensee or operator will review and take all possible steps to assess the collision risk, and will mitigate the collision risk if necessary. As appropriate, steps to assess and mitigate the collision risk should include, but are not limited to: contacting the operator of any active spacecraft involved in such a warning; sharing ephemeris data and other appropriate operational information with any such operator; and modifying space station attitude and/or operations.

(3) If at any time during the space station(s)' mission or de-orbit phase the space station(s) will transit through the orbits used by any inhabitable spacecraft, including the International Space Station, applicants must provide a description of the design and operational strategies, if any, that will be used to minimize the risk of collision and avoid posing any operational constraints to the inhabitable spacecraft shall be furnished at the time of application.

(4) Applicants must provide a statement identifying characteristics of the space station(s)' orbits that may present a collision risk, including any planned and/or operational space stations in those orbits, and indicating what steps, if any, have been taken to coordinate with the other spacecraft or system, or what other measures the licensee plans to use to avoid collision. This requirement also applies to applicants for streamlined small spacecraft authorizations.

(5) Applicants must provide a statement disclosing how the licensee or operator plans to identify the space station(s) following deployment and whether space station tracking will be active or passive; whether the space station(s) will be registered with the 18th Space Control Squadron or successor entity prior to deployment; and the extent to which the space station licensee or operator plans to share information regarding initial deployment, ephemeris, and/or planned maneuvers with the 18th Space Control Squadron or successor entity, other entities that engage in space situational awareness or space traffic management functions, and/or other operators.

(6) If the applicant's space station(s) will undertake any planned proximity operations, the applicant must provide a statement disclosing those planned operations, and addressing debris generation that will or may result from the proposed operations, including any planned release of debris, the risk of accidental explosions, the risk of accidental collision, and measures taken to mitigate those risks.

(7) Applicants must provide a demonstration that the probability of success of disposal is 0.9 or greater for any individual space station. Space stations deployed to orbits in which atmospheric drag will, in the event of a space station failure, limit the lifetime of the space station to less than 25 years do not need to provide this additional demonstration.

(C) Geostationary orbit (GSO) space station applicants. The following new or modified information collection requirements contained in *Orbital Debris Report and Order* are applicable to applicants requesting a modification of an existing licensee for a GSO space station to extend the space station license term under part 25 of the Commission's rules: GSO space station licensees seeking a license term extension through a license modification application must provide a statement that includes the requested duration of the license extension; the estimated total remaining space station lifetime; a description of any single points of failure or other malfunctions, defects, or anomalies during the space station operation that could affect its ability to conduct end-of-life procedures as planned, and an assessment of the associated risk; a certification that remaining fuel reserves are adequate to complete de-orbit as planned; and a certification that telemetry, tracking, and command links are fully functional.

On September 30, 2022, the Commission released a Second Report and Order, FCC 22–74, IB Docket No. 18–313, titled ''Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Second Report and Order*). In *Orbital Debris Second Report and Order,* the Commission required all space stations ending their mission in, or passing through, the low earth orbit (LEO) region, and planning disposal though uncontrolled atmospheric re-entry following the completion of the mission, to complete disposal as soon as practicable, and no later than five years after the end of the mission.

On January 26, 2024, the Commission released an Order on Reconsideration, FCC 24–6, IB Docket No. 18–313, titled ''Mitigation of Orbital Debris in the New Space Age'' (*Orbital Debris Reconsideration Order*). In *Orbital Debris Reconsideration Order,* the Commission dismissed three petitions for reconsideration, including a petition for reconsideration filed by The Boeing Company, Echostar Satellite Services, LLC, Hughes Network Services, LLC, Planet Labs Inc., Spire Global and Telesat Canada. The *Orbital Debris Reconsideration Order* upheld the current regulatory environment for orbital debris mitigation, and provided additional clarity and guidance for satellite operators while reinforcing the Commission's commitment to space safety.

These collections are used by the Commission's staff in carrying out its statutory duties to regulate satellite communications in the public interest, as generally provided under 47 U.S.C. 151, 154(i), 301, 303, 307, 308, 309, and 310. This collection is also used by staff in carrying out United States treaty obligations under the World Trade Organization (WTO) Basic Telecom Agreement. The information collected is used for the practical and necessary purposes of assessing the legal, technical, and other qualifications of applicants; determining compliance by applicants, licensees, and other grantees with Commission rules and the terms and conditions of their grants; and concluding whether, and under what conditions, grant of an authorization will serve the public interest, convenience, and necessity.

As technology advances and new spectrum is allocated for satellite use, applicants for satellite service will

continue to submit the information required in 47 CFR part 25. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

Federal Communications Commission.

Marlene Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2024–05847 Filed 3–19–24; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0103]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0103).

DATES: Comments must be submitted on or before May 20, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. *Title:* Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations.

OMB Number: 3064–0103.

Forms: None.

Affected Public: Insured State Nonmember Banks and State Savings Associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDENS

[OMB No. 3064–0103]

IC description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Time per response (hours)	Annual burden (hours)
Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations (12 CFR 323).	Recordkeeping (Mandatory)	On occasion ...	3,038	250	0.083	63,039
Total Annual Burden Hours	.....	.....	.....	.....	.....	63,039

Source: FDIC.

General Description of Collection: FIRREA directs the FDIC to prescribe appropriate performance standards for real estate appraisals connected with federally related transactions under its jurisdiction. This information collection is a direct consequence of the statutory requirement. It is designed to provide protection for federal financial and public policy interests by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by an appraiser whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. There is no change in the methodology or substance of this information collection. The increase in estimated annual burden (from 227 hours in 2021 to 250 hours currently) is due to the increase in the estimated number of responses.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions 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 collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, March 15, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–05900 Filed 3–19–24; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0099]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the

general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collection described below (OMB Control No. 3064–0099). A notice of the proposed renewal for this information collection was published in the **Federal Register** allowing for a 60-day comment period.

DATES: Comments must be submitted on or before April 19, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. *Title:* Application for Waiver of Prohibition on Acceptance of Brokered Deposits.

OMB Number: 3064–0099.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0099]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Application for Waiver of Prohibition on Acceptance of Brokered Deposits, 12 CFR 337.6(c) (Required to Obtain or Retain a Benefit).	Reporting (On Occasion) ...	3	2	06:00	36
2. Notice Submission for Primary Purpose Exception Based on Placement of Less Than 25 Percent of Customer Assets Under Administration—Initial submission, 12 CFR 303.243(b)(3)(i)(A) (Required to Obtain or Retain a Benefit).	Reporting (On Occasion) ...	23	1	03:00	69
3. Notice Submission for Primary Purpose Exception Based on Enabling Transactions—Initial submission, 12 CFR 303.243(b)(3)(i)(B) (Required to Obtain or Retain a Benefit).	Reporting (On Occasion) ...	30	1	05:00	150
4. Application for Primary Purpose Exception Not Based on Business Arrangements that Meets a Designated Exception, 12 CFR 303.243(b)(4) (Required to Obtain or Retain a Benefit).	Reporting (On Occasion) ...	5	1	10:00	50
5. Notice Submission for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Administration—Ongoing, 12 CFR 303.243(b)(3)(v) (Required to Obtain or Retain a Benefit).	Reporting (Quarterly)	23	4	00:30	46
6. Notice Submission for Primary Purpose Exception Based on Enabling Transactions—Ongoing, 12 CFR 303.243(b)(3)(v) (Required to Obtain or Retain a Benefit).	Reporting (Annual)	23	1	00:30	12
7. Reporting for Primary Purpose Exception Not Based on the Business Arrangements that meets a Designated Exception—Ongoing, 12 CFR 303.243(b)(4)(vi) (Required to Obtain or Retain a Benefit).	Reporting (Quarterly)	2	4	00:15	2
Total Annual Burden (Hours)	.....	.....	.....	.....	365

Source: FDIC.

General Description of Collection: Section 29 of the Federal Deposit Insurance Act prohibits undercapitalized insured depository institutions from accepting, renewing, or rolling over any brokered deposits. Adequately capitalized institutions may do so with a waiver from the FDIC, while well-capitalized institutions may accept, renew, or roll over brokered deposits without restriction. This information collection captures the burden associated with preparing and filing an application for a waiver of the prohibition on the acceptance of brokered deposits. There is no change in the methodology or substance of this information collection. The reduction in burden is primarily due to the fact that virtually all FDIC-supervised institutions have gone through the

implementation burden and face primarily burden related to their ongoing operations.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates 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; 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 15, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–05898 Filed 3–19–24; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201407–002.

Agreement Name: HMM Yang Ming PSX Space Charter Agreement.

Parties: HYUNDAI MERCHANT MARINE CO., LTD.; Yang Ming (Singapore) Pte. Ltd; YANG MING MARINE TRANSPORT CORPORATION; YANGMING (UK) LTD.

Filing Party: Joshua Stein; Cozen O'Connor.

Synopsis: The amendment extends the effectiveness of the Agreement through March 31, 2025.

Proposed Effective Date: 03/12/2024.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/84503.

Dated: March 15, 2024.

Carl Savoy,

Federal Register Alternate Liaison Officer.

[FR Doc. 2024–05903 Filed 3–19–24; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

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 April 19, 2024.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309; Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Fifth District Bancorp, Inc., New Orleans, Lousisiana;* to become a savings and loan holding company by acquiring Fifth District Savings Bank, New Orleans, Louisiana, in connection with the mutual-to-stock conversion of Fifth District Savings Bank.

Board of Governors of the Federal Reserve System.

Yao Chin-Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–05928 Filed 3–19–24; 8:45 am]

BILLING CODE 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 April 4, 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. *Dana Hodgson, Beaver Island, Michigan, and Lucas Michna, Ann Arbor, Michigan;* to join the Hodgson Family Control Group, a group acting in concert, to retain voting shares of Charlevoix First Corporation and thereby indirectly retain voting shares of Charlevoix State Bank, both of Charlevoix, Michigan.

B. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Minor Child A and Minor Child B, Carla Campbell Coffey as custodian, all of Troy, Tennessee;* to join the Coffey family control group, a group acting in concert, to retain voting shares of Citizens Bancorp of Hickman, Inc., and thereby indirectly retain voting shares of The Citizens Bank, both of Hickman, Kentucky.

Board of Governors of the Federal Reserve System.

Yao Chin-Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–05924 Filed 3–19–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

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 the BHC Act (12 U.S.C. 1842(c)).

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 April 19, 2024.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 North Pearl Street, Dallas, Texas 75201–2272. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Safehands Capital Holdings, Inc., Southlake, Texas;* to become a bank holding company by acquiring Quanah Financial Corporation and thereby indirectly acquiring First Capital Bank, both of Quanah, Texas.

Board of Governors of the Federal Reserve System.

Yao Chin-Chao,

Deputy Associate Secretary of the Board.

[FR Doc. 2024–05925 Filed 3–19–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Reorganization of the Office of Safety, Security and Asset Management

AGENCY: Centers for Disease Control and Prevention (CDC), the Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: CDC has modified its structure. This notice announces the reorganization of the Office of Safety, Security and Asset Management (OSSAM). OSSAM retitled a component.

DATES: This reorganization of OSSAM was approved by the Director of CDC on March 12, 2024 and became effective.

FOR FURTHER INFORMATION CONTACT: Geoff Crider, Office of Safety, Security, and Asset Management, Office of the Chief Operating Officer, Office of the Director, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H20–2, Atlanta, GA 30329. Telephone 404–718–5367; Email: *ossam@cdc.gov.*

SUPPLEMENTARY INFORMATION: Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 89 FR 16579–16580, dated March 7, 2024) is amended to reflect the reorganization of Office of Safety, Security and Asset Management within the Office of the Chief Operating Officer, Centers for Disease Control and Prevention. Specifically, the changes are as follows:

I. Under Part C, Section C–B, Organization and Functions, retitle the following organizational units:

- Quality and Compliance Branch to the Global Safety and Performance Branch (CAJSCB)

Delegations of Authority

All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

(Authority: 44 U.S.C. 3101)

Dia Taylor,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–05866 Filed 3–19–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (HHS), Health Resources and Services Administration (HRSA) (60 FR 56605, as amended November 6, 1995; as last amended at 88 FR 44809 dated July 13, 2023) is amended to reorganize sections of the Office of Special Health Initiatives, Office of Operations, Office of Intergovernmental and External Affairs, and Office of Federal Assistance Management.

This reorganization updates and/or realigns functions, including delegations of authority for the: (1) Office of Special Health Initiatives (RA4), (2) Office of Operations (RB), (3) Office of Intergovernmental and External Affairs (RE), and (4) Office of Federal Assistance Management (RJ).

Chapter R—Health Resources and Services Administration

Section R.10 Organization

Under the Section R.10, retitle the Federal Assistance Management (RJ) to Federal Assistance and Acquisition Management (RJ).

Chapter RA4—Office of the Administrator, Office of Special Health Initiatives

Section RA4.20 Function

Add the following to Section RA4.20: (6) Provides agency-wide management and oversight of HRSA Public Health Service Commissioned Corps Affairs.

Chapter RB—Office of Operations

Section RB.10 Organization

Delete Section RB.10 in its entirety and replace with the following:

The Office of Operations (RB) is headed by the Chief Operating Officer, who reports directly to the Administrator, HRSA. The Office of Operations includes the following components:

- Executive Secretariat (RB0);
- Office of Budget and Finance (RB1);
- Office of Administrative Management (RB4);
- Office of Information Technology (RB5); and
- Office of Human Resources (RB6).

Section RB.20 Function

Delete the functional statement for the Office of Operations, Office of the Chief Operating Officer (RB) in its entirety and replace with the following:

(1) Provides leadership for operational activities, interaction, and execution of initiatives across HRSA; (2) plans, organizes and manages annual and multi-year budgets and resources and assures that the conduct of administrative and financial management activities effectively support program operations; (3) provides an array of HRSA-wide services including Executive Secretariat, information technology, facilities, human resources, workforce management, and budget execution and formulation; (4) maintains overall responsibility for policies, procedures, and monitoring of internal controls and systems related to payment and disbursement activities; (5) provides management expertise, staff advice, and support to the Administrator in program and policy formulation and execution; (6) provides leadership in the development, review and implementation of policies and procedures to promote improved information technology management capabilities and best practices; (7) coordinates workforce issues and works closely with the Department on recruitment and training activities; and (8) administers functions of the Chief Financial Officer.

Chapter RB5—Office of Operations, Office of Information Technology

Section RB5.10 Organization

Delete Section RB5.10 in its entirety and replace with the following:

The Office of Information Technology (RB5) is headed by the Chief Information Officer, who reports directly to the Chief Operating Officer, HRSA. The Office of Information Technology includes the following components:

- Office of Information Technology (RB5);
- Division of IT Governance (RB5A);
- Division of Data and Analytics Services (RB5B);
- Division of Grants Performance Systems (RB5C);
- Division of Infrastructure Services (RB5D);
- Division of End User Services (RB5E);
- Division of Cyber Security and Privacy (RB5F); and
- Division of Applications and Platform Services (RB5G).

Section RB5.20 Function

Delete the functional statement for the Office of Information Technology (RB5) within the Office of Operations in its entirety and replace with the following:

Office of Information Technology (RB5)

The Office of Information Technology is responsible for the organization, management, and administrative functions necessary to carry out the following responsibilities: (1) architects, secures, deploys, and maintains HRSA's network, cloud, and data center infrastructure; (2) oversees HRSA's security operations and risk management program; (3) provides information technology (IT) Helpdesk, desktop, telecommunications, and virtual meeting support; (4) engineers, develops, deploys, and supports enterprise and custom applications, data analytics platforms, and enterprise tools; (5) provides Capital Planning and Investment Control, IT governance, and budget formulation and execution; (6) performs strategic and tactical planning; (7) provides leadership in the development, review, and implementation of IT policies and procedures to promote improved IT management capabilities and best practices throughout HRSA; and (8) performs IT budget formulation and execution and contract management.

Chief Technology Officer

The Chief Technology Officer advises the Chief Information Officer on new technologies that align with HRSA's modernization and transformation strategic objectives. The Chief Technology Officer develops HRSA's Enterprise Architecture, business cases and performs proof of concepts to determine if new technologies will meet HRSA's business needs.

Division of IT Governance (RB5A)

The Division of IT Governance coordinates HRSA's IT compliance functions including: (1) provides direct planning development and support to assure that IT activities achieve agency business planning and mission objectives; (2) coordinates control and evaluation of ongoing IT projects and investments, including providing support for HRSA's Enterprise Governance Board; and (3) administers HRSA's records management program.

Division of Data and Analytics Services (RB5B)

The Division of Data and Analytics Services is responsible for the following functions: (1) collaborates with HRSA programs staff about data and information needs and develops approaches for meeting those requirements using appropriate modern technologies; (2) transforms vast amounts of structured and unstructured data into insights, predictive analytics and machine learning models for decision automation; (3) utilizes methods from quantitative disciplines (statistics, machine learning, and operations research) to extract knowledge from data; and (4) enhances and expands the use and utility of HRSA's data by providing technical assistance.

Division of Grants Performance Systems (RB5C)

The Division of Grants Performance Systems develops and maintains modern applications that support HRSA's grants performance reporting capabilities. This includes: (1) evaluates processes based on business requirements and develop and integrates automated systems; (2) manages grants performance reporting systems software development lifecycle; and (3) provides user training and customer support for grants performance systems.

Division of Infrastructure Services (RB5D)

The Division of Infrastructure Services provides leadership and consultation including the following functions: (1) architects, deploys, and supports modern cloud infrastructure services; (2) engineers secure network and data center infrastructure services

for high availability; and (3) provides Identity and Access Management Services.

Division of End User Services (RB5E)

The Division of End User Services provides leadership, consultation, training, and management services for HRSA's end user computing environment. Specifically, the Division of End User Services: (1) directs and manages the support and acquisition of HRSA's desktop hardware, mobile devices, telecommunication, and cabling; (2) maintains and secures workstation hardware and software configuration management controls; (3) accounts for property life cycle management, and tracks HRSA-wide IT capital equipment; (4) oversees the delivery of desktop services to staff in HRSA's Regional Offices; and (5) provides telecommunications, video, and web conferencing support.

Division of Cyber Security and Privacy (RB5F)

HRSA's Chief Information Security Officer leads the Division of Cyber Security and Privacy. The Division of Cyber Security and Privacy is responsible for the following functions: (1) implements, coordinates, and administers cyber security and privacy programs to protect HRSA's data and information resources; (2) executes HRSA's Risk Management Program and evaluates and assists with the implementation of safeguards to protect information systems and IT infrastructure; and (3) operates HRSA's Security Operations Center.

Division of Applications and Platform Services (RB5G)

The Division of Applications and Platform Services is responsible for the following: (1) develops, implements, and maintains enterprise custom applications; (2) deploys and supports enterprise platforms; and (3) installs and maintains enterprise platform solutions.

Chapter RB6—Office of Operations, Office of Human Resources

Section RB6.20 Function

Delete the functional statement for the Office of Human Resources (RB6) and Division of Workforce Relations (RB62) in its entirety and replace with the following:

Office of Human Resources (RB6)

(1) Provides advice and guidance on all aspects of the HRSA human resources (HR) management program; (2) provides the full range of HR operations including employment, staffing and recruitment, compensation, classification, executive resources, labor and employee relations, employee benefits, and retirement; (3) develops and coordinates the implementation of HR policies and procedures for HRSA's human resources activities; (4) monitors, evaluates, and reports on the effectiveness, efficiency, and compliance with HR laws, rules, and regulations; (5) provides advice and guidance for the establishment or modification of organization structures; (6) manages the HRSA's Ethics Program; (7) administers HRSA's performance management programs; (8) manages the incentive and honor awards programs; (9) represents HRSA in HR matters both within and outside of the Department; (10) monitors HR accountability; (11) manages HR information technology; (12) directs, coordinates, and conducts workforce development activities for HRSA; and (13) conducts HRSA-wide workforce analysis studies and surveys.

Division of Workforce Relations (RB62)

The Division of Workforce Relations is responsible for providing advice, guidance, and counsel to agency employees and managers. Specifically, the Division of Workforce Relations: (1) represents HRSA on HR matters before the Department, the Office of the General Counsel, the Office of Government Ethics, the Office of Personnel Management, the unions, and the Federal Labor Relations Authority; (2) provides resources to managers and employees, such as labor relations, employee relations, performance management, employee benefits, and retirement; (3) manages the unemployment and voluntary leave transfer programs; (4) manages the HRSA-wide ethics program; (5) administers the performance management programs; (6) manages HRSA's Telework Program; (7) ensures program integrity and accountability, including conducting program audits, reviews and/or self-assessments; and (8) provides advice, guidance, and counsel to HRSA employees and managers for assigned programs.

Chapter RE—Office of Intergovernmental and External Affairs (RE)

Section RE.10 Organization

Delete Section RE.10 in its entirety and replace with the following:

The Office of Intergovernmental and External Affairs (RE) is headed by the Associate Administrator, who reports directly to the Administrator, HRSA. The Office of Intergovernmental and External Affairs (RE) includes the following components:

- Office of the Associate Administrator (RE);
- Division of Strategic External Engagement (REZ);
- Division of Administrative Operations (REY);
- Boston Regional Office (RE1);
- New York Regional Office (RE2);
- Philadelphia Regional Office (RE3);
- Atlanta Regional Office (RE4);
- Chicago Regional Office (RE5);
- Dallas Regional Office (RE6);
- Kansas City Regional Office (RE7);
- Denver Regional Office (RE8);
- San Francisco Regional Office (RE9); and
- Seattle Regional Office (REX).

Section RE.20 Function

Delete the functional statement for the Office of Intergovernmental and External Affairs (RE) in its entirety and replace with the following:

Office of Intergovernmental and External Affairs (RE)

The Office of Intergovernmental and External Affairs serves as the principal agency lead on intergovernmental and external affairs, regional operations, and tribal partnerships. The Office serves as the agency liaison to the HHS Office of Intergovernmental and External Affairs and other external key stakeholders to advance HRSA's priorities. The office provides the HRSA Administrator and agency leadership with a single point of contact on intergovernmental, external events, stakeholder associations, and interest groups activities, and serves as the primary liaison to Department and other federal intergovernmental staff. The office provides leadership and management to HRSA's 10 regional offices that support engagement and promote HRSA's mission and priorities across regions, states, tribes, territories, and local communities.

Division of Strategic External Engagement (REZ)

The Division of Strategic External Engagement leads the coordination of external events for HRSA and manages and coordinates cross-HRSA roll-out external engagement across regional offices. The Division guides and directs outreach and engagement activities and communications strategies. Specifically, the Division of Strategic External Engagement: (1) leads and coordinates HRSA external events and the amplification of cross-HRSA efforts through regional offices (2) plans and directs an annual external affairs strategy for the agency; (3) leads the preparation and guidance for new stakeholder outreach and engagement initiatives for regional offices; (4)

develops technical assistance tools and strategies for communications and engagement strategies used by regional offices; (5) leads responses to data calls and inquiries; (6) manages agency cross-bureau cooperative agreements and activities with national organizations of state and local health leaders and elected officials; (7) coordinates tribal activities across the agency and strengthens HRSA's relationship with tribes on HRSA's programmatic and policy matters; and (8) manages HRSA's Tribal Advisory Council, participates in HHS tribal consultations and collaborates with Indian Health Services and other federal and community stakeholders to address tribal issues.

Division of Administrative Operations (REY)

The Division of Administrative Operations collaborates with the Office of Intergovernmental and External Affairs leadership to plan, coordinate, and direct office wide administrative management activities. The division carries out operations activities for Headquarters and 10 regional offices. Specifically, the Division of Administrative Operations: (1) executes the office's budget; (2) provides human resource services regarding all aspects of personnel management, workforce planning, and the allocation and utilization of personnel resources; (3) coordinates the business management functions for the office's grants programs; (4) plans, directs, and coordinates office-wide administrative management activities (*e.g.,* budget, personnel, procurements, delegations of authority); (5) coordinates and supports the office's quality and internal control efforts; and (6) provides additional support services including the acquisition, management, and maintenance of supplies, equipment, space, training, and travel.

Regional Offices

HRSA's Regional Offices develop and maintain relationships with state, territory, local, and tribal government leaders and creates new partnerships with key stakeholders to address HRSA's key priorities. Regional offices amplify HRSA-led external events focused by participating in various engagement activities, including representing HRSA at regional, state, territorial, tribal, or local meetings. Specifically, HRSA's Regional Offices: (1) responds to invitational speaking requests or technical assistance requests; (2) conducts outreach to expand knowledge of HRSA's programs to advance agency and Department priorities; (3) generates and sustains collaborative efforts with state and jurisdictional health care leaders to align HRSA and other resources; (4) presents regional surveillance and analysis of health care trends and makes recommendations to HRSA leadership, government officials, and stakeholders to improve policies and programs; and (5) exercises management authority for general administration of HRSA's regional offices.

The HRSA Regional Offices includes the following components:

- Boston Regional Office (RE1);
- New York Regional Office (RE2);
- Philadelphia Regional Office (RE3);
- Atlanta Regional Office (RE4);
- Chicago Regional Office (RE5);
- Dallas Regional Office (RE6);
- Kansas City Regional Office (RE7);
- Denver Regional Office (RE8);
- San Francisco Regional Office (RE9); and
- Seattle Regional Office (REX).

Chapter RJ—Office of Federal Assistance and Acquisition Management (RJ)

Rename the Office of Federal Assistance Management to the Office of Federal Assistance and Acquisition Management (RJ) and realign the Office of Acquisitions Management and Policy from the Office of Operations to the Office of Federal Assistance and Acquisition Management.

Section RJ.00 Mission

Through strategic direction and collaborative efforts, the Office of Federal Assistance and Acquisition Management provides leadership in the planning, awarding, oversight, and closeout of federal assistance, acquisition, and related activities that advance the HRSA mission.

Section RJ.10 Organization

Delete Section RJ.10 in its entirety and replace with the following:

The Office of Federal Assistance and Acquisition Management (RJ) is headed by the Associate Administrator, who reports directly to the Administrator, HRSA. The Office of Federal Assistance and Acquisition Management includes the following components:

- Office of the Associate Administrator (RJ);
- Office of Operations Management (RJA);
- Office of Systems and Data (RJB);
- Division of Financial Integrity (RJ1);
- Division of Grants Policy (RJ2);
- Division of Grants Management Operations (RJ3);
- Division of Independent Review (RJ4);
- Office of Acquisitions Management and Policy (RJC);
- Division of Enterprise Information Technology Services (RJC1);
- Division of Primary Care and Health Infrastructure Services (RJC2);
- Division of Population-Based and Enterprise Services (RJC3); and
- Division of Procurement Management (RJC4).

Section RJ.20 Function

Delete the functional statement for the Office of Federal Assistance Management (RJ) in its entirety and replace with the following which includes the functional statement for the Office of Acquisitions Management and Policy (RJC):

Office of Federal Assistance and Acquisition Management (RJ)

The Office of Federal Assistance and Acquisition Management provides national leadership in the administration and financial integrity of HRSA's federal assistance programs and acquisitions management. Provides leadership, direction, coordination to all phases of grants policy, administration, independent review of competitive grant applications, planning, development, and implementation of policies and procedures for agreements and acquisitions. Specifically, the Office of Federal Assistance and Acquisition Management: (1) serves as the Administrator's principal source for grants and acquisition policy for financial integrity of HRSA programs; (2) exercises oversight over the agency's business processes related to assistance programs; (3) exercises the responsibility within HRSA for the award and management of contracts; (4) plans, directs, and administers HRSA's Community Projects Funding/ Congressionally Directed Spending program; (5) directs and carries out the independent review of grant applications of HRSA's competitive programs; (6) provides advice and consultation on the interpretation and application of the Federal Acquisition Regulation and HHS policies and procedures which govern reimbursable agreements and contracts management; (7) coordinates HRSA positions and actions with respect to the audit of contracts; (8) functions as the focal point of all communications and negotiations with HRSA's business partners, and liaises directly with or through Bureaus/Offices with contractors, other organizations, and various components of the Department; (9) provides leadership, guidance, and advice on the promotion of the activities in HRSA relating to procurement and material management governed by the Small Business Act of 1958, Executive

Order 11625, other statutes, and national policy directives for augmenting the role of private industry and small and minority businesses as sources of supply to the government and government contractors; (10) plans, directs, and coordinates HRSA's category management program; (11) oversees the administration of the Federal Certification Program for HRSA's Contracting Officer's Representatives, contracting acquisition professionals, and Program and Project Managers; (12) oversees the administration and implementation of the HRSA Federal Purchase Card Program; (13) and exercises the responsibility within HRSA for grant and cooperative agreement receipt, award, and post-award processes;

Office of Operations Management (RJA)

The Office of Operations Management provides strategic organizational management and direction, and plans, directs, and coordinates business operations and administrative management activities for the Office of Federal Assistance and Acquisition Management. Specifically, the Office of Operations Management: (1) serves as the principal source for administrative operations advice and assistance; (2) provides guidance and coordinates personnel activities; (3) provides organization and management analysis, coordinating the allocation of personnel resources, developing policies and procedures for internal operations, interpreting and implementing management policies and procedures and systems; (4) develops and coordinates administrative delegations of authority activities; (5) leads, plans, and coordinates budgetary activities, such as contracts, procurements and inter-agency agreements, as well as, provides guidance and support to leadership in these areas; (6) provides support services, such as acquisition support, travel coordination, supply management, equipment utilization, printing, property management, space management, records management, and management reports; (7) coordinates administrative management activities with other components within HRSA and HHS, and with other federal agencies, as appropriate; and (8) provides overall support for continuity of operations and emergency support.

Office of Systems and Data (RJB)

The Office of Systems and Data provides strategic management and direction for the Office of Federal Assistance and Acquisition Management's efforts addressing data analysis, evaluation, and systems. Specifically, the Office of Systems and Data: (1) coordinates and analyzes the agency's need for federal assistance data for all programs; (2) collects federal assistance data to quantify and measure financial assistance data for evaluation at the national level; (3) provides coordination and strategic guidance for management of the Electronic Handbook, *Grants.gov*, and other information technology systems; (4) coordinates Electronic Handbook data requests, dashboards, and report development; (5) provides guidance on data management laws, regulations, governances and policy; (6) develops and manages performance measures; and (7) manages and maintains current data on all electronic sites.

Division of Financial Integrity (RJ1)

The Division of Financial Integrity: (1) coordinates agency-wide efforts addressing HHS's Program Integrity Initiative/Enterprise Risk Management; (2) serves as the agency's focal point for resolving audit findings on HRSA programs resulting from Single and Commercial Audits and special reviews, and related policy; (3) conducts financial and compliance reviews of recipient use of HRSA funds; (4) conducts the pre-award financial assessment of HRSA recipients; (5) conducts the pre-award and post-award review of grant applicant's and recipients financial soundness and management including accounting systems for managing federal grants; (6) conducts ad hoc studies and reviews related to the financial integrity of the HRSA business processes related to assistance programs; (7) serves as the agency's liaison with the Office of Inspector General for investigations and audits related to HRSA programs; (8) coordinates non-federal entities appeal actions for the Department on HRSA decisions related to HRSA programs; (9) coordinates the preparation of informational reports on high risk recipients; (10) conducts internal audits; and (11) coordinates with HRSA staff to provide fiduciary guidance to recipients for effective management of HRSA grant funds.

Division of Grants Policy (RJ2)

The Division of Grants Policy analyzes, develops, and implements HRSA's federal assistance award policy in compliance with statutes, regulations, government-wide administrative requirements, and departmental policy. The Division recommends internal procedures to ensure consistent and effective stewardship of taxpayer dollars.

Division of Grants Management Operations (RJ3)

The Division of Grants Management Operations exercises responsibility within HRSA for all business aspects of grant and cooperative agreement award and post-award processes, and participates in the planning, development, and implementation of policies and procedures for grants and other federal financial assistance mechanisms. Specifically, the Division of Grans Management Operations: (1) plans, directs, and carries out the grants officer functions for all of HRSA's grant programs as well as awarding official functions for various scholarship, loan, and loan repayment assistance programs; (2) participates in the planning, development, and implementation of policies and procedures for grants and cooperative agreements; (3) provides assistance and technical consultation to program offices and recipients in the application of laws, regulations, policies, and guidelines relative to the agency's grant and cooperative agreement programs; (4) develops standard operating procedures, methods, and materials for the administration of the agency's grants programs; (5) establishes standards and guides for grants management operations; (6) reviews recipient financial status reports and prepares reports and analyses on the recipient's use of funds; (7) provides technical assistance to applicants and recipients on financial and administrative aspects of grant projects; (8) provides data and analyses as necessary for budget planning, hearings, operational planning, and management decisions; (9) participates in the development of program guidance and instructions for grant competitions; (10) oversees contracts, such as in support of receipt of applications, and grant closeout operations; and (11) supports post-award monitoring and closeout by analyzing payment management system data and working with grants and program office staff.

Division of Independent Review (RJ4)

The Division of Independent Review is responsible for the management and oversight of HRSA's independent review of grant and cooperative agreement applications for funding. Specifically, the Division of Independent Review: (1) plans, directs, and carries out HRSA's independent review of applications for grants and cooperative agreement funding and assures that the process is fair, open, and competitive; (2) develops, implements, and maintains policies and

procedures necessary to carry out the agency's independent review/peer review processes; (3) provides technical assistance to independent reviewers ensuring that reviewers are aware of and comply with appropriate administrative policies and regulations; (4) provides technical advice and guidance to the agency regarding the independent review processes; (5) coordinates and assures the development of program policies and rules relating to HRSA's extramural grant activities; and (6) provides HRSA's Bureaus/Offices with the final disposition of all reviewed applications.

Office of Acquisitions Management and Policy (RJC)

The Office of Acquisitions Management and Policy: (1) provides leadership in the planning, development, and implementation of policies and procedures for contracts; (2) exercises the sole responsibility within HRSA for the award and management of contracts; (3) provides advice and consultation of interpretation and application of HHS policies and procedures governing contracts management; (4) coordinates HRSA positions and actions with respect to the audit of contracts; (5) maintains liaison directly with or through Bureaus/Offices with contractors, other organizations, and various components of the department; (6) provides leadership, guidance, and advice on the promotion of the activities in HRSA relating to procurement and material management governed by the Small Business Act of 1958, Executive Order 11625, other statutes, and national policy directives for augmenting the role of private industry and small and minority businesses as sources of supply to the government and government contractors; (7) plans, directs, and coordinates HRSA's strategic sourcing program; and (8) oversees the administration of the Federal Certification Program for HRSA's Contracting Officer's Representatives, contracting acquisition professionals, and Program and Project Managers.

Division of Enterprise Information Technology Services (RJC1)

The Division of Enterprise Information Technology Services: (l) provides comprehensive acquisition services including planning, soliciting, negotiating, awarding, and administering simplified and negotiated procurement actions tailored to the functions of its assigned Bureaus/Offices; (2) ensures compliance with federal laws and regulations, departmental and HRSA guidelines, policies and procedures; (3) provides professional, in-depth advice and consultation, customized to the Bureaus/Offices, regarding the appropriate contract vehicles and the various phases of the acquisition cycle; (4) conducts pre-award reviews of proposed contracts that exceed the requirements called for in the federal and departmental acquisition regulations in conjunction with the other contract services divisions; (5) plans and coordinates acquisition reviews of contracting activities within HRSA headquarters and the field components; and (6) responds to congressional inquiries and requests for acquisition information from other federal agencies and non-federal sources.

Division of Primary Care and Health Infrastructure Services (RJC2)

The Division of Primary Care and Health Infrastructure Services: (1) provides comprehensive acquisition services including planning, soliciting, negotiating, awarding, and administering simplified and negotiated procurement actions tailored to the functions of its assigned Bureaus/Offices; (2) ensures compliance with federal laws and regulations, departmental and HRSA guidelines, policies and procedures; (3) provides professional, in-depth advice and consultation, customized to the Bureaus/Offices, regarding the appropriate contract vehicles and the various phases of the acquisition cycle; (4) conducts pre-award reviews of proposed contracts that exceed the requirements called for in the federal and departmental acquisition regulations in conjunction with the other contract services divisions; (5) plans and coordinates acquisition reviews of contracting activities within HRSA headquarters and the field components; and (6) responds to congressional inquiries and requests for acquisition information from other federal agencies and non-federal sources.

Division of Population-Based and Enterprise Services (RJC3)

The Division of Population-Based and Enterprise Services: (1) provides comprehensive acquisition services including planning, soliciting, negotiating, awarding, and administering simplified and negotiated procurement actions tailored to the functions of its assigned Bureaus/Offices; (2) ensures compliance with federal laws and regulations, departmental and HRSA guidelines, policies and procedures; (3) provides professional, in-depth advice and consultation, customized to the Bureaus/Offices, regarding the appropriate contract vehicles and the various phases of the acquisition cycle; (4) conducts pre-award reviews of proposed contracts that exceed the requirements called for in the federal and departmental acquisition regulations in conjunction with the other contract services divisions; (5) plans and coordinates acquisition reviews of contracting activities within HRSA headquarters and the field components; and (6) responds to congressional inquiries and requests for acquisition information from other federal agencies and non-federal sources.

Division of Procurement Management (RJC4)

The Division of Procurement Management: (1) administers the training and certification programs in collaboration with HRSA's programs and offices for HRSA's Contracting Officer's Representatives, Federal Acquisitions Certification in Contracting acquisition professionals, and Program and Project Mangers; (2) administers and oversees HRSA's automated contracts systems and federal mandated acquisition life cycle systems; (3) conducts and monitors the performance of the HRSA purchase card program for headquarters, satellite contracts office, and regional field offices; (4) develops and implements policies, procedures, and other internal controls in compliance with federal, departmental, and HRSA acquisition laws, regulations, policies, and/or procedures; (5) coordinates and responds to acquisition-related information requests including congressional inquiries, performance management reviews, and requests for information from the Government Accountability Office, Office of Inspector General, and other departments and non-federal sources; (6) conducts independent reviews and analysis requested by external and internal customers; (7) provides contract audits and analysis related to HRSA's acquisition actions, including terminations, modifications, cost proposals, and invoices; (8) coordinates with HRSA's Office of Budget and Finance to perform annual internal controls testing of HRSA's acquisition management operations, per the requirements of the Office of Management and Budget Circular A–123; (9) maintains the HRSA-wide contract portfolio for Indefinite Delivery/Indefinite Quantity Contracts and Blanket Purchase Agreements; (10)

manages the close-out process of negotiated and simplified acquisition actions and other related actions.

Section RJ.30 Delegation of Authority

All delegations of authority and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, if allowed, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

(Authority: 44 U.S.C. 3101)

Carole Johnson,

Administrator.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Native Public Health Resilience

Announcement Type: New.

Funding Announcement Number: HHS–2024–IHS–NPHR–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.231.

Key Dates

Application Deadline Date: May 14, 2024.

Earliest Anticipated Start Date: July 1, 2024.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for grants for Native Public Health Resilience. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the American Rescue Plan Act, Public Law 117–2, 135 Stat. 42 (2021). The Assistance Listings section of *SAM.gov* (*https://sam.gov/content/home*) describes this program under 93.231.

Background

The IHS, an agency within the Department of Health and Human Services (HHS), is the principal Federal health care provider and health advocate for American Indian and Alaska Native (AI/AN) people, and its goal is to raise their health status to the highest possible level. One core strategic goal of the IHS is to ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/AN people. The Division of Epidemiology and Disease Prevention (DEDP) provides and supports applied public health and epidemiologic services to further the overall IHS mission. Through the provision of direct services and key partnerships, our collective work strives to improve overall awareness, understanding, and mitigation of priority health conditions negatively impacting AI/AN populations. The American Rescue Plan Act appropriated funding to IHS for purposes that include enhancing public health capacity.

Purpose

The purpose of this program is to enhance Tribes', Tribal organizations', and Urban Indian Organizations' capacity to implement core Public Health functions, services, and activities, and to further develop and improve their Public Health management capabilities.

As part of the IHS mission to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level, this program seeks to build on and strengthen community resilience by supporting wider access to the 10 Essential Public Health Services (EPHS) [1] in Indian Country, a framework designed to offer all people a fair and just opportunity to achieve optimal health and well-being. For more information on the EPHS, please visit *https://www.cdc.gov/publichealthgateway/publichealthservices/essentialhealthservices.html.* The framework of the EPHS has served as a guide to the public health field since 1994 and describes the public health activities that all communities should undertake, including, (1) monitor health status to identify and solve community health problems, and (2) Diagnose and investigate health problems and health hazards in the community. The EPHS framework was revised in 2020 with an emphasis on equity and reflects current and future priorities for public health practice. The EPHS have been included in the HHS Healthy People initiatives since 2010, when the initiative first included a focus area of Public Health Infrastructure with the goal to ''ensure that Federal, Tribal, State, and local health agencies have the infrastructure to provide essential public health services effectively.''

The IHS is offering competitive awards to assist applicants in enhancing EPHS implementation within established public health programs serving AI/AN communities.

The 10 EPHS include:

1. Assess and monitor population health status, factors that influence health, and community needs and assets.
2. Investigate, diagnose, and address health problems and hazards affecting the population.
3. Communicate effectively to inform and educate people about health, factors that influence it, and how to improve it.
4. Strengthen, support, and mobilize communities and partnerships to improve health.
5. Create, champion, and implement policies, plans, and laws that impact health.
6. Use legal and regulatory actions designed to improve and protect the public's health.
7. Contribute to an effective system that enables equitable access to the individual services and care needed to be healthy. This Service description has been adapted to better align with the anticipated scope of intended recipient jurisdictions.
8. Build and support a diverse and skilled public health workforce.
9. Improve and innovate public health functions through ongoing evaluation, research, and continuous quality improvement.
10. Build and maintain a strong organizational infrastructure for public health.

Required and Allowable Activities

The following activities are required under this funding announcement. For more guidance on the proposal requirements, please see Project Narrative, below.

Required Activities

Select and implement one or more new EPHS or implement significant expansion of existing EPHS to support Tribal communities throughout the planned project period. Recipients are required to offer new or expanded EPHS activities through the award's period of performance. Applicants must address at least two core elements of their selected EPHS in their proposal, as described below.

EPHS 1: Assess and monitor population health status, factors that influence health, and community needs and assets.

Core elements:

a. Maintaining an ongoing understanding of health in the jurisdiction by collecting, monitoring, and analyzing data on health and factors that influence health to identify threats,

[1] For the full details of each EPHS, please review the resources posted at: *https://www.cdc.gov/publichealthgateway/publichealthservices/essentialhealthservices.html.*

patterns, and emerging issues, with a particular emphasis on disproportionately affected populations.

b. Using data and information to determine the root causes of health disparities and inequities.

c. Working with the community to understand health status, needs, assets, key influences, and narrative.

d. Collaborating and facilitating data sharing with partners, including multisector partners.

e. Using innovative technologies, data collection methods, and data sets.

f. Utilizing various methods and technology to interpret and communicate data to diverse audiences.

g. Analyzing and using disaggregated data (*e.g.,* by race) to track issues and inform equitable action.

h. Engaging community members as experts and key partners.

EPHS 2: Investigate, diagnose, and address health problems and hazards affecting the population.

Core elements:

a. Anticipating, preventing, and mitigating emerging health threats through epidemiologic identification.

b. Monitoring real-time health status and identifying patterns to develop strategies to address chronic diseases and injuries.

c. Using real-time data to identify and respond to acute outbreaks, emergencies, and other health hazards.

d. Using public health laboratory capabilities and modern technology to conduct rapid screening and high-volume testing.

e. Analyzing and utilizing inputs from multiple sectors and sources to consider social, economic, and environmental root causes of health status.

f. Identifying, analyzing, and distributing information from new, big, and real-time data sources.

EPHS 3: Communicate effectively to inform and educate people about health, factors that influence it, and how to improve it.

Core elements:

a. Developing and disseminating accessible health information and resources, including through collaboration with multi-sector partners.

b. Communicating with accuracy and necessary speed.

c. Using appropriate communications channels (*e.g.,* social media, peer-to-peer networks, mass media, and other channels) to effectively reach the intended populations.

d. Developing and deploying culturally and linguistically appropriate and relevant communications and educational resources, which includes working with stakeholders and influencers in the community to create effective and culturally resonant materials.

e. Employing the principles of risk communication, health literacy, and health education to inform the public, when appropriate.

f. Actively engaging in two-way communication to build trust with populations served and ensure accuracy and effectiveness of prevention and health promotion strategies.

g. Ensuring public health communications and education efforts are asset-based when appropriate and do not reinforce narratives that are damaging to disproportionately affected populations.

EPHS 4: Strengthen, support, and mobilize communities and partnerships to improve health.

Core elements:

a. Convening and facilitating multisector partnerships and coalitions that include sectors that influence health (*e.g.,* planning, transportation, housing, education, etc.).

b. Fostering and building genuine, strengths-based relationships with a diverse group of partners that reflect the community and the population.

c. Authentically engaging with community members and organizations to develop public health solutions.

d. Learning from, and supporting, existing community partnerships and contributing public health expertise.

EPHS 5: Create, champion, and implement policies, plans, and laws that impact health.

Core elements:

a. Developing and championing policies, plans, and laws that guide the practice of public health.

b. Examining and improving existing policies, plans, and laws to correct historical injustices.

c. Ensuring that policies, plans, and laws provide a fair and just opportunity for all to achieve optimal health.

d. Providing input into policies, plans, and laws to ensure that health impact is considered.

e. Continuously monitoring and developing policies, plans, and laws that improve public health and preparedness and strengthen community resilience.

f. Collaborating with all partners, including multi-sector partners, to develop and support policies, plans, and laws.

g. Working across partners and with the community to systematically and continuously develop and implement health improvement strategies and plans, and evaluate and improve those plans.

EPHS 6: Use legal and regulatory actions designed to improve and protect the public's health.

Core elements:

a. Ensuring that applicable laws are equitably applied to protect the public's health.

b. Conducting enforcement activities that may include, but are not limited to sanitary codes, especially in the food industry; full protection of drinking water supplies; and timely follow-up on hazards, preventable injuries, and exposure-related diseases identified in occupational and community settings.

c. Licensing and monitoring the quality of healthcare services (*e.g.,* laboratory, nursing homes, and home healthcare).

d. Reviewing new drug, biologic, and medical device applications.

e. Licensing and credentialing the healthcare workforce.

f. Including health considerations in laws from other sectors (*e.g.,* zoning).

EPHS 7: Contribute to an effective system that enables equitable access to the individual services and care needed to be healthy.

Core elements:

a. Connecting the population to needed health and social services that support the whole person, including preventive services.

b. Ensuring access to high-quality and cost-effective healthcare and social services, including behavioral and mental health services, that are culturally and linguistically appropriate.

c. Engaging health delivery systems to assess and address gaps and barriers in accessing needed health services, including behavioral and mental health.

d. Addressing and removing barriers to care.

e. Building relationships with payers and healthcare providers, including the sharing of data across partners to foster health and well-being.

f. Contributing to the development of a competent healthcare workforce.

EPHS 8: Build and support a diverse and skilled public health workforce

Core elements:

a. Providing education and training that encompasses a spectrum of public health competencies, including technical, strategic, and leadership skills.

b. Ensuring that the public health workforce is the appropriate size to meet the public's needs.

c. Building a culturally competent public health workforce and leadership that reflects the community and practices cultural humility.

d. Incorporating public health principles in non-public health curricula.

e. Cultivating and building active partnerships with academia and other

professional training programs and schools to assure community-relevant learning experiences for all learners.

f. Promoting a culture of lifelong learning in public health.

g. Building a pipeline of future public health practitioners.

h. Fostering leadership skills at all levels.

EPHS 9: Improve and innovate public health functions through ongoing evaluation, research, and continuous quality improvement.

Core elements:

a. Building and fostering a culture of quality in public health organizations and activities.

b. Linking public health research with public health practice.

c. Using research, evidence, practice-based insights, and other forms of information to inform decision-making.

d. Contributing to the evidence base of effective public health practice.

e. Evaluating services, policies, plans, and laws continuously to ensure they are contributing to health and not creating undue harm.

f. Establishing and using engagement and decision-making structures to work with the community in all stages of research.

g. Valuing and using qualitative, quantitative, and lived experience as data and information to inform decision-making.

EPHS 10: Build and maintain a strong organizational infrastructure for public health.

Core elements:

a. Developing an understanding of the broader organizational infrastructures and roles that support the entire public health system in a jurisdiction (*e.g.,* government agencies, elected officials, and non-governmental organizations).

b. Ensuring that appropriate, needed resources are allocated equitably for the public's health.

c. Exhibiting effective and ethical leadership, decision-making, and governance.

d. Managing financial and human resources effectively.

e. Employing communications and strategic planning capacities and skills.

f. Having robust information technology services that are current and meet privacy and security standards.

g. Being accountable, transparent, and inclusive with all partners and the community in all aspects of practice.

Allowable Activities

Allowable costs and activities must align with the 10 EPHS. Additional activities that complement but are not explicitly captured within the defined core elements are allowable but should be clearly associated with the selected EPHS.

II. Award Information

Funding Instrument—Grant

Estimated Funds Available

The total funding identified for fiscal year (FY) 2024 is approximately $6,000,000. Individual award amounts for the first budget year are anticipated to be between $300,000 and $400,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

The IHS anticipates issuing approximately 15 awards under this program announcement.

Period of Performance

The period of performance is for 3 years.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity applicant must be one of the following, as defined by 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States (U.S.) to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.
- An Urban Indian organization, as defined by 25 U.S.C. 1603(29). The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3). Each awardee shall provide services under this award only to eligible Urban Indians living within the urban center in which the Urban Indian Organization (UIO) is situated.

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

2. Additional Information on Eligibility

The IHS does not fund concurrent projects. Specifically, an applicant may not be awarded under both this opportunity and the Native Public Health Resilience Planning opportunity (number HHS–2024–IHS–NPHRP–0001). Applications on behalf of individuals (including sole proprietorships) and foreign organizations are not eligible and will be disqualified from competitive review and funding under this funding opportunity.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

3. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

4. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not

be reviewed. The DGM will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution is not available by the application deadline date, a draft Tribal Resolution may be submitted with the application by the application deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required official signed resolution but is acceptable until a signed resolution is received. Applications submitted without either official signed or draft Tribal Resolution(s) are considered incomplete and will not be reviewed. If an application submitted with only draft Tribal Resolution(s) is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Applicants organized with a governing structure other than a Tribal council must submit an equivalent document commensurate with their governing organization. Please include documentation explaining and substantiating your organization's governing structure.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the merit review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a single file. Creating a single file creates confusion when trying to find specific documents. This can contribute to delays in processing awards, and could lead to lower scores during the merit review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applications are listed below. An application is incomplete if any of the listed mandatory documents are missing. Incomplete applications will not be reviewed.

- *Application forms:*

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

4. Project Abstract Summary form.

- Project Narrative (not to exceed 15 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed 5 pages). See Section IV.2.B, Budget Narrative for instructions.
- One-page Work Plan Chart.
- Logic Model (Included as an attachment, not in the narrative page limit).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Certification Regarding Lobbying (GG-Lobbying Form).

The documents listed here may be required. Please read this list carefully.

- Tribal Resolution(s) as described in Section III, Eligibility.
- Letters of Support from organization's Board of Directors, if applicable.
- 501(c)(3) Certificate, if applicable.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Additional documents can be uploaded as Other Attachments in *Grants.gov.* These can include:

- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (for example, data tables and key news articles).

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 15 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria), and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the reviewers will be directed to ignore any content beyond the page limit. The 15-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

Part 1: Program Information (Limit—3 Pages)

Section 1: Introduction and Need for Assistance

Briefly describe the population that will be served, including the estimated population size, and geographic reach.

Briefly describe the public health problem your proposed project will address, including community and/or organizational strengths, and any existing capacities it would build upon to foster success. This section should include a description of the needs and strengths of the population. Clearly identify any existing public health system and unmet community needs.

Part 2: Program Planning and Evaluation (Limit—10 Pages)

Section 1: Program Planning

Identify one or more new EPHS or implement significant expansion of existing EPHS to support Tribal communities throughout the planned project period. Applications must address at least two core elements of their selected EPHS in their proposal, as described above. If additional activities are proposed, explicitly link each to at least one of the 10 EPHS. Applicants must include a clear description of how the selected EPHS will address the problem described in Part 1, Section 1: Needs and select existing evidence-based strategies that meet those needs. Part 1, Section 1: Needs, or describe novel strategies that will be evaluated over the course of the project period. Applicants are encouraged to consider using or adapting strategies identified in Healthy People 2030 at *https://health.gov/healthypeople,* the Foundational Public Health Services Framework at *https://phnci.org/transformation/fphs,* Public Health Accreditation Standards and Measures at *https://phaboard.org/,* and the HHS Equity Action Plan at *https://www.hhs.gov/sites/default/files/hhs-equity-action-plan.pdf.*

The Program Plan should include details of the applicant's plan to address the project objectives. The work plan should include details of the applicant's plan to address each required activity.

Section 2: Program Evaluation

The evaluation plan should identify how the applicant plans to measure program progress, outcomes, success, and opportunities for refinement. List measurable and attainable goals with explicit timelines that detail expectation of findings. Applicants must clearly identify the outcomes they expect to achieve by the end of the period of performance, as identified in the logic model. Outcomes are the results that the program intends to achieve and usually indicate the intended direction of change (*e.g.,* increase, decrease).

Part 3: Program Report (Limit—2 Pages)

Describe your organization's significant program activities and accomplishments over the past 5 years, if any, in performing activities related to the proposed project.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the entire project, by year. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item would support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by email at *DGM@ihs.gov.* Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, contact the DGM as soon as possible by email at *DGM@ihs.gov.*

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one grant may be awarded per applicant.
- The purchase of food (*i.e.,* as supplies, for meetings or events, etc.) is an allowable cost with this grant funding and should be included in the budget/budget justification where there is a clear relationship between the chosen intervention and food (such as community gardens, traditional food, promotion activities, etc.).

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov.* Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If you cannot submit an application through *Grants.gov,* you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the waiver approval from the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov*

Customer Support (see contact information at *https://www.Grants.gov*).

- Upon contacting *Grants.gov,* obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number.

The IHS will not notify you that the application has been received.

System for Award Management

Organizations that are not registered with the SAM must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov,* which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your *SAM.gov* registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime recipient organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include the proposed activities for the entire period of performance. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (10 Points)

Proposal should succinctly describe the population that will be served, including the estimated population size, and geographic reach.

Proposals will be scored on how adequately they describe the public health problem they propose to address, including community and/or organizational strengths and any existing capacities it would build upon to foster success.

B. Program Planning (30 Points)

Adequately describe the proposed project for implementing activities within the targeted community. The Program Plan should include details of the applicant's plan to address the project objectives. The narrative should provide sufficient details of the applicant's plan to address each required activity. Applicants must link their chosen EPHS with the problem described in Part 1, Section 1: Needs and plan to implement existing evidence-based strategies that meet those needs or describe novel strategies that will be evaluated over the course of the project period.

C. Program Evaluation (30 Points)

The evaluation plan will be scored on the feasibility of appropriately measuring program implementation. Reviewers will focus on whether goals are measurable, attainable, and related to the outcomes proposers expect to achieve by the end of the period of performance, as identified in their logic model.

D. Program Report, Organizational Capabilities, Key Personnel, and Qualifications (10 Points)

Provide a detailed biographical sketch of each member of key personnel assigned to carry out the objectives of the program plan. The sketches should detail the qualifications and expertise of identified staff.

E. Categorical Budget and Budget Narrative (20 Points)

Provide a detailed budget of each expenditure directly related to the identified program activities. Ensure that allowable activities are identified separately from required activities.

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. The Review Committee (RC) will review applications that meet the eligibility criteria. The RC will review the applications for merit based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the RC and will not be funded. The DGM will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DEDP within 30 days of the conclusion of the review outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75.pdf.*
- If you receive an award, HHS may terminate it if any of the conditions in 2 CFR 200.340(a)(1)–(4) are met. Please review all HHS regulatory provisions for Termination at 2 CFR 200.340, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2023-title2-vol1/pdf/CFR-2023-title2-vol1-sec200-340.pdf.* No other termination conditions apply.

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75-subpartF.pdf.*

F. As of August 13, 2020, 2 CFR part 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2023-title2-vol1/pdf/CFR-2023-title2-vol1-sec200-216.pdf.* This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 2 CFR 200.414(f) Indirect (F&A) costs, found at *https://www.govinfo.gov/content/pkg/CFR-2023-title2-vol1/pdf/CFR-2023-title2-vol1-sec200-414.pdf.* Electing to charge a de minimis rate of 10 percent can be used by applicants that have received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the award.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please write to *DGM@ihs.gov.*

3. Reporting Requirements

The recipient must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active award, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the recipient organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 120 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance.

Recipients are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report.

Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Data Collection and Reporting

Reporting for recipients will be required semi-annually (two progress reports per year).

Recipients will track the implementation of strategies and activities and determine the progress made in achieving outcomes based on their selected evaluation plan elements.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance

• If you receive an award, you must follow all applicable nondiscrimination laws. You agree to this when you register in *SAM.gov.* You must also submit an Assurance of Compliance (HHS–690). To learn more, see *https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html.* Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://sam.gov/content/fapiis* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *DGM@ihs.gov*.

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the program matters may be directed to: Lisa Neel, Public Health Advisor, Office of Public Health Support, 5600 Fishers Lane, Rockville, MD 20852, Phone: (301) 443–4305, Email: *lisa.neel@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Email: *DGM@ihs.gov*.

3. For technical assistance with *Grants.gov,* please contact the *Grants.gov* help desk at (800) 518–4726, or by email at *support@grants.gov.*

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at *help@grantsolutions.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to

protect and advance the physical and mental health of the American people.

Roselyn Tso,

Director, Indian Health Service.

Sample Logic Model for the 10 Essential Public Health Services Implementation Proposals

Background

The 10 Essential Public Health Services (EPHS) describe the public health activities that all communities should undertake. For the past 25 years, the EPHS have served as a well-recognized framework for carrying out the mission of public health. The EPHS framework was originally released in 1994 and more recently updated in 2020. The revised version is intended to bring the framework in line with current and future public health practice.

For an implementation tool kit, please see the Public Health National Center for Innovations. 10 Essential Public Health Services Toolkit. September 9, 2020. *ph.phnci.net/10ephs.*

Resources/inputs	Activity example	Output example	Outcomes example
1. Assess and monitor population health status, factors that influence health, and community needs and assets			
Identified via proposal	a. Begin and/or maintain an ongoing understanding of health in the population by collecting, monitoring, and analyzing data on health and factors that influence health to identify threats, patterns, and emerging issues.	Number of internal and external reports on the selection and use or adaptation of health data sources.	Increased program capacity to describe the health of the population served. Increased program capacity to communicate the root causes of health disparities in the service population.
Identified via proposal	b. Work with the community to understand health status, needs, assets, and key influences. Include social determinants of health measures when assessing health risks and outcomes.	Number of in-person and virtual outreach events to form connections with community members on health status, needs, assets, and key influences.	Increased program capacity to describe the health knowledge, attitudes, and beliefs of the population served.
Identified via proposal	c. Engage community members as experts and key partners.	Number of completed community-based participatory research (CBPR)-informed events to engage community members and community organizations in program planning and implementation.	Increased local participation in program planning and implementation.
2. Investigate, diagnose, and address health problems and hazards affecting the population			
Identified via proposal	a. Increase access to public health laboratory capabilities to conduct rapid screening and high-volume testing.	Number of completed activities to implement the ''Competency Guidelines for Public Health Laboratory Professionals'' in a Tribal laboratory. Number of formal agreements with existing public health laboratories.	Increased rapid screening and high-volume testing in the service population.
Identified via proposal	b. Monitor real-time health status and identify patterns to develop strategies to address chronic disease and injuries.	Number of internal and external reports on the selection and use or adaptation of data benchmarks.	Increased program capacity to document and describe the health of the service population.
Identified via proposal	c. Use real-time data to identify and respond to acute outbreaks, emergencies, and other health hazards.	Number of completed action plans to stand up a rapid response to outbreaks, emergencies, and other health hazards.	Increased number of active data-sharing agreements to support real-time data access, analysis, and action.
3. Communicate effectively to inform and educate people about health, factors that influence it, and how to improve it			
Identified via proposal	a. Develop and deploy culturally and linguistically appropriate and relevant communications and educational resources, working with community influencers to create effective and culturally resonant materials.	Number of health communication campaigns using and reporting the reach of multiple channels, including mass media.	Increase in Health communication campaigns that apply integrated strategies to deliver messages that aim to affect people's health behaviors.
Identified via proposal	b. Actively engage in two-way communication to build trust with populations served and ensure accuracy and effectiveness of prevention and health promotion strategies.	Number of completed community-based participatory research (CBPR)-informed events to engage community members and community organizations in program planning and implementation.	Increased local participation in prevention and health promotion planning and implementation.
Identified via proposal	c. Ensure public health communication and education efforts are asset-based when appropriate and do not reinforce narratives that are damaging to disproportionately affected populations.	Number of public health communication and education campaigns that are asset-based and do not reinforce narratives that are damaging to the service population.	Increased public health communication and education programs with positive and affirming messages.
4. Strengthen, support, and mobilize communities and partnerships to improve health			
Identified via proposal	a. Convene and facilitate multi-sector partnerships and coalitions that include sectors that influence health (planning, transportation, housing, education, etc.).	Number of formal collaborations across local services to host and teach seasonal cultural and traditional practices that support health and wellness.	Increased consumption of healthy traditional foods and/or increased physical activity in communities.
Identified via proposal	b. Foster and build genuine, strengths-based relationships with a diverse group of partners that reflect the community and the population.	Use community-based participatory research (CBPR) methods to engage community members and community organizations in program planning and implementation.	Increased local participation in program planning and implementation.

Resources/inputs	Activity example	Output example	Outcomes example
Identified via proposal	c. Authentically engage with community members and organizations to develop public health solutions.	Number of completed community-based participatory research (CBPR)-informed events to engage community members and community organizations in program planning and implementation.	Increased local participation in program planning and implementation.
5. Create, champion, and implement policies, plans, and laws that impact health			
Identified via proposal	a. Provide input into policies, plans, and laws to ensure that health impact is considered and addressed.	Number of laws, policies, and related resources that ultimately accommodate health implications and/or promote health.	Increased consideration for health protection when writing policies, plans, and laws in your tribal government.
Identified via proposal	b. Assess health impacts of policies, plans, and laws.	Number of completed reviews of law and policy resources related to tribal public health for applicability to the policies, plans, and laws in your tribal government.	Increased advocacy for health protection when writing policies, plans, and laws in your tribal government.
Identified via proposal	c. Monitor and develop policies, plans, and laws that improve public health and preparedness and strengthen community resilience.	Number of completed reviews of law and policy resources related to tribal public health for applicability to the policies, plans, and laws in your tribal government. Number of new or amended policies, plans, and laws. Number of adapted Health Improvement Plans in the service community.	Increase in community resilience measures such as educational access, households without reliable transportation, hospital capacity, or presence of civic and social organizations.
6. Utilize legal and regulatory actions designed to improve and protect the public's health			
Identified via proposal	a. Conduct enforcement activities that may include, but are not limited to sanitary codes, especially in the food industry; full protection of drinking water supplies; and timely follow-up on hazards, preventable injuries, and exposure-related diseases identified in occupational and community settings.	Number of completed reviews of Tribal Laws Related to Occupational Safety and Health.	Reduction in preventable injuries and exposure-related diseases identified in occupational and community settings.
7. Assure an effective system that enables equitable access to the individual services and care needed to be healthy			
Identified via proposal	a. Connect the population to needed health and social services that support the whole person, including preventive services.	Number of activities implementing the evidence-based practices in The Healthy Brain Initiative Road Map for Indian Country.	Increased discussion about dementia and caregiving within tribal communities. Increased use of a public health approach to dementia and associated caregiving.
Identified via proposal	b. Engage health delivery systems to assess and address gaps and barriers in accessing needed health services, including behavioral and mental health.	Number of persons needing alcohol and/or illicit drug treatment who received specialty treatment for a substance use problem in the past year.	Reduce gaps and barriers in accessing needed health services, including behavioral and mental health.
8. Build and support a diverse and skilled public health workforce			
Identified via proposal	a. Build a culturally competent public health workforce and leadership that reflects the community and practices cultural humility.	Number of programs using core competencies for public health in continuing education planning.	Increase in public health professionals using Core Competencies for Public Health in their work.
Identified via proposal	b. Incorporate public health principles in non-public health curricula.	Number of formal collaborations across local services to host and teach seasonal cultural and traditional practices that support health and wellness.	Increased consumption of healthy traditional foods and/or increased physical activity in communities.
Identified via proposal	c. Cultivate and build active partnerships with academia and other professional training programs and schools to assure community-relevant learning experiences for all learners.	Number of culturally-informed training, educational materials, and process evaluation tools available to service population.	Increased dissemination or development of culturally-informed training, educational materials, and process evaluation tools that build workforce capacity.
9. Improve and innovate public health functions through ongoing evaluation, research, and continuous quality improvement			
Identified via proposal	a. Contribute to the evidence base of effective public health practice.	Number of reports, journal articles, oral histories, and presentations on public health practice evaluations and program outcomes.	Increased inclusion of Tribal contexts in the public health evidence base to support future continuous quality improvement.
Identified via proposal	b. Establish and use engagement and decision-making structures to work with the community in all stages of Public Health research.	Number of events using best practices in planning, designing, and delivering virtual events with the service population.	Increase in the use of innovative public health functions.
Identified via proposal	c. Value and use qualitative, quantitative, and lived experience as data and information to inform decision-making.	Number of qualitative data analyses, inclusive of a wide range of perspectives from the service population.	Increase in decision-making that includes a range of perspectives and lived experiences in the service population.
10. Build and maintain a strong organizational infrastructure for public health			
Identified via proposal	a. Develop an understanding of the broader organizational infrastructures and roles that support the entire public health system in your jurisdiction.	Number of assessments of organizational infrastructure and roles in the jurisdiction.	Increased capacity to implement public health programs and services to address prioritized public health problems in AI/AN communities.

Resources/inputs	Activity example	Output example	Outcomes example
Identified via proposal	b. Develop and/or maintain robust information technology services in your jurisdiction's public health program. They should be current and meet privacy and security standards.	Number of program plans using informatics in public health (Healthy people 2030: Public Health Infrastructure.)	Increased capacity to implement public health programs and services to address public health priorities in AI/AN communities.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Native Public Health Resilience Planning

Announcement Type: New.
Funding Announcement Number: HHS–2024–IHS–NPHRP–0001.
Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.231.

Key Dates

Application Deadline Date: May 14, 2024.
Earliest Anticipated Start Date: July 1, 2024.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for grants for Native Public Health Resilience Planning. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the American Rescue Plan Act, Public Law 117–2, 135 Stat. 42 (2021). The Assistance Listings section of *SAM.gov* (*https://sam.gov/content/home*) describes this program under 93.231.

Background

The IHS, an agency within the Department of Health and Human Services (HHS), is the principal Federal health care provider and health advocate for American Indian and Alaska Native (AI/AN) people, and its goal is to raise their health status to the highest possible level. One core strategic goal of the IHS is to ensure that comprehensive, culturally appropriate personal and public health services are available and accessible to AI/AN people. The Division of Epidemiology and Disease Prevention (DEDP) provides and supports applied public health and epidemiologic services to further the overall IHS mission. Through the provision of direct services and key partnerships, our collective work strives to improve overall awareness, understanding, and mitigation of priority health conditions negatively impacting AI/AN populations. The American Rescue Plan Act appropriated funding to IHS for purposes that include enhancing public health capacity.

Purpose

The purpose of this program is to assist applicants to establish goals and performance measures, assess their current management capacity, and determine if developing a Public Health program is practicable. Specifically, programs should assess the availability and feasibility of the 10 Essential Public Health Services (EPHS), described further below.

As part of the IHS mission to raise the physical, mental, social, and spiritual health of American Indians and Alaska Natives to the highest level, this program seeks to build on and strengthen community resilience by supporting wider access to the 10 EPHS in Indian Country, a framework designed to offer all people a fair and just opportunity to achieve optimal health and well-being. For more information on the EPHS, please visit *https://www.cdc.gov/publichealthgateway/publichealthservices/essentialhealthservices.html.* The framework of the EPHS has served as a guide to the public health field since 1994, and describes the public health activities that all communities should undertake, including, (1) monitor health status to identify and solve community health problems, and (2) Diagnose and investigate health problems and health hazards in the community.

The EPHS framework was revised in 2020 with an emphasis on equity and reflects current and future public health practice goals. The EPHS have been included in the HHS Healthy People initiatives since 2010, when the initiative first included a focus area of Public Health Infrastructure with the goal to ''ensure that Federal, Tribal, state, and local health agencies have the infrastructure to provide essential public health services effectively.''

The 10 EPHS include:

1. Assess and monitor population health status, factors that influence health, and community needs and assets.
2. Investigate, diagnose, and address health problems and hazards affecting the population.
3. Communicate effectively to inform and educate people about health, factors that influence it, and how to improve it.
4. Strengthen, support, and mobilize communities and partnerships to improve health.
5. Create, champion, and implement policies, plans, and laws that impact health.
6. Use legal and regulatory actions designed to improve and protect the public's health.
7. Contribute to an effective system that enables equitable access to the individual services and care needed to be healthy. This Service description has been adapted to better align with the anticipated scope of intended recipient jurisdictions.
8. Build and support a diverse and skilled public health workforce.
9. Improve and innovate public health functions through ongoing evaluation, research, and continuous quality improvement.
10. Build and maintain a strong organizational infrastructure for public health.

Required and Allowable Activities

The following activities are required for awardees under this funding announcement. For more guidance on the proposal requirements, please see Project Narrative, below.

Required Activities

1. Assess community-specific public health needs.
2. Conduct an assessment to identify current EPHS activities and/or priorities.
3. Identify gaps in EPHS functions currently available within supported communities.
4. Quantify costs for establishing priority EPHS functions.
5. Assess feasibility of establishing priority EPHS functions.

Allowable Activities

Allowable costs and activities must align with the 10 EPHS.

II. Award Information

Funding Instrument—Grant

Estimated Funds Available

The total funding identified for fiscal year (FY) 2024 is approximately $3,600,000. Individual award amounts

for the first budget year are anticipated to be between $100,000 and $200,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

The IHS anticipates issuing approximately 24 awards under this program announcement.

Period of Performance

The period of performance is for 3 years.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity applicant must be one of the following, as defined by 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States (U.S.) to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(l)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.
- An Urban Indian organization, as defined by 25 U.S.C. 1603(29). The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3). Each awardee shall provide services under this award only to eligible Urban Indians living within the urban center in which the Urban Indian Organization (UIO) is situated.

The Division of Grants Management (DGM) will notify any applicants deemed ineligible.

2. Additional Information on Eligibility

The IHS does not fund concurrent projects. Specifically, an applicant may not be awarded under this opportunity and the Native Public Health Resilience opportunity (number HHS–2024–IHS–NPHR–0001). Applications on behalf of individuals (including sole proprietorships) and foreign organizations are not eligible and will be disqualified from competitive review and funding under this funding opportunity.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

3. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

4. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The DGM will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official signed Tribal Resolution is not available by the application deadline date, a draft Tribal Resolution may be submitted with the application by the application deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required official signed resolution but is acceptable until a signed resolution is received. Applications submitted without either official signed or draft Tribal Resolution(s) are considered incomplete and will not be reviewed. If an application submitted with only draft Tribal Resolution(s) is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Applicants organized with a governing structure other than a Tribal council must submit an equivalent document commensurate with their governing organization. Please include documentation explaining and substantiating your organization's governing structure.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

Grants.gov uses a Workspace model for accepting applications. The Workspace consists of several online forms and three forms in which to upload documents—Project Narrative, Budget Narrative, and Other Documents. Give your files brief descriptive names. The filenames are key in finding specific documents during the merit review and in processing awards. Upload all requested and optional documents individually, rather than combining them into a single file. Creating a single file causes confusion when trying to find specific documents. This can contribute to delays in processing awards, and could lead to lower scores during the merit review.

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to *DGM@ihs.gov.*

2. Content and Form Application Submission

Mandatory documents for all applications are listed below. An application is incomplete if any of the listed mandatory documents are missing. Incomplete applications will not be reviewed.

- *Application forms:*

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

4. Project Abstract Summary form.

- Project Narrative (not to exceed 15 pages). See Section IV.2.A, Project Narrative for instructions.
- Budget Narrative (not to exceed 5 pages). See Section IV.2.B, Budget Narrative for instructions.
- One-page Work Plan Chart.
- Logic Model (Included as an attachment, not in the narrative page limit).
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Certification Regarding Lobbying (GG-Lobbying Form).

The documents listed here may be required. Please read this list carefully.

- Tribal Resolution(s) as described in Section III, Eligibility.
- Letters of Support from organization's Board of Directors.
- 501(c)(3) Certificate.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Additional documents can be uploaded as Other Attachments in *Grants.gov.* These can include:

- Work plan, logic model, and timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 15 pages and must: (1) have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches). Do not combine this document with any others.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria), and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the overall page limit, the reviewers will be directed to ignore any content beyond the page limit. The 15-page limit for the project narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget narratives, and/or other items. Page limits for each section within the project narrative are guidelines, not hard limits.

There are three parts to the project narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

Part 1: Program Information (Limit—3 Pages)

Section 1: Introduction and Need for Assistance

Briefly describe the population that will be served, estimated population size, and geographic reach. Briefly describe the public health problem your proposed project will address, including community and/or organizational strengths and any existing capacities it would build upon to foster success. This section should include a description of the needs and strengths of the population. Clearly identify any existing public health system and unmet community needs.

Part 2: Program Planning and Evaluation (Limit—10 Pages)

Section 1: Program Planning

Detail how the proposed project will help determine the feasibility of implementing activities within their community. Applicants must include a clear description of how the selected EPHS will address the problem described in Part 1, Section 1: Needs, and select existing evidence-based strategies that meet those needs or describe novel strategies that will be evaluated over the course of the project period. The Program Plan should include details of the applicant's plan to address the project objectives. The work plan should include details of the applicant's plan to address each required activity. If additional activities are proposed, explicitly link each to at least one of the 10 EPHS. Applicants are encouraged to consider using or adapting strategies identified in Healthy People 2030 at *https://health.gov/healthypeople,* the Foundational Public Health Services Framework at *https://phnci.org/transformation/fphs,* Public Health Accreditation Standards and Measures at *https://phaboard.org/,* and the HHS Equity Action Plan at *https://www.hhs.gov/sites/default/files/hhs-equity-action-plan.pdf.*

Section 2: Program Evaluation

The evaluation plan should identify how the applicant plans to measure program progress in establishing goals and performance measures, assessing current management capacity, and determine if developing a Public Health program is practicable. List measurable and attainable goals with explicit timelines that detail expectation of findings. Applicants must clearly identify the outcomes they expect to achieve by the end of the period of performance, as identified in the logic model. Outcomes are the results that the program intends to achieve and usually indicate the intended direction of change (*e.g.,* increase, decrease).

Part 3: Program Report (Limit—2 Pages)

Describe your organization's significant program activities and accomplishments over the past 5 years, if any, in performing activities related to the proposed project.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs) for the entire project, by year. The applicant can submit with the budget narrative a more detailed spreadsheet than is provided by the SF–424A (the spreadsheet will not be considered part of the budget narrative). The budget narrative should specifically describe how each item would support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys, Deputy Director, DGM, by email at *DGM@ihs.gov.* Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, contact the DGM as soon as possible by email at *DGM@ihs.gov.*

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one grant may be awarded per applicant.
- The purchase of food (*i.e.,* as supplies, for meetings or events, etc.) is not an allowable cost with this grant funding and should not be included in the budget/budget justification.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. The IHS will not accept any applications submitted through any means outside of *Grants.gov* without an approved waiver.

If you cannot submit an application through *Grants.gov*, you must request a waiver prior to the application due date. You must submit your waiver request by email to *DGM@ihs.gov.* Your waiver request must include clear justification for the need to deviate from the required application submission process.

If the DGM approves your waiver request, you will receive a confirmation of approval email containing submission instructions. You must include a copy of the written approval with the application submitted to the DGM. Applications that do not include a copy of the waiver approval from the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, you will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify you that the application has been received.

System for Award Management

Organizations that are not registered with SAM must access the SAM online registration through the SAM home page at *https://sam.gov.* Organizations based in the U.S. will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2 to 5 weeks to become active. Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Unique Entity Identifier

Your *SAM.gov* registration now includes a Unique Entity Identifier (UEI), generated by *SAM.gov*, which replaces the DUNS number obtained from Dun and Bradstreet. *SAM.gov* registration no longer requires a DUNS number.

Check your organization's *SAM.gov* registration as soon as you decide to apply for this program. If your SAM.gov registration is expired, you will not be able to submit an application. It can take several weeks to renew it or resolve any issues with your registration, so do not wait.

Check your *Grants.gov* registration. Registration and role assignments in *Grants.gov* are self-serve functions. One user for your organization will have the authority to approve role assignments, and these must be approved for active users in order to ensure someone in your organization has the necessary access to submit an application.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its UEI number to the prime recipient organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Additional information on implementing the Transparency Act, including the specific requirements for SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include the proposed activities for the entire period of performance. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (10 Points)

Proposal should succinctly describe the public health services your proposed project will consider and/or evaluate, including community and/or organizational strengths and any existing capacities it would build upon to foster success.

B. Program Planning (30 Points)

Adequately describe the needs and strengths of the population. The narrative should provide sufficient details of the applicant's plan to address each required activity and explicitly link these to at least one of the 10 EPHS. Applicants must explain how existing evidence-based strategies will be used to meet the needs identified in the Introduction and Need for Assistance, or describe novel strategies to meet needs that they will evaluate over the course of the period of performance. Applicants must address each element of their selected EPHS in their approach.

C. Program Evaluation (30 Points)

The evaluation plan will be scored on the feasibility of appropriately measuring program progress, outcomes, success, and opportunities for refinement. Reviewers will focus on whether goals are measurable, attainable, and related to the outcomes applicants expect to achieve by the end of the period of performance, as identified in their logic model.

D. Program Report, Organizational Capabilities, Key Personnel, and Qualifications (10 Points)

Provide a detailed biographical sketch of each member of key personnel assigned to carry out the objectives of the program plan. The sketches should detail the qualifications and expertise of identified staff.

E. Categorical Budget and Budget Narrative (20 Points)

Provide a detailed budget of each expenditure directly related to the identified program activities. Ensure that allowable activities are identified separately from required activities.

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in this funding announcement. The Review Committee (RC) will review applications that meet the eligibility criteria. The RC will review the applications for merit based on the evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, period of performance limit) will not be referred to the RC and will not be funded. The DGM will notify the applicant of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DEDP within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, the budget period, and period of performance. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75.pdf.*
- If you receive an award, HHS may terminate it if any of the conditions in 2 CFR 200.340(a)(1)–(4) are met. Please review all HHS regulatory provisions for Termination at 2 CFR 200.340, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2023-title2-vol1/pdf/CFR-2023-title2-vol1-sec200-340.pdf.* No other termination conditions apply.

C. Grants Policy:

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75-subpartE.pdf.*

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2022-title45-vol1/pdf/CFR-2022-title45-vol1-part75-subpartF.pdf.*

F. As of August 13, 2020, 2 CFR part 200 was updated to include a

prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216, at the time of this publication located at *https://www.govinfo.gov/content/pkg/CFR-2023-title2-vol1/pdf/CFR-2023-title2-vol1-sec200-216.pdf.* This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 2 CFR 200.414(f) Indirect (F&A) costs, found at *https://www.govinfo.gov/content/pkg/CFR-2023-title2-vol1/pdf/CFR-2023-title2-vol1-sec200-414.pdf.*

Electing to charge a de minimis rate of 10 percent can be used by applicants that have received an approved negotiated indirect cost rate from HHS or another cognizant Federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the award. Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please write to *DGM@ihs.gov.*

3. Reporting Requirements

The recipient must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active award, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the recipient organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please use the form under the Recipient User section of *https://www.grantsolutions.gov/home/getting-started-request-a-user-account/.* Download the Recipient User Account Request Form, fill it out completely, and submit it as described on the web page and in the form.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 120 days of expiration of the period of performance.

B. Financial Reports

Federal Financial Reports are due 90 days after the end of each budget period, and a final report is due 120 days after the end of the period of performance. Recipients are responsible and accountable for reporting accurate information on all required reports: the Progress Reports and the Federal Financial Report. Failure to submit timely reports may result in adverse award actions blocking access to funds.

C. Data Collection and Reporting

Reporting for recipients will be required semi-annually (two progress reports per year).

Recipients will track the implementation of strategies and activities and determine the progress made in achieving outcomes based on their selected evaluation plan elements.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance

- If you receive an award, you must follow all applicable nondiscrimination laws. You agree to this when you register in *SAM.gov.* You must also submit an Assurance of Compliance (HHS–690). To learn more, see *https://www.hhs.gov/civil-rights/for-providers/laws-regulations-guidance/laws/index.html.* Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS.

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://sam.gov/content/fapiis* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the

applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10 million for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, andHHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Marsha Brookins, Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *DGM@ihs.gov.*

AND

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line) or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the program matters may be directed to: Lisa Neel, Public Health Advisor, Office of Public Health Support, 5600 Fishers Lane, Rockville, MD 20852, Phone: (301) 443–4305, Email: *lisa.neel@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Email: *DGM@ihs.gov*.

3. For technical assistance with *Grants.gov*, please contact the *Grants.gov* help desk at (800) 518–4726, or by email at *support@grants.gov.*

4. For technical assistance with GrantSolutions, please contact the GrantSolutions help desk at (866) 577–0771, or by email at *help@grantsolutions.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Roselyn Tso,

Director, Indian Health Service.

Appendix 1: Sample Logic Model

Background

The 10 Essential Public Health Services (EPHS) describe the public health activities that all communities should undertake. For the past 25 years, the EPHS have served as a well-recognized framework for carrying out the mission of public health. The EPHS framework was originally released in 1994 and more recently updated in 2020. The revised version is intended to bring the framework in line with current and future public health practice.

For an implementation tool kit, please see the Public Health National Center for Innovations. 10 Essential Public Health Services Toolkit. September 9, 2020. *ph.phnci.net/10ephs.*

Resources/inputs	Activities	Outputs	Outcomes
Identified via proposal	1. Assess community-specific Public Health needs. Resources at: *https://www.cdc.gov/publichealthgateway/cha/.*	Number of completed assessments. Report identifying the top EPHS priorities of the service population.	Identification of key Public Health needs and issues in AI/AN communities.
Identified via proposal	2. Conduct an assessment of current EPHS activities and/or priorities.	Number of completed ecological assessments of current activities and/or priorities. Number of assessments using existing toolkits such as the Roadmap to Develop Sharing Initiatives in Public Health. *https://phsharing.org/resources/a-roadmap-to-develop-cross-jurisdictional-sharing-initiatives/.*	Improved capacity to develop public health programs and services to address prioritized public health activities in AI/AN communities.
Identified via proposal	3. Identify gaps in EPHS functions currently available within supported communities.	Number of reports on gaps in EPHS functions using community-based engagement and decision-making structures such as community-based participatory research designs or participatory budgeting.	Use of roadmap to develop public health programs and services to address prioritized public health activities in AI/AN communities.
Identified via proposal	4. Quantify costs for establishing priority EPHS functions.	Number of economic evaluations that quantify the cost factors of offering the selected EPHS.	Improved capacity to develop public health programs and services to address prioritized public health activities in AI/AN communities.

Resources/inputs	Activities	Outputs	Outcomes
Identified via proposal	5. Assess feasibility of establishing priority EPHS functions.	Selection and testing of at least one pilot program or demonstration project addressing the selected EPHS.	Improved capacity to develop and/or offer public health programs and services to address prioritized public health activities in AI/AN communities.

[FR Doc. 2024–05826 Filed 3–19–24; 8:45 am]

BILLING CODE 4166–14–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 Stability and Efficacy of Pfs48/45 Domain III Protein Variants for Malaria Vaccine Development Using SPEEDesign Technology

Description of Technology

The technology includes modifying the Plasmodium falciparum Pfs48/45 Domain III protein sequence to enhance its stability and efficacy to aid in malaria vaccine development. This approach successfully overcomes previous production challenges by increasing the thermostability of the antigen and eliminating the need for additional modifications that could impair vaccine effectiveness. Crucially, the technology maintains the essential neutralizing epitope of Pfs48/45, ensuring its effectiveness in preventing malaria transmission as a transmission-blocking vaccine. Developed using the SPEEDesign program, these novel protein variants show increased stability and a more robust transmission blocking response than wild-type proteins. The potential applications of this technology are providing a more stable and effective vaccine, potentially reducing the incidence of malaria and leading to improved health outcomes.

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

- This malaria vaccine technology offers competitive advantages by providing increased thermostability and enhanced immune response without the need for efficacy-reducing modifications, potentially revolutionizing malaria prevention with more effective and stable vaccine options.

Competitive Advantages

- The development of more effective and stable malaria vaccines offers improved prevention strategies in regions affected by this disease and significantly contributing to global health initiatives.

Development Stage

Pre-Clinical

Inventors: Niraj Tolia, Ph.D., Thayne Dickey, Ph.D., all of NIAID.

Publications

Intellectual Property: HHS Reference No. E–030–2023–0–US–01, US Provisional Application No. 63/476,897, filed on December 22, 2022; HHS Reference No. E–030–2023–0–PC–01, PCT Application No. PCT/US2023/085849, filed on December 22, 2023

Licensing Contact: To license this technology, please contact Peter Tung at 240–669–5483 or *peter.tung@nih.gov,* and reference E–030–2023.

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: March 14, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–05880 Filed 3–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Manufacturing of Anti-Malaria Monoclonal Antibody L9LS in Transgenic Cows and Sheep

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Taurgen Malaria, Inc. (''Taurgen''), headquartered in Logan, UT. Taurgen Malaria, Inc. is a wholly-owned subsidiary of Taurgen Therapeutics, LLC, which is also headquartered in Logan, UT.

DATES: Only written comments and/or applications for a license which are received by the National Institute of Allergy and Infectious Diseases' Technology Transfer and Intellectual Property Office on or before April 4, 2024 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Wade Green, Ph.D., Lead Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases Telephone: (301) 761–7505; Email: *wade.green@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. United States Provisional Patent Application No. 62/842,590, filed May 03, 2019, titled ''Neutralizing antibodies to *Plasmodium falciparum* circumsporozoite protein and their use'' [HHS Reference No. E–087–2019–0–US–01];

2. International Patent Application No. PCT/US2020/031345, filed May 04, 2020, titled ''Neutralizing antibodies to *Plasmodium falciparum* circumsporozoite protein and their use'' [HHS Reference No. E–087–2019–0–PCT–01];

3. European Patent Application No. 20727798.9, filed May 04, 2020, titled ''Neutralizing antibodies to *Plasmodium falciparum* circumsporozoite protein and their use'' [HHS Reference No. E–087–2019–0–EP–02]; and

4. United States Patent Application No. 17/608,381, filed October 02, 2021, titled ''Neutralizing antibodies to *Plasmodium falciparum* circumsporozoite protein and their use'' [HHS Reference No. E–087–2019–0–US–03].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

''Production of the L9LS monoclonal antibody in transgenic bovine and ovine species.''

The E–087–20219 patent family is primarily directed to (1) compositions of matter of the L9LS monoclonal antibody, (2) methods of treating and preventing infection with *Plasmodium falciparum* using the L9LS monoclonal antibody, and (3) methods of manufacturing the L9LS monoclonal antibody. The exclusive field of use which may be granted to Taurgen applies to only manufacturing of the L9LS monoclonal antibody in transgenic bovine and ovine species. Accordingly, the proposed scope of rights which may be conveyed under the license covers only a portion of total scope of the E–087–2019 patent family and only a subset of the possible methods of manufacturing the L9LS monoclonal antibody.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Institute of Allergy and Infectious Diseases receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

Complete license applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the *Freedom of Information Act,* 5 U.S.C. 552.

Dated: March 14, 2024.

Surekha Vathyam,

Acting Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–05878 Filed 3–19–24; 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:

Next-Generation MSP1-Targeted Malaria Immunotherapy: Enhanced Vaccine Candidates and Monoclonal Antibodies

Description of Technology

This technology encompasses the development of highly advanced malaria vaccine candidates and human monoclonal antibodies, both centered on targeting the Merozoite Surface Protein 1 (MSP1) of the *Plasmodium falciparum* malaria parasite. The innovation lies in utilizing a novel computational design and in vitro screening process, which has created MSP1 vaccine candidates that are significantly more immunogenic, stable, and cost-effective than existing alternatives. These vaccines focus on the 19 kDa carboxy-terminus fragment of MSP1. They contain engineered amino acid changes and are displayed on self-assembling nanoparticles to elicit a more potent immune response, potentially offering more robust and durable protection against malaria. Additionally, the technology includes the production of enhanced human monoclonal antibodies with improved affinity for the same fragment of MSP1, designed to overcome the parasite's immune evasion tactics. These advancements hold immense promise for significantly improving malaria prevention and treatment. They could lead to the development of more

effective vaccines and therapeutic antibodies, providing a critical solution to a significant global health challenge.

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

- This MSP1-focused technology has the potential to transform malaria treatment and prevention worldwide, offering more effective vaccines and therapeutic antibodies for use in clinical settings, public health programs, and potentially in regions with high malaria prevalence.

Competitive Advantages

- This technology offers highly immunogenic and stable MSP1-based vaccine candidates and monoclonal antibodies, with superior efficacy, cost-effectiveness, and ease of production compared to current alternatives.

Development Stage

Pre-Clinical

Inventors: Niraj Tolia, Ph.D., Thayne Dickey, Ph.D., Palak Patel, Ph.D., Kazuotoyo Miura, Ph.D., Carole Long, Ph.D., all of NIAID.

Publications: Patel, Palak N et al. ''Neutralizing and interfering human antibodies define the structural and mechanistic basis for antigenic diversion.'' *Nature communications* vol. 13,1 5888. 6 Oct. 2022, doi:10.1038/s41467–022–33336–3.

Intellectual Property: HHS Reference No. E–154–2022–0–US–01, US Provisional Application No. 63/369,909, filed on July 29, 2022; HHS Reference No. E–154–2022–0–PC–01, PCT Application No. PCT/US2023/070926, filed on July 25, 2023.

Licensing Contact: To license this technology, please contact Peter Tung at 240–669–5483 or *peter.tung@nih.gov,* and reference E–154–2022.

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: March 14, 2024.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2024–05881 Filed 3–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Council of Councils.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed from the NIH Videocast at the following link: *https://videocast.nih.gov/.*

Name of Committee: Council of Councils.

Date: April 05, 2024.

Time: 01:00 p.m. to 02:30 p.m.

Agenda: Welcome and Opening Remarks; Announcements; Primary Care Research Network; Proposed Council of Councils Working Group on AIM–AHEAD.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Franziska Grieder, D.V.M., Ph.D., Executive Secretary, Council of Councils, Director, Office of Research Infrastructure Programs, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, 6701 Democracy Boulevard, Room 948, Bethesda, MD 20892, *GriederF@mail.nih.gov,* 301–435–0744.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: March 15, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–05869 Filed 3–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: April 24–25, 2024.

Time: April 24–25, 2024, 9:00 a.m. to 12:30 p.m..

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: NIH Bethesda Main Campus, Building 10, 12S233 (NIAMS 12th floor conference room), Bethesda, MD (Hybrid meeting).

Contact Person: John J. O'Shea, MD, Ph.D., Scientific Director, Intramural Research Program, National Institute of Arthritis & Musculoskeletal and Skin Diseases, Building 10, Room 9N228, Bethesda, MD 20892, (301) 496–2612, *osheaj@arb.niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 14, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–05824 Filed 3–19–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7080–N–14]

30-Day Notice of Proposed Information Collection: Data Collection for the HUD Secretary's Awards, OMB Control No.: 2528–0324

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 19, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna Guido, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410–5000; email *PaperworkReductionActOffice@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410; email: *PaperworkReductionActOffice@hud.gov.* Telephone (202) 402–5535. This is not a toll-free number, HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 18, 2023 at 88 FR 87448.

A. Overview of Information Collection

Title of Information Collection: Data Collection for the HUD Secretary's Awards.

OMB Approval Number: 2528–0324.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: HUD seeks to collect information that will be used to implement the following HUD Secretary's Awards: (1) the Secretary's Award for Public-Philanthropic Partnerships, (2) the Secretary's Awards for Healthy Homes, (3) the Secretary's Award for Excellence in Historic Preservation, (4) the Secretary's Planning Award, (5) the Secretary's Housing Design Awards, (6) The Secretary's Award for Tribal Housing Impact, and (7) the HUD Innovation in Affordable Housing Student Design and Planning Competition. On an annual basis, HUD accepts nominations for the above listed awards. A template application form for nominations streamlines information collection across these 7 award programs. Each award recognizes awardees for their innovation and commitment to raising industry standards and increasing the quality of life for low- and moderate-income households.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hours per response	Annual burden hours	Hourly cost per response	Annual cost
Secretary's Award for Public-Philanthropic Partnerships	50	1	50	3	150	$18.52	$2,778.00
Secretary's Awards for Healthy Homes	30	1	30	3	90	18.52	1,666.80
Secretary's Award for Excellence in Historic Preservation	50	1	50	3	150	18.52	2,778.00
Secretary's Planning Award	50	1	50	3	150	18.52	2,778.00
Secretary's Housing Design Awards	50	1	50	3	150	18.52	2,778.00
Innovation in Affordable Housing Student Design and Planning Competition	50	1	50	3	150	18.52	2,778.00
Secretary's Award for Tribal Housing Impact	30	1	30	3	90	18.52	1,666.80
Total	310		310		930		17,223.60

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comments in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Office, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2024–05868 Filed 3–19–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2024–N016; FXES11130300000–245–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before April 19, 2024.

ADDRESSES:

Document availability and comment submission: Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email (preferred method): permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in 50 CFR part 17 provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES81968B	Curtis Hart, Hudson, MI.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), gray bat (*M. grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	AL, AR, CO, CT, DC, DE, GA, FL, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, identify, handle, collect non-intrusive measurements, band, radio-tag, take wing biopsy samples, and release.	Amend.
TE28573D	Adam Rusk, Prairie Village, KS.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), gray bat (*M. grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	AL, AR, CO, CT, DC, DE, GA, FL, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, harp trap, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Renew/amend.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES13580D	Julia Wilson, Bloomington, IN.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), and gray bat (*M. grisescens*).	AL, AR, CO, CT, DC, DE, GA, FL, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, harp trap, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Renew/ Amend.
PER0003355	Josiah Maine, Kansas City, MO.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), gray bat (*M. grisescens*).	AL, AR, CT, DC, DE, GA, FL, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Amend.
PER0003405	Crystal Griffin, Overland Park, KS.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), gray bat (*M. grisescens*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*).	AL, AR, CO, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets or harp traps, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Amend.
ES07358A	Civil and Environmental Consultants, Inc., Indianapolis, IN.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), gray bat (*M. grisescens*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), and Ozark big-eared bat (*C.t. ingens*).	AL, AR, CN, DE, DC, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MN, MO, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets or harp traps, identify, handle, collect non-intrusive measurements, band, radio-tag, and release.	Amend.
ESPER7529560	The Xerces Society for Invertebrate Conservation, Portland, OR.	Rusty patched bumble bee (*Bombus affinis*).	IA, MN	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	New.
PER7549968	Josiah Kleinhenz, Cincinnati, OH.	Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), gray bat (*M. grisescens*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat (*Corynorhinus townsendii virginianus*).	AL, AR, CT, DC, DE, GA, FL, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, harp trap, identify, handle, collect non-intrusive measurements, band, collect bio samples, radio-tag, enter hibernacula, and release.	New.
ES95228C	Terry VanDeWalle, Brandon, IA.	Rusty patched bumble bee (*Bombus affinis*) and Eastern Massasauga Rattlesnake (*Sistrurus catenatus).*	IA, IL, IN, MI, MN, MO, NY, OH, PA, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, tag, collection bio-samples, and release.	Renew.
TE82666A	Justin Boyles, Carbondale, IL.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), and gray bat (*M. grisescens*).	AL, AR, CO, CT, DC, DE, GA, FL, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MS, MO, MT, NC, ND, NE, NH, NJ, NM, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, harp trap, identify, handle, collect non-intrusive measurements, band, collect bio samples, radio-tag, enter hibernacula, and release.	Renew and Amend.
ES85294C	Amy Wolf, Green Bay, WI.	Rusty patched bumble bee (*Bombus affinis*).	WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, and release.	Renew.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER0016072	Brittany Rogness, Urbana, IL.	Add new species—tri-colored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), northern long-eared bat (*M. septentrionalis*), and gray bat (*M. grisescens*).	IL, IN, IA, MI, MN, MO, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Add new activity—salvage—to existing authorized activities: Capture, handle, release, conduct radio-telemetry, and bio-sample.	Amend.
ES41671D	Brian Carlson, Morgantown, WV.	Add clubshell (*Pleurobema clava*), northern riffleshell (*Epioblasma torulosa rangiana*), round hickorynut (*Obovaria subrotunda*), and longsolid (*Fusconaia subrotunda*) to existing authorized species: 12 species of Freshwater mussels, big sandy crayfish (*Cambarus callainus*), Guyandotte River Crayfish (*Cambarus veteranus*), and candy darter (*Etheostoma osburni*).	AL, AR, CT, DE, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NH, NJ, NY, NC, OK, OH, PA, TN, VT, VA, WV, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Add PIT and shell tagging to existing authorized activities: capture, handle, hold, and relocate due to stranding.	Renew/ Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Lori Nordstrom,

Assistant Regional Director, Ecological Service, Midwest Region.

[FR Doc. 2024–05820 Filed 3–19–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2024–N003; FXES11130100000C4–245–FF01E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 100 Species in American Sāmoa, California, Hawaii, Idaho, Oregon, and Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews for 100 species in American Sāmoa, California, Hawaii, Idaho, Oregon, and Washington under the Endangered Species Act of 1973. Three of these species also occur outside of United States jurisdiction, in Canada and the South Pacific. A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last reviews.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than May 20, 2024. However, we will continue to accept new information about any species at any time.

ADDRESSES: *Submitting Information on Species:*

• *Any of the 89 species occurring in Hawaii or American Sāmoa:*

U.S. mail: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850; or

Email: pifwo_admin@fws.gov.

• *Woodland caribou and Spalding's catchfly:*

U.S. mail: State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S Vinnell Way, Suite 368, Boise, ID 83709; or

Email: ifwo@fws.gov.

• *Oregon silverspot butterfly:*

U.S. mail: State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; or

Email: fw1ofwo@fws.gov.

• *Pocket gophers, island marble butterfly, showy stickseed, White Bluffs bladderpod, and Wenatchee Mountains checkermallow:*

U.S. mail: State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Dr. Southeast, Suite 102, Lacey, WA 98503; or

Email: WFWO_LR@fws.gov.

FOR FURTHER INFORMATION CONTACT: For general information, please contact Grant Canterbury, Regional Recovery Biologist, at 503–231–6151. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

For information about the following specific species, contact the following people:

- *Any of the 89 species occurring in Hawaii or American Sāmoa:* Megan Laut, Recovery Program Manager, Pacific Islands Fish and Wildlife Office, 808–792–9400; *pifwo_admin@fws.gov.*
- *Woodland caribou and Spalding's catchfly:* Tracy Melbihess, Assistant State Supervisor, Idaho Fish and Wildlife Office, 208–378–5243; *ifwo@fws.gov.*
- *Oregon silverspot butterfly:* Jennifer Siani, Recovery Coordinator, Oregon Fish and Wildlife Office, 503–231–6179; *fw1ofwo@fws.gov.*
- *Pocket gophers, island marble butterfly, showy stickseed, White Bluffs bladderpod, and Wenatchee Mountains checkermallow:* Rose Agbalog, Recovery Coordinator, Washington Fish and Wildlife Office, 564–200–2124; *WFWO_LR@fws.gov.*

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year status reviews?

Under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531, *et seq.*), we maintain lists of endangered and threatened wildlife and plant species (referred to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants). Section 4(c)(2) of the Act requires us to review each listed species' status at least once every 5 years. For additional information about 5-year status reviews, refer to our factsheet at *https://www.fws.gov/project/five-year-status-reviews.*

What information do we consider in our review?

A 5-year status review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that have become available since the listing determination or most recent status reviews, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends in relation to the five listing factors (as defined in section 4(a)(1) of the Act); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year status review and will also be useful in evaluating the ongoing recovery programs for these species.

Which species are under review?

This notice announces our active review of 100 species, including 6 mammals, 6 birds, 2 snails, 11 insects, and 75 plants, as listed in the table below.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
ANIMALS				
Mammals:				
Pacific sheath-tailed bat (pe'ape'a vai, tagiti, beka beka) (South Pacific sub-species).	*Emballonura semicaudata semicaudata.*	Endangered	American Sāmoa, Fiji, Sāmoa, Tonga, Vanuatu.	81 FR 65466, 9/22/2016.
Woodland caribou (southern mountain distinct population segment (DPS)).	*Rangifer tarandus caribou*	Endangered	Idaho, Washington, Canada (British Columbia).	84 FR 52598, 10/02/2019.
Olympia pocket gopher	*Thomomys mazama pugetensis*	Threatened	Washington	79 FR 19760, 4/9/2014.
Roy Prairie pocket gopher	*Thomomys mazama glacialis*	Threatened	Washington	79 FR 19760, 4/9/2014.
Tenino pocket gopher	*Thomomys mazama tumuli*	Threatened	Washington	79 FR 19760, 4/9/2014.
Yelm pocket gopher	*Thomomys mazama yelmensis*	Threatened	Washington	79 FR 19760, 4/9/2014.
Birds:				
Hawaiian duck (koloa maoli)	*Anas wyvilliana*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Hawaiian coot ('alae ke'oke'o)	*Fulica alai*	Endangered	Hawaii	35 FR 16047, 10/13/1970.
Friendly ground-dove (tu'aimeo) (American Sāmoa DPS).	*Gallicolumba stairi*	Endangered	American Sāmoa	81 FR 65466, 9/22/2016.
Hawaiian common gallinule ('alae 'ula).	*Gallinula galeata sandvicensis*	Endangered	Hawaii	32 FR 4001, 3/11/1967.
Ma'o (ma'oma'o)	*Gymnomyza samoensis*	Endangered	American Sāmoa, Sāmoa	81 FR 65466, 9/22/2016.
Band-rumped storm-petrel ('akē 'akē) (Hawaii DPS).	*Hydrobates castro*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Snails:				
No common name	*Eua zebrina*	Endangered	American Sāmoa	81 FR 65466, 9/22/2016.
No common name	*Ostodes strigatus*	Endangered	American Sāmoa	81 FR 65466, 9/22/2016.
Insects:				
Island marble butterfly	*Euchloe ausonides insulanus*	Endangered	Washington	85 FR 26786, 5/5/2020.
Yellow-faced bee	*Hylaeus anthracinus*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Yellow-faced bee	*Hylaeus assimulans*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Yellow-faced bee	*Hylaeus facilis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Yellow-faced bee	*Hylaeus hilaris*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Yellow-faced bee	*Hylaeus kuakea*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Yellow-faced bee	*Hylaeus longiceps*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Yellow-faced bee	*Hylaeus mana*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Mariana eight-spot butterfly (ababbang, libweibwogh).	*Hypolimnas octocula marianensis*	Endangered	Hawaii	80 FR 59423, 10/1/2015.
Orangeblack Hawaiian damselfly.	*Megalagrion xanthomelas*	Endangered	Hawaii	81 FR 67786, 9/30/2016.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
Oregon silverspot butterfly	*Speyeria zerene hippolyta*	Threatened	Oregon, California, Washington	45 FR 44935, 7/2/1980.
	PLANTS			
Flowering Plants:				
Māhoe	*Alectryon macrococcus*	Endangered	Hawaii	57 FR 20772, 5/15/1992.
No common name	*Amaranthus brownii*	Endangered	Hawaii	61 FR 43178, 8/21/1996.
No common name	*Bonamia menziesii*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
Maui reedgrass	*Calamagrostis expansa*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Calamagrostis hillebrandii*	Endangered	Hawaii	78 FR 32014, 5/28/2013.
ʻĀwikiwiki	*Canavalia pubescens*	Endangered	Hawaii	78 FR 32014, 5/28/2013.
Kāmanomano	*Cenchrus agrimonioides*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
Kauila	*Colubrina oppositifolia*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
No common name	*Cyanea kauaulaensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Cyperus neokunthianus*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Cyperus pennatiformis*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
Haʻiwale	*Cyrtandra hematos*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
ʻAkoko	*Euphorbia haeleeleana*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
Heau	*Exocarpos menziesii*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Festuca hawaiiensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Mēhamehame	*Flueggea neowawraea*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
Nānū	*Gardenia brighamii*	Endangered	Hawaii	50 FR 33728, 8/21/1985.
Nānū	*Gardenia remyi*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Gouania meyenii*	Endangered	Hawaii	56 FR 55770, 10/29/1991.
Showy stickseed	*Hackelia venusta*	Endangered	Washington	67 FR 5515, 2/6/2002.
Maʻo hau hele	*Hibiscus brackenridgei*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
Hilo ischaemum	*Ischaemum byrone*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Aupaka	*Isodendrion longifolium*	Threatened	Hawaii	61 FR 53108, 10/10/1996.
Wahine noho kula	*Isodendrion pyrifolium*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
ʻOhe	*Joinvillea ascendens* ssp. *ascendens.*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Kamapuaʻa	*Kadua fluviatilis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Kadua haupuensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Labordia lorenciana*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Lobelia niihauensis*	Endangered	Hawaii	56 FR 55770, 10/29/1991.
No common name	*Lysimachia filifolia*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
Uhiuhi	*Mezoneuron kavaiense*	Endangered	Hawaii	51 FR 24672, 7/8/1986.
Kōlea	*Myrsine fosbergii*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
ʻAiea	*Nothocestrum latifolium*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Hōlei	*Ochrosia haleakalae*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Hōlei	*Ochrosia kilaueaensis*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
No common name	*Phyllostegia brevidens*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Phyllostegia parviflora*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
White Bluffs bladderpod	*Physaria douglasii ssp. tuplashensis.*	Threatened	Washington	78 FR 23983, 4/23/2013.
Kuahiwi laukahi	*Plantago princeps*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
No common name	*Platanthera holochila*	Endangered	Hawaii	61 FR 53108, 10/10/1996.
ʻIhi	*Portulaca villosa*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Baker's loulu	*Pritchardia bakeri*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Loulu	*Pritchardia remota*	Endangered	Hawaii	61 FR 43178, 8/21/1996.
ʻEnaʻena	*Pseudognaphalium sandwicensium* var. *molokaiense.*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Makou	*Ranunculus hawaiensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Makou	*Ranunculus mauiensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Sanicula sandwicensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
ʻIliahi	*Santalum involutum*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Dwarf naupaka	*Scaevola coriacea*	Endangered	Hawaii	51 FR 17971, 5/16/1986.
ʻĀwiwi	*Schenkia sebaeoides*	Endangered	Hawaii	56 FR 55770, 10/29/1991.
No common name	*Schiedea diffusa* ssp. *diffusa*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Māʻoliʻoli	*Schiedea pubescens*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Schiedea verticillata*	Endangered	Hawaii	61 FR 43178, 8/21/1996.
ʻŌhai	*Sesbania tomentosa*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
ʻĀnunu	*Sicyos lanceoloideus*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
ʻĀnunu	*Sicyos macrophyllus*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Wenatchee Mountains checkermallow.	*Sidalcea oregana* var. *calva*	Endangered	Washington	64 FR 71680, 12/22/1999.
No common name	*Silene lanceolata*	Endangered	Hawaii	57 FR 46325, 10/8/1992.
Spalding's catchfly	*Silene spaldingii*	Threatened	Idaho, Washington, Oregon	66 FR 51598, 10/10/2001.
Pōpolo	*Solanum nelsonii*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
ʻAiakeakua, pōpolo	*Solanum sandwicense*	Endangered	Hawaii	59 FR 9304, 2/25/1994.
No common name	*Spermolepis hawaiiensis*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
Aʻe	*Zanthoxylum hawaiiense*	Endangered	Hawaii	59 FR 10305, 3/4/1994.
Ferns and Allies:				
Palai lāʻau	*Adenophorus periens*	Endangered	Hawaii	59 FR 56333, 11/10/1994.
No common name	*Asplenium dielerectum* (=*Diellia erecta*).	Endangered	Hawaii	59 FR 56333, 11/10/1994.
No common name	*Asplenium diellaciniatum*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Pauoa	*Ctenitis squamigera*	Endangered	Hawaii	59 FR 49025, 9/26/1994.
No common name	*Deparia kaalaana*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Hohiu	*Dryopteris glabra* var. *pusilla*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Olua	*Hypolepis hawaiiensis* var. *mauiensis.*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Kupukupu makaliʻi	*Menisciopsis boydiae* (=*Cyclosorus boydiae*).	Endangered	Hawaii	81 FR 67786, 9/30/2016.

Common name	Scientific name	Status	Known range of species occurrence	Final listing rule and publication date
No common name	*Microlepia strigosa* var. *mauiensis*	Endangered	Hawaii	81 FR 67786, 9/30/2016.
Wāwae'iole	*Phlegmariurus nutans*	Endangered	Hawaii	59 FR 14482, 3/28/1994.
No common name	*Phlegmariurus stemmermanniae* (=*Huperzia stemmermanniae*).	Endangered	Hawaii	81 FR 67786, 9/30/2016.
No common name	*Pteris lidgatei*	Endangered	Hawaii	59 FR 49025, 9/26/1994.

Request for New Information

To ensure that a 5-year status review is complete and based on the best available scientific and commercial information, we request new information from all sources. See What Information Do We Consider in Our Review? for specific criteria. If you submit information, please support it with documentation such as maps, references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for any species listed in the table, please submit your comments and materials to the appropriate contact in **ADDRESSES**.

Public Availability of Comments

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.

Completed and Active Reviews

A table including hyperlinks to the most recently completed 5-year status review for each listed species, as well as notices of 5-year status reviews that are currently in progress, is available at *https://ecos.fws.gov/ecp/report/species-five-year-review.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Bridget Fahey,

Acting Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–05822 Filed 3–19–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037601; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), San Diego State University (SDSU) intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Jaime Lennox, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182, telephone (619) 594–4575, email *jlennox@sdsu.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 SDSU, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 90 cultural items have been requested for repatriation. The 90 unassociated funerary objects are 66 ground stone objects and 24 pieces of worked shell. Ethnographer and archaeologist J.P. Harrington removed the cultural items from the Burton Mound Site located in Santa Barbara County, CA (CMP–SDSU–0568; CA–SBA–28; Harrington Collection) at an unknown date; Harrington's daughter, Awona Harrington, donated the collection to SDSU in 1961.

A total of 118 cultural items have been requested for repatriation. The 118 unassociated funerary objects are 117 faunal fragments and one shell fragment. The cultural items were removed from site LAN–466 located in Los Angeles County, CA (CMP–SDSU–1031) at an unknown date by unknown individuals; SDSU received the collection at an unknown date.

Determinations

SDSU has determined that:

- The 208 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains, and are connected, either 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 an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Santa Ynez Band of Chumash Indians of the Santa Ynez Reservation, California.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, SDSU 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. SDSU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05856 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037611; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Ohio History Connection, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ohio History Connection intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Nekole Alligood, NAGPRA Specialist, Ohio History Connection, 800 E 17th Avenue, Columbus, OH 43211, telephone (405) 933–7643, email *nalligood@ohiohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ohio History Connection, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of five cultural items have been requested for repatriation. The five unassociated funerary objects are two gorgets, one ax, one set of shell beads, and one birdstone.

The cannel coal gorget was obtained by Dr. Gordon Meuser on an unknown date from a ''gravel kame burial'' at an unknown location in Lucas County, OH. It is unclear if he was the collector or received it from someone else. On a date likely between 1942 and 1974, the gorget was purchased by Mrs. Carol Heckendorn, who then donated it to Ohio History Connection in 1974.

The ax, one gorget, and shell beads were excavated at Turkey Foot Rock in Lucas County, Ohio in the fall of 1933 by Richard Larimer. The materials were donated to the Ohio History Connection in 1933 by Richard Larimer.

The birdstone was collected from an unknown location in Lucas County, OH by W.K. Moorehead prior to 1897. The material was then donated to the Ohio History Connection in 1897.

Determinations

The Ohio History Connection has determined that:

- The five unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, the Ohio History Connection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ohio History Connection is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25

U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05849 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037600; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Pennsylvania Museum of Archaeology and Anthropology (Penn 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.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Dr. Christopher Woods, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, email *director@pennmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Penn Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual has been reasonably identified. No associated funerary objects are present. The human remains are a cranium and mandible of one individual who was recorded as probably female, aged 50 or more years old. Lieutenant Commander Ebenezer Farrand of the United States Navy removed the human remains from a burial platform mound at the site of Bear Point [1BA1] in Baldwin County, Alabama. Bear Point is a protohistoric archaeological site dated to the Bear Point Phase (c. 1550 to 1700 C.E.) and is attributed to the Pensacola Archaeological Culture. The remains were transferred to Dr. Isaac Hulse in 1844 and by 1849 transferred to Dr. Samuel G. Morton. After Morton's death in 1851, the remains were transferred to the Academy of Natural Sciences in 1853. In 1966, the human remains were loaned to the Penn Museum, and in 1997, they were formally gifted to the Penn Museum (PM# 97–606–1455).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains.

Determinations

The Penn Museum has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Jena Band of Choctaw Indians; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Seminole Tribe of Florida; The Choctaw Nation of Oklahoma; and The Muscogee (Creek) Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 19, 2024. If competing requests for repatriation are received, the Penn 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 Penn Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05855 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037603; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology, Harvard University (PMAE) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were collected at the Chemawa (Salem) Indian School, Marion County, OR.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Jane Pickering, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–2374, email *jpickering@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

Human remains representing, at minimum, three individuals were collected at Chemawa (Salem) Indian

School in Marion County, OR. The human remains include hair clippings from one individual who was recorded as being 15 years old and identified as ''Snohomish;'' one individual who was recorded as being 16 years old and identified as ''Snoqualmie;'' and one individual who was recorded as being 17 years old and identified as ''Swinomish.'' James T. Ryan took the hair clippings at the Chemawa (Salem) Indian School between 1930 and 1933. Ryan sent the hair clippings to George Woodbury, who donated the hair clippings to the PMAE in 1935. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: kinship and anthropological.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate lineal descendants, Indian Tribes, and Native Hawaiian organizations, the PMAE has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Tulalip Tribes of Washington.

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 19, 2024. If competing requests for repatriation are received, the PMAE must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribe identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024) but in the older format. 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: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05858 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037599; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Pennsylvania Museum of Archaeology and Anthropology (Penn 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.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Dr. Christopher Woods, Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 3260 South Street, Philadelphia, PA 19104–6324, telephone (215) 898–4050, email *director@pennmuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Penn Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, two individuals have been reasonably identified. No associated funerary objects are present. The human remains are a cranium of one individual who was recorded as female, aged 9 to 11 years old from Georgia. Dr. J. Hutchins was in possession of the human remains by 1840. The human remains are a cranium and mandible of one individual who was recorded as male, aged 40 to 50 years old. Dr. W.J. Wilson was in possession of the human remains by 1839. Both individuals were identified as ''Choctaw.'' The human remains of both individuals were transferred to Dr. Samuel G. Morton no later than 1840. After Morton's death in 1851, the remains were transferred to the Academy of Natural Sciences in 1853. In 1966, the human remains were loaned to the Penn Museum, and in 1997, they were formally gifted to the Penn Museum (PM# 97–606–22 and PM# 97–606–408).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains.

Determinations

The Penn Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Jena Band of Choctaw Indians; Mississippi Band of Choctaw Indians; and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representatives identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization

not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 19, 2024. If competing requests for repatriation are received, the Penn 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 Penn Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05854 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037609; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Ohio History Connection, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ohio History Connection intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Nekole Alligood, NAGPRA Specialist, Ohio History Connection, 800 E 17th Ave., Columbus, OH 43211, telephone (405) 933–7643, email *nalligood@ohiohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ohio History Connection, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 27 cultural items have been requested for repatriation. The 27 unassociated funerary objects are one lot of shell necklace beads, one kettle, one effigy ladle, one bowl, one mug, one ax, six bone and metal handle fragments, one hook, one gorget, one cross pendant, two glass shards, four armbands, one bracelet, two silver fragments, one hair ornament, and two brooches. This material was excavated by A.W. Agner. It is from ''an Indian grave, old burial ground, one mile east of Ottawa, Ohio on the Blanchard River'' in Putnam County. Ohio History Connection purchased the material on March 20, 1919.

Determinations

The Ohio History Connection has determined that:

- The 27 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, the Ohio History Connection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ohio History Connection is responsible for sending a copy of this notice to the

Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05863 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037613; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Ohio History Connection, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ohio History Connection intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Nekole Alligood, NAGPRA Specialist, Ohio History Connection, 800 E 17th Avenue, Columbus, OH 43211, telephone (405) 933–7643, email *nalligood@ohiohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ohio History Connection, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of nine cultural items have been requested for repatriation. The nine unassociated funerary objects are one ax, one kettle, one kettle lid, two bowls, one brooch, one effigy ladle, one bracelet, one coat button. The materials were taken from a burial at Indian Green, Findlay, Hancock County, OH on an unknown date. The items were donated to Ohio History Connection in 1917 by H. F. Burkett.

Determinations

The Ohio History Connection has determined that:

- The nine unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Delaware Nation, Oklahoma; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Kaw Nation, Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saint Regis Mohawk Tribe; Seneca-Cayuga Nation; Shawnee Tribe; Tonawanda Band of Seneca; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, the Ohio History Connection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ohio History Connection is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05864 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037608; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Chicago Historical Society, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Chicago Historical Society 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.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Jamie Lewis, Registrar, Chicago Historical Society, 1601 N Clark Street, Chicago, IL 60614, telephone (312) 799–2067, email *jlewis@chicagohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Chicago Historical Society, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing one named individual have been reasonably identified. No associated funerary objects are present. The remains include a piece of skin taken from the back of Chief Cut Nose, whose Dakota name was Marpiya Okinajin. The piece of tanned skin is attached to a certificate. This was donated to the Chicago Historical Society by George S. Knapp in 1883. It is unknown how Knapp acquired the remains. It is known from the historical record that Marpiya Okinajin was one of the 38 Dakota men hanged in Mankato, MN in 1862 at the end of the U.S.-Dakota War and that his remains were removed from his place of burial in Mankato.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains described in this notice.

Determinations

The Chicago Historical Society has determined that:

- The human remains described in this notice represent the physical remains of a named individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Lower Sioux Indian Community in the State of Minnesota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 19, 2024. If competing requests for repatriation are received, the Chicago Historical Society 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 Chicago Historical Society is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05862 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037602; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: New Jersey State Museum, Trenton, NJ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the New Jersey State Museum has completed an inventory of associated funerary objects and has determined that there is a cultural affiliation between the associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the associated funerary objects in this notice may occur on or after April 19, 2024.

ADDRESSES: Dr. Gregory D. Lattanzi, New Jersey State Museum, 205 West State Street, Trenton, NJ 08625, telephone (609) 984–9327, email *gregory.lattanzi@sos.nj.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the New Jersey State Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, 174 associated funerary objects are one large, reconstructed pot, pottery sherds, and lithics. This list comprises additional objects from a Notice of Inventory Completion published in the **Federal Register** (83 FR 28262–28263, June 18, 2018). These funerary objects were excavated by Norman Lister at the Abbott Farm National Historic Landmark (28–Me–1), located in Hamilton Township, Mercer County, sometime in the early 1930s. There is no record of the associated funerary objects, being treated with pesticides, preservatives, or other substances that represent a potential hazard to the object(s) or to person(s) handling the object(s).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the associated funerary objects described in this notice.

Determinations

The New Jersey State Museum has determined that:

- The 174 objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a reasonable connection between the associated funerary objects described in this notice and the Delaware Nation, Oklahoma; Delaware Tribe of Indians; and the Stockbridge Munsee Community, Wisconsin.

Requests for Repatriation

Written requests for repatriation of the associated funerary objects in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the associated funerary objects in this notice to a requestor may occur on or after April 19, 2024. If competing requests for repatriation are received, the New Jersey State Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the associated funerary objects are considered a single request and not competing requests. The New Jersey State Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05857 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037605; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the American Museum of Natural History (AMNH) 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.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Nell Murphy, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, email *nmurphy@amnh.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the AMNH, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. In an unknown year, human remains representing a minimum of one individual were removed from NY, Madison County, Oneida Valley, one mile from Oneida Lake, banks of Oneida Creek, Sterling's Farm. Walter Hildburg purchased these remains from Sterling in February 1898. The AMNH acquired the remains of this individual in 1917 as a gift from Walter Hildburgh and accessioned them that same year. No associated funerary objects are present. The following types of information were used to determine affiliation: archeological, biological, geographical, historical, and oral history.

While it no longer does so, in the past, the Museum applied potentially hazardous pesticides to items in the collections. Museum records do not list specific objects treated or which of several chemicals used were applied to a particular item. Therefore, those handling this material should follow the advice of industrial hygienists or medical personnel with specialized training in occupational health or with potentially hazardous substances.

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains and associated funerary objects described in this notice.

Determinations

The AMNH has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains and the Oneida Indian Nation.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 19, 2024. If competing requests for repatriation are received, the AMNH 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 AMNH is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05860 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037612; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Ohio History Connection, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ohio History Connection intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Nekole Alligood, NAGPRA Specialist, Ohio History Connection, 800 E 17th Avenue, Columbus, OH 43211, telephone (405) 933–7643, email *nalligood@ohiohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ohio History Connection, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 11 cultural items have been requested for repatriation. The 11 unassociated funerary objects are objects are one bead, one bar weight, one projectile point, seven gorgets, and one pipe fragment.

The cultural items were removed from Hancock County, OH. One bead was removed from a stone burial on the Emanual Smith Farm, in an unknown

location within Hancock County, OH. This bead was collected sometime between 1820–1912 and then donated to Ohio History Connection sometime between 1885–1912. The remaining materials were collected from unknown locations within Amanda Township, Hancock County, Ohio by Mr. George W. Van Horn. The materials were donated to Ohio History Connection on March 8, 1905 by the collector.

Determinations

The Ohio History Connection has determined that:

- The 11 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Cayuga Nation; Eastern Shawnee Tribe of Oklahoma; Kaw Nation, Oklahoma; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Saint Regis Mohawk Tribe; Seneca-Cayuga Nation; Shawnee Tribe; Tonawanda Band of Seneca; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, the Ohio History Connection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ohio History Connection is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05851 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037604; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Tennessee, Department of Anthropology, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Tennessee, Department of Anthropology (UTK), 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 Leavenworth County, KS.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Dr. Ozlem Kilic, University of Tennessee, Office of the Provost, 527 Andy Holt Tower, Knoxville, TN 37996–0152, telephone (865) 974–2454, email *okilic@utk.edu* and *vpaa@utk.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 UTK. 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 UTK.

Description

Human remains representing, at minimum, one individual were removed from Leavenworth County, KS, by an unknown party. Based on the single note available, this Ancestor was likely removed in the fall of 1964 and either turned over to or confiscated by the Kansas Bureau of Investigation. This individual was likely sent to Dr. William Bass at the University of Kansas for examination and retained by Bass once he determined they were not a missing person or crime victim. This individual was likely brought by Bass to Knoxville when he began working at UTK in 1971. 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, geographical information, historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, UTK 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 Nez Perce Tribe.

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 19, 2024. If competing requests for repatriation are received, UTK 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. UTK is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

This notice was submitted after the effective date of the revised regulations (88 FR 86452, December 13, 2023, effective January 12, 2024) but in the older format. 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: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05859 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037597; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Disposition: The United States Army Garrison—Hawaii, Pōhakuloa Training Area, Hilo, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the United States Army Garrison-Hawaii (USAG–HI) Pōhakuloa Training Area (PTA) intends to carry out the disposition of human remains, associated funerary objects, unassociated funerary objects, sacred objects, or objects of cultural patrimony removed from Federal or Tribal lands to the lineal descendants, Indian Tribe, or Native Hawaiian organization with priority for disposition in this notice.

DATES: Disposition of the human remains or cultural items in this notice may occur on or after April 19, 2024. If no claim for disposition is received by March 20, 2025, the human remains or cultural items in this notice will become unclaimed human remains or cultural items.

ADDRESSES: Dr. Heidi E Miller, USAG–HI PTA, P.O. Box 4607, Hilo, HI 96720, telephone (808) 787–7802, email *heidi.e.miller10.civ@army.mil.*

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 USAG–HI PTA, and additional information on the human remains or cultural items in this notice, including the results of consultation, can be found in the related records. The National Park Service is not responsible for the identifications in this notice.

Abstract of Information Available

Based on the information available, three associated funerary objects, a hōkeo and two ipu gourds, were identified in the Pu'uanahulu Ahupua'a, North Kona District, Hawai'i Island, Hawai'i. These items were removed from their identified location in August 2022 at the request of NAGPRA Consulting Parties and placed in the curation facility at the USAG–HI PTA.

Determinations

The USAG–HI PTA has determined that:

- The three objects described in this notice are reasonably believed to have been placed intentionally with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- The Native Hawaii Organizations House of Nobles and Royal Heirs, Ka O Ho'ohuli, 'Ohana Kailiwai-Ray, 'Ohana Kapele, 'Ohana Lindsey, 'Ohana Medeiros, and Protect Keopuka 'Ohana have priority for disposition of the cultural items described in this notice.

Claims for Disposition

Written claims for disposition of the human remains or cultural items in this notice must be sent to the appropriate official identified in this notice under **ADDRESSES**. If no claim for disposition is received by March 20, 2025, the human remains or cultural items in this notice will become unclaimed human remains or cultural items. Claims for disposition may be submitted by:

1. Any lineal descendant, Indian Tribe, or Native Hawaiian organization 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 they have priority for disposition.

Disposition of the human remains or cultural items in this notice may occur on or after April 19, 2024. If competing claims for disposition are received, the USAG–HI PTA must determine the most appropriate claimant prior to disposition. Requests for joint disposition of the human remains or cultural items are considered a single request and not competing requests. The USAG–HI PTA is responsible for sending a copy of this notice to the lineal descendants, Indian Tribes, and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3002, and the implementing regulations, 43 CFR 10.7.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05852 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037607; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Office of the State Archaeologist Bioarchaeology Program, University of Iowa, Iowa City, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Office of the State Archaeologist Bioarchaeology Program (OSA–BP) 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.

DATES: Repatriation of the human remains in this notice may occur on or after April 19, 2024.

ADDRESSES: Dr. Lara Noldner, Office of the State Archaeologist Bioarchaeology Program, University of Iowa, 700 S Clinton Street, Iowa City, IA 52242, telephone (319) 384–0740, email *lara-noldner@uiowa.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 OSA–BP, and additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

Based on the information available, human remains representing, at least, one individual have been reasonably identified. No associated funerary objects are present. In 1931, the human remains were removed from an unknown location, possibly near Yucatan, Houston County, MN. A single rib fragment is believed to be part of a skeleton that was discovered during road work near Yucatan, MN, the same year. This grave was excavated by two students from Luther College, but a site number was not assigned or recorded. The Minnesota Office of the State Archaeologist has no record of a site in the general area. The skeleton was encased in plaster and kept at the Vesterheim Norwegian American Museum in Decorah, IA. At an unknown date, the human remains were transferred to Luther College. The skeleton was reburied in the 1970s in an unknown location by a student affiliated with Luther College. In 2001, a rib fragment believed to belong to this set of remains was discovered in the Luther College Archaeological Laboratory and was transferred to the OSA–BP. An adult of indeterminate age and sex is represented by this fragment (BP 1473).

Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is reasonably identified by the geographical location and acquisition history of the human remains described in this notice.

Determinations

The OSA–BP has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a reasonable connection between the human remains described in this notice and the Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Prairie Island Indian Community in the State of Minnesota; Red Lake Band of Chippewa Indians, Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Upper Sioux Community, Minnesota; and the Yankton Sioux Tribe of South Dakota.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after April 19, 2024. If competing requests for repatriation are received, the OSA–BP 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 OSA–BP is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05861 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037610; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Ohio History Connection, Columbus, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Ohio History Connection intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Nekole Alligood, NAGPRA Specialist, Ohio History Connection, 800 E 17th Avenue, Columbus, OH 43211, telephone (405) 933–7643, email *nalligood@ohiohistory.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Ohio History Connection, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 28 cultural items have been requested for repatriation. The 28 unassociated funerary objects are one ceramic vessel, two lots of shell beads, two antler drifts, one lot of faunal remains, one bone harpoon, and 21 antler flint-chipping tools.

The vessel was collected on an unknown date from Harmon Cemetery (33 PU 1) in Blanchard Township, Putnam County, OH. The area the vessel came from is described as a ''burial ground and village site. Material found in gravel pits and during construction work''. The collector is unknown. Dr. Gordon Meuser donated the beads to Ohio History Connection in 1942.

The two lots of shell beads, antler drifts, faunal remains, bone harpoon, and antler flint-chipping tools were collected on an unknown date from Hay-Jay Mound, also known as W.J. Clark Kame Site (33 WI 1) in Bridgewater Township, Williams County, OH. The collector is unknown. Dr. Gordon Meuser donated the beads to Ohio History Connection on June 30, 1942. The remaining materials were purchased from an unknown entity by Ohio History Connection on June 26, 2942.

Determinations

The Ohio History Connection has determined that:

- The 28 unassociated funerary objects described in this notice are reasonably believed to have been placed

intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.

• There is a reasonable connection between the cultural items described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Cayuga Nation; Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Forest County Potawatomi Community, Wisconsin; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Kaw Nation, Oklahoma; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan; Little River Band of Ottawa Indians, Michigan; Little Shell Tribe of Chippewa Indians of Montana; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band); Nottawaseppi Huron Band of the Potawatomi, Michigan; Omaha Tribe of Nebraska; Oneida Indian Nation; Oneida Nation; Onondaga Nation; Ottawa Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Prairie Band Potawatomi Nation; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Saint Regis Mohawk Tribe; Sault Ste. Marie Tribe of Chippewa Indians, Michigan; Seneca Nation of Indians; Seneca-Cayuga Nation; Shawnee Tribe; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Tonawanda Band of Seneca; Turtle Mountain Band of Chippewa Indians of North Dakota; Tuscarora Nation; and the Wyandotte Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, the Ohio History Connection must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Ohio History Connection is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05848 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037598; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intended Repatriation: Boston Children's Museum, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Boston Children's Museum intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and objects of cultural patrimony and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice.

DATES: Repatriation of the cultural items in this notice may occur on or after April 19, 2024.

ADDRESSES: Melissa Higgins, Boston Children's Museum, 308 Congress Street, Boston, MA 02210, telephone (617) 986–3692, email *Higgins@BostonChildrensMuseum.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 Boston Children's Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records. The National Park Service is not responsible for the determinations in this notice.

Abstract of Information Available

A total of 19 cultural items have been requested for repatriation. The 16 unassociated funerary objects are one clay vessel, 11 clay sherds, two stone bullets, and two projectile points. The three objects of cultural patrimony are projectile points.

The 16 unassociated funerary objects were accessioned without an accession number or donor listed. They were recorded as ''From Creek Indian's grave in North Alabama. Probably placed there in 1800.'' The clay vessel (Object ID IA/NN 442) is a small, brownish-grey cup with a slightly curved base (narrower at the base and widens towards the rim). The rim is uneven; lower on one side. The vessel measures 1 ½''x and is about 1 ¾'' diameter at the rim. The pottery sherds (Object IDs IA/NN 443 a–j) are a group of 11 sherds in various colors and sizes, potentially from different vessels. The largest sherd is approximately 3 ½'', the smallest sherds are less than 1''. The two stone bullets (Object IDs IA/NN 445 a and b) measure approximately 5/8'' each and have slightly pock-marked surfaces. One is more grey in tone, the other is more orange and brown. The stone projectile point (Object ID IA/NN 444 b) is roughly triangular in shape and measures approximately 1 ¾'' long and 1 ¼'' wide, with a greenish color to the stone and a red tone at the tip of the projectile. The final unassociated funerary object is a projectile point that has had two object IDs (N.Am.I 942 and

N.Am.I 444) and is now known as INM 444 S1.

The three additional objects of cultural patrimony (projectile points) were donated by Mr. Charles Floyd in 1939 and have Object ID IA/NN 932. They are described as a set of three stone projectile points from Georgia. Each has an irregular shape and variations in color. One is grey with red veins in the stone. One is quartz-like with an opaque white and yellow surface on one side and grey granules on the opposite side. One is yellow/brown in color and appears to have a broken tip.

Determinations

Boston Children's Museum has determined that:

- The 16 unassociated funerary objects described in this notice are reasonably believed to have been placed intentionally with or near human remains, and are connected, either at the time of death or later as part of the death rite or ceremony of a Native American culture according to the Native American traditional knowledge of a lineal descendant, Indian Tribe, or Native Hawaiian organization. The unassociated funerary objects have been identified by a preponderance of the evidence as related to human remains, specific individuals, or families, or removed from a specific burial site or burial area of an individual or individuals with cultural affiliation to an Indian Tribe or Native Hawaiian organization.
- The three objects of cultural patrimony described in this notice have ongoing historical, traditional, or cultural importance central to the Native American group, including any constituent sub-group (such as a band, clan, lineage, ceremonial society, or other subdivision), according to the Native American traditional knowledge of an Indian Tribe or Native Hawaiian organization.
- There is a reasonable connection between the cultural items described in this notice and The Muscogee (Creek) Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the authorized representative identified in this notice under **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 19, 2024. If competing requests for repatriation are received, Boston Children's Museum 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. Boston Children's Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice and to any other consulting parties.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3004 and the implementing regulations, 43 CFR 10.9.

Dated: March 11, 2024.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2024–05853 Filed 3–19–24; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–590 and 731–TA–1397 (Review)]

Sodium Gluconate, Gluconic Acid, and Derivative Products From China; Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping and countervailing duty orders on sodium gluconate, gluconic acid, and derivative products from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 2, 2023 (88 FR 67807) and determined on January 5, 2024 that it would conduct expedited reviews (89 FR 3426, January 18, 2024).

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on March 15, 2024. The views of the Commission are contained in USITC Publication 5498 (March 2024), entitled *Sodium Gluconate, Gluconic Acid, and Derivative Products from China: Investigation Nos. 701–TA–590 and 731–TA–1397 (Review).*

By order of the Commission.

Issued: March 15, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–05919 Filed 3–19–24; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–710–711 and 731–TA–1673–1674 (Preliminary)]

2,4-Dichlorophenoxyacetic Acid (''2,4-D'') From China and India; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–710–711 and 731–TA–1673–1674 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of 2,4-dichlorophenoxyacetic acid (''2,4-D'') from China and India, provided for in subheading 2918.99.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of China and India. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by April 29, 2024. The Commission's views must be transmitted to Commerce within five business days thereafter, or by May 6, 2024.

DATES: March 14, 2024.

FOR FURTHER INFORMATION CONTACT: Charles Cummings (202–708–1666), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on March 14, 2024, by Corteva Agriscience LLC, Indianapolis, Indiana.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold a staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on April 4, 2024. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before 5:15 p.m. on April 2, 2024. Please provide an email address for each conference participant in the email. Information on conference procedures, format, and participation, including guidance for requests to appear as a witness via videoconference, will be available on the Commission's Public Calendar (Calendar (USITC) √ United States International Trade Commission). A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before 5:15 p.m. on April 9, 2024, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on April 3, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 15, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–05917 Filed 3–19–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0009]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Application To Register as an Importer of U.S. Munitions Import List Articles

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 20, 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: Victoria Kenney, FEIB/FEST, either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at *Victoria.Kenney@atf.gov,* or telephone at 304–616–3376.

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 information on ATF Form 4587 (5330.4) is used to register an individual or company as an importer of U.S. Munitions Import List Articles. This Information Collection (IC) is being revised to include two attachment pages, one for Additional Responsible Persons and the other for Additional Locations. Revisions will also include sentence rephrasing/statement modification, an added definition, and renumbering.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 4587 (5330.4).

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:* Individuals or households, Private Sector-for or not for profit institutions. The obligation to respond is mandatory per Title 22 U.S.C. 2778(1)(A)(i) and the implementing regulations in 27 CFR part 447.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 400 respondents will respond to this collection annually, and it will take each respondent approximately 30 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 200 hours, which is equal to 400 (total respondents) * 1 (# of response per respondent) * 0.5 (30 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
ATF Form 4587 (5330.4)	400	1	400	30	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: March 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05896 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice Lodging of Proposed Material Modification to Consent Decree Under the Clean Air Act

On March 24, 2024, the Department of Justice lodged a proposed material modification to a Consent Decree (''Decree'') with the United States District Court for the Western District of Washington in the lawsuit entitled *United States* v. *Trident Seafoods Corp., et. al,* Civil Action 2:19–cv–231. See Dkt. No. 8.

The Consent Decree—entered by the court in May 2019—resolved alleged violations of Title X of the Clean Air Act stemming from Trident's use of ozone-depleting refrigerants on board fishing vessels and at seafood processing facilities in Alaska and in the Pacific Northwest. The Decree includes requirements that Trident retrofit or retire a number of its larger refrigeration appliances in accordance with a ten-year schedule. The proposed material modification extends certain deadlines in that schedule by up to two years and requires that Trident retrofit or retire the appliances on an additional vessel by January 31, 2032.

The publication of this notice opens a period for public comment on the proposed material modification. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Trident Seafoods Corp., et al.,* D.J. Ref. No. 90–5–2–1–11183. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the proposed material modification, along with the previously entered Consent Decree, may be examined and downloaded at this Justice Department

website: *https://www.justice.gov/enrd/consent-decrees.* If you require assistance accessing the proposed material modification, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Kathryn C. Macdonald,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024–05827 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0114]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Prohibited Persons Questionnaire—ATF Form 8620.57

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 20, 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: Jaclyn N. Wiltshire, Personnel Security Division, either by mail at U.S. Department of Justice, PSD—Room (1E–300), 99 New York Ave., NE, Washington, DC 20226, by email at *Niki.Wiltshire@atf.gov,* or telephone at 202–648–9260.

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 Prohibited Persons Questionnaire (ATF F 8620.57) is used to collect personally identifiable information (PII), to begin the eligibility determination process for granting a candidate (respondent) access to ATF information, IT systems, and/or unescorted access to ATF facilities. This collection relates to respondent prohibitions to possess or receive firearms or explosives as described in ATF-enforced statutes 18 U.S.C. 922(g) or (n), and/or 18 U.S.C. 842(i). The proposed information collection (IC) OMB 1140–0114 is being revised due to minor material changes to the form, such as removing references to the declination statement and signature/date fields associated with the declination statement.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Prohibited Persons Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number:* ATF Form 8620.57. 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:* Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will use the form annually, and it will take each respondent approximately 5 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 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * 0.08 (5 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response	Total annual burden (hours)
ATF Form 8620.57	2,000	1	2,000	5 min	167 hrs.

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: March 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05901 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0113]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Licensing Questionnaire

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 20, 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: Jaclyn N. Wiltshire, Personnel Security Division, either by mail at U.S. Department of Justice, PSD—Room (1E–300), 99 New York Ave. NE, Washington, DC 20226, by email at *Niki.Wiltshire@atf.gov,* or telephone at 202–648–9260.

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 Licensing Questionnaire (ATF F 8620.44) is used to determine if a candidate for federal or contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives, or his/her spouse or minor child, holds a financial interest in the alcohol, tobacco, firearms and/or explosives regulated industries, which may be in conflict with 5 CFR 3801, Supplemental Standards of Ethical Conduct for Employees of the Department of Justice. The proposed information collection (OMB 1140–0113) is being revised to make minor material changes to the form, such as removing the declination statement and signature/date fields, and include a note clarifying that personal ownership of a firearm and a permit/license to carry a firearm are not considered holding a Federal Firearms License.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Licensing Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 8620.44. 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: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will provide information to complete this form once annually, and it will take each respondent approximately 5 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 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * 0.08 (5 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
ATF Form 8620.44	2,000	1	2,000	5	167

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: March 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05899 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–0118]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Tribal Access Program Application

AGENCY: Office of the Chief Information Officer, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Office of the Chief Information Officer, 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 20, 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 Allison Spratlin, Program Manager, 145 N Street NW, Washington, DC 20530; (202) 532–5047; *Allison.spratlin@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 U.S. Department of Justice (DOJ) launched the Tribal Access Program for National Crime Information (TAP) provide Tribes access to national crime information systems for both criminal justice and non-criminal justice purposes. DOJ has developed an application for use by federally recognized Tribes interested in participating in TAP.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Tribal Access Program Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is Office of the Chief Information Officer.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Federally recognized Tribes. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of respondents for this collection is 50. The time per response is 60 minutes to complete the application.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 50 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hour)	Total annual burden (hours)
TAPS Application	50	1/annually	50	1	50
Totals	50		50		50

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: March 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05867 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–ML–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0115]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Residency and Citizenship—ATF Form 8620.58

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 20, 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: Niki Wiltshire, Personnel Security Division, either by mail at U.S. Department of Justice, PSD—Room (1E–300), 99 New York Ave. NE, Washington, DC 20226, by email at *Niki.Wiltshire@atf.gov,* or telephone at 202–648–9260.

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 Residency and Citizenship Questionnaire (ATF F 8620.58) is used to collect personally identifiable information (PII), to begin the eligibility determination process for granting a candidate (respondent) access to ATF information, IT systems, and/or unescorted access to ATF facilities. This collection gathers information to determine whether the respondent meets the Department of Justice's residency and citizenship/foreign national requirements. The proposed information collection (IC) OMB 1140–0115 is being revised to update information on the Department of State's Treaties in Force listing and make minor material changes to the form, such as removing references to the declination statement and signature/date fields associated with the declination statement.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *The Title of the Form/Collection:* Residency and Citizenship Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* ATF Form 8620.58.

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: Individuals or households. The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will provide information to complete this form once annually, and it will take each respondent approximately 5 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 167 hours, which is equal to 2,000 (total respondents) * 1(# of response per respondent) * 0.08 (5 minutes).

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (hours)
ATF Form 8620.58	2,000	1	2,000	5	167

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: March 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05895 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0060]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; CJIS Biographic Verification Request

AGENCY: Federal Bureau of Investigation, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Federal Bureau of Investigation (FBI), 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 20, 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 Christopher G. Vandevender, Processing Manager, FBI, CJIS, Biometric Services Section, Biometric Identification and Analysis Unit, BTC–4, 1000 Custer Hollow Road, Clarksburg, WV, 26306, phone: 304–625–5789 or email: *CJISBioVerify@fbi.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: Title 28, Code of Federal Regulations (CFR), section 0.85(j) sets forth the Attorney General's delegation to the FBI to implement the exchange of identity history information for noncriminal justice purposes. Additionally, 28 CFR 20.33(a)(3) and 50.12 both further explain the dissemination of identity history information for noncriminal justice purposes. The FBI's Criminal Justice Information Services (CJIS) Division currently offers a Biographic Verification Service to noncriminal justice agencies as a way to obtain adjudicated criminal history information in cases where the required fingerprint image quality could not be achieved after two attempts for a fingerprint-based search. The service was implemented to ensure that individuals with poor quality fingerprints not be denied benefits, licensing, or employment opportunities due to non-discernible fingerprints. The information collected on the CJIS Biographic Verification Request form is required to ensure the agency requesting the service has the authority to request and obtain the results and to verify fingerprints were submitted and rejected twice for the individual of the request.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* CJIS Biographic Verification Request.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* I–791; CJIS, FBI, DOJ.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* The form is used when an authorized noncriminal justice agency requests that the CJIS Division complete a Biographic Verification. The obligation is strictly voluntary, and the frequency of submissions is not mandated; however, the form is required to obtain the benefit of the CJIS Biographic Verification Service.

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 approximately 36,000 respondents will complete the CJIS Biographic Verification Request form in fiscal year 2024. It will take each respondent approximately two minutes to complete the form.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is approximately 1,200 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (min)	Total annual burden (Hours)
Ex: Survey (individuals or households)	36,000	1/annually	36,000	2	1,200
Unduplicated Totals	*36,000*		*36,000*		*1,200*

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: March 15, 2024.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2024–05891 Filed 3–19–24; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; YouthBuild (YB) Work Site Description and Housing Census

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for information collection request (ICR) titled, ''YouthBuild Work Site Description and Housing Census.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by May 20, 2024.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Stephanie Pena by telephone at (202) 693–3153 (this is not a toll-free number), or by email at *pena.stephanie.l@dol.gov.* For persons with a hearing or speech disability who need assistance to use the telephone system, please dial 711 to access telecommunications relay services. Submit written comments regarding, or requests for a copy of, this ICR by email: *pena.stephanie.l@dol.gov;* or by fax: (202) 693–3113.

FOR FURTHER INFORMATION CONTACT: Stephanie Pena by telephone at (202)

693–3153 (this is not a toll-free number) or by email at *pena.stephanie.l@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed.

The YouthBuild Work Site Description and Housing Census (ETA–9143) form collects information about the proposed work sites for low-income or homeless individuals or families where YouthBuild participants receive training and participate in construction skills activities. This form also collects information annually on the number of housing units that grantees build or renovate each year, which allows ETA to demonstrate the annual increase in affordable housing supported by YouthBuild. ETA is proposing changes to the Annual Housing Census portion of ETA–9143 form that reduces the burden collection.

The accuracy, reliability, and comparability of program reports submitted by grantees using Federal funds are fundamental elements of good public administration and are necessary tools for maintaining and demonstrating system integrity. The Workforce Innovation and Opportunity Act (29 U.S.C. 3101) authorizes this information collection.

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 it is approved by OMB under the PRA 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 Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB 1205–0464.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- 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 submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: YouthBuild Work Site Description and Housing Census.

Form: ETA–9143.

OMB Control Number: 1205–0464.

Affected Public: Private sector.

Estimated Number of Respondents: 650.

Frequency: Varies.

Total Estimated Annual Responses: 650.

Estimated Average Time per Response: 92 hours.

Estimated Total Annual Burden Hours: 196.6 hours.

Total Estimated Annual Other Cost Burden: $3,912.34.

Authority: 44 U.S.C. 3506(c)(2)(A).

Laura P. Watson,

Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2024–05804 Filed 3–19–24; 8:45 am]

BILLING CODE 4510–FT–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cadmium in General Industry 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 April 19, 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.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The standard requires employers to monitor worker exposure to cadmium, to provide medical surveillance, to train workers about the hazards of cadmium in the workplace, and to establish and maintain accurate records of worker exposure to cadmium. These records will be used by employers, workers, physicians and the Government to ensure that workers are not being harmed by exposure to cadmium. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 9, 2024 (89 FR 1127).

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.

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: Cadmium in General Industry Standard.

OMB Control Number: 1218–0185.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 50,679.

Total Estimated Number of Responses: 234,036.

Total Estimated Annual Time Burden: 115,626 hours.

Total Estimated Annual Other Costs Burden: $5,493,656.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Certifying Official.

[FR Doc. 2024–05805 Filed 3–19–24; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF MANAGEMENT AND BUDGET

Methods and Leading Practices for Advancing Public Participation and Community Engagement With the Federal Government

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Request for Information (RFI).

SUMMARY: The Federal Government is committed to making it easier for the American people to engage with their Government, and to harnessing their knowledge, needs, and lived experiences to improve how Government works for them and with them. Federal laws and Executive directives require agencies to frequently consult with the public to inform regulations, policies, program and service design, and other actions. However, these consultation efforts may be perceived as inaccessible, convoluted, or disconnected from the interests and priorities of impacted stakeholders. According to the 2023 Partnership for Public Service (PPS) survey on trust in government, only about 1 in 5 Americans believe that the Federal Government ''listens to the public'' or ''is transparent.''

The Office of Management and Budget (OMB), in partnership with Federal agencies and the public, is working to develop a government-wide framework, common guidelines, and leading practices for public participation and community engagement (PPCE or ''participation and engagement''). This framework will enable agencies to more frequently, effectively, broadly, and meaningfully involve the public, including underserved communities, in government decision-making.

Through this Request for Information (RFI), OMB seeks input on the experiences of individuals and organizations, including from underserved communities, with informing Federal Government decision-making and participating in engagement activities with government agencies; examples of leading practices in this space; and other recommendations on available methods, approaches, and tools that could assist in the effort to develop and implement a Federal framework for participation and engagement. OMB welcomes input from a wide and diverse array of stakeholders in the public, private, advocacy, not-for-profit, and philanthropic sectors, including State, local, Tribal, and territorial governments. OMB will review and consider the usability and applicability of responses to this RFI as OMB develops a Federal framework for PPCE and supports agencies in their work to ensure that their policies and actions are responsive to all Americans.

DATES: Responses to this RFI should be received by May 17, 2024. To the extent practicable, OMB will also consider comments received after that date.

ADDRESSES: In an effort to improve accessibility, OMB is offering multiple options to provide feedback.

Responses can be submitted via the Federal eRulemaking Portal at *https://www.regulations.gov/.* Follow the instructions for submitting comments.

Alternatively, responses may be submitted through a simple form at *https://www.performance.gov/participation/.* Instructions for submitting responses through that form can be found on the site, as well as options to register for events that OMB will host to gather live input and feedback from the public. Participation in these events is not required in order to respond to this RFI.

Instructions for Submission: Written comments should not exceed 10 pages. Attachments or linked resources or documents are not included in the 10-page limit. Please use concise, plain language in narrative or bullet format. OMB has provided some key questions on which public insights would be most valuable (see Supplementary Information, Part III). You may respond to some or all of these questions, and additional feedback beyond these questions is also welcome. Any links you provide to online materials or presentations must be publicly accessible. Each response should include:

- The name of the individual(s) and/or organization(s) responding;
- RFI question(s), topic(s), and/or policy suggestions that your submission and materials address;
- A brief description of the responding individual(s) and/or organization(s)'s mission and/or areas of experience or expertise; and
- A contact for questions or other follow-up on your response.

Please feel free to share this RFI with colleagues or others for feedback, including those who may be familiar with effective outreach to underserved communities.

Privacy Act Statement: Response to this RFI is voluntary. The information will be used to inform sound decision-making regarding the PPCE framework and other related matters. Please note that all submissions received in response to this notice may be posted on *https://www.regulations.gov/* or otherwise released in their entirety, including any personal and business confidential information provided. Do not include in your submissions any copyrighted material; information of a confidential nature, such as personal or proprietary information; or any information you would not like to be made publicly available. The OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, 88 FR 20913 (*https://www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records*), includes a list of routine uses associated with the collection of this information.

By responding to the RFI, each participant (individual, team, or legal entity) warrants that they are the sole author or owner of, or has the right to

use, any copyrightable works that the submission comprises, that the works are wholly original (or is an improved version of an existing work that the participant has sufficient rights to use and improve), and that the submission does not infringe any copyright or any other rights of any third party of which participant is aware.

Individuals and organizations who respond to this RFI may be contacted for additional clarification, related discussions, events, surveys, crowdsource campaigns, or competitions.

FOR FURTHER INFORMATION CONTACT: Please email *publicparticipation@omb.eop.gov* with ''PPCE RFI'' in the subject line, or contact Cherie Klein at 202–881–6220.

SUPPLEMENTARY INFORMATION:

I. Background

In a government of the people, by the people, and for the people, inclusive, effective, and meaningful participation and engagement is one of the foundational principles of government decision-making. A wide range of Federal statutes provide for participation and engagement across routine Federal agency functions—from rulemaking to strategic planning and evaluation. These include the Administrative Procedure Act of 1946 (Pub. L. 79–404), Paperwork Reduction Act of 1995 (Pub. L. 104–13), Government Performance and Results Act Modernization Act of 2010 (Pub. L. 111–352), and Foundations for Evidence-based Policymaking Act of 2018 (Pub. L. 115–435).

Consistent with these laws, a range of Executive actions and policy directives also encourage and, in many cases, require agencies to develop better mechanisms to receive direct feedback from and engage with the people, organizations, and communities served by the Federal Government. These include:

- Executive Order (E.O.) 13175 on *Consultation and Coordination With Indian Tribal Governments;*
- 2011 Open Government Declaration, endorsed by the U.S., as a founding member of the Open Government Partnership (OGP) and current member of the OGP Steering Committee;
- E.O. 13707 on *Using Behavioral Science Insights To Better Serve the American People;*
- E.O. 14058 on *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government;*
- E.O. 14091 on *Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government;*
- E.O. 14094 on *Modernizing Regulatory Review;*
- E.O. 14096 on *Revitalizing Our Nation's Commitment to Environmental Justice for All;*
- Fifth U.S. Open Government National Action Plan;
- Biden-Harris Administration President's Management Agenda;
- OMB Circular No. A–11 (Preparation, Submission, and Execution of the Budget);
- OMB Memorandum on *Broadening Public Participation and Community Engagement in the Regulatory Process;*
- OMB Guidance Implementing Section 2(e) of E.O. 14094;
- OMB Memorandum M–24–08 (Strengthening Digital Accessibility and the Management of Section 508 of the Rehabilitation Act);
- OMB Memorandum M–23–22 (Delivering a Digital-First Public Experience);
- OMB Memorandum M–22–12 (Advancing Effective Stewardship of Taxpayer Resources and Outcomes in the Implementation of the Infrastructure Investment and Jobs Act);
- OMB Memorandum M–21–28 (Interim Implementation Guidance for the Justice40 Initiative); and
- OMB Memorandum M–21–20 (Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources).

A growing body of evidence in the public and private sectors has documented a strong relationship between effective PPCE and improved public perception of and trust in government. In the 2022 PPS survey on trust in government, about one-third of the respondents said that being more responsive to the public and being more transparent were among their key priorities for government improvement. Meanwhile, a survey conducted by the Organization for Economic Cooperation and Development (OECD) found that if people believed their feedback would be used to improve a program, they trusted government 60 percent of the time, whereas if they did not feel it would be used, they trusted government only 20 percent of the time.

Aside from building greater trust, effective PPCE can also improve the design, inclusivity, and accessibility of government policies and programs. This is particularly true when the Federal Government's management of its customer experience and service delivery is responsive to customer needs, interests, and priorities, as identified through human-centered design methodologies; empirical customer research; an understanding of behavioral science and user testing, especially for digital services; and other mechanisms of participation and engagement. For example, research by the U.S. Department of Health and Human Services (HHS) found that when HHS staff consulted with program participants and considered their lived experiences,[1] the outcomes and impacts of Federal programs, policies, and practices improved and resulted in benefits for both participants and Federal staff, including an increased understanding of the needs of HHS's customers and other stakeholders.

A Federal framework for PPCE will help agencies to:

- Broaden the kinds of people and groups reached;
- Expand the government's knowledge and consideration of the range of lived experiences and perspectives;
- Increase and improve participation and engagement across different agency functions;
- Identify when to effectively involve the public in decision-making processes and provide timely, ongoing opportunities for input;
- Better understand how PPCE aligns with and across multiple Federal laws, Executive priorities, mandates, and requirements;
- Embed PPCE within different agency functions; and
- Build on successes and model new participation and engagement efforts to strengthen a government that is inclusive, transparent, accountable, and responsive to the American people.

II. Definitions

E.O. 14058, E.O. 14091, and various OMB Memoranda use the following government-wide definitions, which OMB adopts for purposes of this RFI:

The term ''customer'' means any individual, business, or organization (such as a grantee or State, local, or Tribal entity) that interacts with an agency or program, either directly or through a federally-funded program administered by a contractor, nonprofit, or other Federal entity.

The term ''customer experience'' means the public's perceptions of and overall satisfaction with interactions with an agency, product, or service.

[1] HHS defines *people with lived experience* as individuals directly impacted by a social issue or combination of issues who share similar experiences or backgrounds and can bring the insights of their experience to inform and enhance systems, research, policies, practices, and programs that aim to address the issue or issues.

The term ''public participation'' in government means any process that involves members of the public in government decision-making. It seeks and facilitates the involvement of those affected by, or interested in, a government decision, including individuals; State, local, Tribal, and territorial governments; non-profit organizations; educational institutions; businesses; and other entities.

The term ''community engagement'' is a more specific concept within public participation that involves agency actions to build trust-based, long-term, and two-way relationships with all communities, including underserved communities that have been historically left out of government decision-making.

The term ''human-centered design'' means an interdisciplinary methodology of putting people, including those who will use or be impacted by what one creates, at the center of any process to solve challenging problems.

The term ''service delivery'' means actions by the Federal Government related to providing a benefit or service to a customer of a Federal Government entity. Such actions pertain to all points of the Government-to-customer delivery process, including when a customer applies for a benefit or loan, receives a service such as health care or small business counseling, requests a document such as a passport or Social Security card, files taxes or declares goods, uses resources such as a park or historical site, or seeks information such as notices about public health or consumer protection.

The term ''underserved communities'' refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civil life, and may include Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities. (While not mentioned explicitly in this definition, underserved communities also include individuals with limited English proficiency, whether they use spoken language, sign language, or other methods to communicate.)

The term ''user'' means any individual that interacts with a website or a digital service, often to complete a task or transaction.

III. Topics and Key Questions

OMB seeks feedback on the following three topic areas: (1) experiences individuals and organizations, including from underserved communities, have had in participating (or trying to participate) in Federal Government PPCE activities (*e.g.,* notice and comment processes, Requests for Information, consultations, listening sessions, customer feedback surveys, user research, crowdsourcing) that inform government decision-making; (2) content to incorporate in a Federal framework for PPCE, including common guidelines and leading practices that can help Federal employees better use these methods; and (3) how OMB might continue to pursue a collaborative process to co-develop such a framework with the public. OMB encourages respondents to answer each question listed below and to include any other related input that respondents believe OMB should consider. However, respondents do not have to answer every question and may provide additional feedback for OMB to consider in developing and implementing this Federal framework for participation and engagement. Whenever possible, OMB requests that respondents share examples, data, and/or research or academic literature. Respondents may also include links to publicly accessible online materials and presentations.

1. Experience participating in Federal Government PPCE activities:

- What is the Federal Government doing well when you (or your organization) participate in or try to participate in government PPCE activities? Please include any specific examples.
- What challenges, including any physical or digital accessibility barriers, have you encountered when you (or your organization) participate in or try to participate in Federal Government PPCE activities? How could those challenges have been avoided or mitigated? Please include any specific examples.
- What might the Federal Government do to make it easier or more likely for you (or your organization) to participate and engage with the Federal Government to inform government decision-making (*e.g.,* to share concerns, recommendations, experience, knowledge, or expertise on government policies, regulations, programs, plans, priorities, and services)?
- What is your understanding of how individuals and organizations can engage with the Federal Government to inform government decision-making, and of various opportunities (both past and present) to do this? What can the Federal Government do to reach and include a broader and more diverse range of people and groups, especially those who might typically be missed?

2. Content in a Federal framework for PPCE:

- What types of content (*e.g.,* methods, tools, definitions, research on the value of participation and engagement, promising practices) could OMB include in a Federal framework for PPCE that would be effective and informative for Federal agencies to initiate or improve their participation and engagement activities, including those carried out with underserved communities? Please share any specific examples.
- How might OMB facilitate agencies adopting and effectively applying such practices, given the wide range of possible PPCE activities and focus areas?
- What are effective ways for the Federal Government to provide updates to the public about the feedback it receives during, and decisions made after, PPCE activities? Please include any specific promising practices.
- What goals and objectives should OMB consider when developing a Federal framework for PPCE?
- What guidance might OMB provide to agencies for developing their own goals and objectives for participation and engagement? What metrics could OMB suggest to help agencies assess the success and/or impact of their PPCE activities (*e.g.,* participant diversity, breadth and saturation of reach, new or unique perspectives gained, engagement quality, engagement satisfaction, usability of feedback on government decision-making)?

3. Collaborative process to co-develop a Federal framework for PPCE:

- In co-developing a Federal framework for PPCE, what specific steps should OMB take that involve the Federal Government and the public, especially engaging members of underserved communities, to ensure collaborative development of the framework? Please share any promising practices and successful examples.

Loren Schulman,

Associate Director, Office of Performance and Personnel Management, Office of Management and Budget.

Samuel Berger,

Associate Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

[FR Doc. 2024–05882 Filed 3–19–24; 8:45 am]

BILLING CODE 3110–01–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m. to 11:30 a.m. (MST–AZ), Wednesday, April 3, 2024.

PLACE: Virtual Board of Trustees Meeting via Microsoft Teams.

STATUS: This virtual meeting of the Board of Trustees will be open to the public. Members of the public who would like to attend this meeting may request remote access by contacting Sara Moeller at *moeller@udall.gov* prior to April 3, 2024, to obtain the teleconference connection information.

MATTERS TO BE CONSIDERED: (1) Call to Order and Acting Chair's Remarks; (2) Executive Director's Remarks; (3) Consent Agenda Approval (Minutes of the November 7–8, 2023, Board of Trustees Meeting; Board Reports submitted for Data and Information Technology, Education Programs, Finance and Internal Controls, John S. McCain III National Center for Environmental Conflict Resolution, and Udall Center for Studies in Public Policy, including the Native Nations Institute for Leadership, Management, and Policy and The University of Arizona Libraries, Special Collections; and Board takes notice of any new and updated personnel policies and internal control methodologies); (4) Disband Ad Hoc Committee on Grants, Gifts, and Donations; (5) U.S. Indigenous Data Sovereignty and Governance Summit; (6) July 2024 Board of Trustees Meeting Updates; (7) Board Officer and Executive Committee Elections; and (8) Hatch Act Training.

CONTACT PERSON FOR MORE INFORMATION: Sara Moeller, Administrative Officer, 434 E University Blvd., Suite 300, Tucson, AZ 85705, (520) 901–8568.

Dated: March 18, 2024.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation.

[FR Doc. 2024–06042 Filed 3–18–24; 4:15 pm]

BILLING CODE 6820–FN–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: 2025–2027 IMLS Inspire! Grants for Small Museums Notice of Funding Opportunity

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. By this Notice, IMLS is soliciting comments concerning the Notice of Funding Opportunity for an initiative targeting the needs of small museums and their communities nationwide: IMLS Inspire! Grants for Small Museums Program. 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 May 19, 2024.

ADDRESSES: Send comments to Sandra Narva, Senior Grants Management Specialist—Team Lead, 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: Reagan Moore, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Moore can be reached by telephone at 202–653–4637, or by email at *rmoore@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 goal of IMLS Inspire! Grants for Small Museums is to help small museums implement projects that address priorities identified in their strategic plans. It has three project categories: Lifelong Learning, Institutional Capacity, and Collections Stewardship and Access. This action is to renew the content, forms, and instructions for the Notice of Funding Opportunity for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2025–2027 IMLS Inspire! Grants for Small Museums Notice of Funding Opportunity.

OMB Number: 3137–0111.

Respondents/Affected Public: Eligible museum organizations.

Total Estimated Number of Annual Respondents: 250.

Frequency of Response: Once per year.

Estimated Average Burden Hours per Response: 35.

Total Estimated Number of Burden Hours: 8,750.

Total Annual Cost Burden: $283,938.

Total Annual Federal Costs: $38,056.

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: March 15, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–05922 Filed 3–19–24; 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: 2025–2027 IMLS Museum Grants for African American History and Culture Program and IMLS Native American/Native Hawaiian Museum Services Program Notices of Funding Opportunity

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. By this Notice, IMLS is soliciting comments concerning the Notices of Opportunity for two grant programs targeting the needs of specific museums and their communities nationwide: IMLS Museum Grants for African American History and Culture Program and IMLS Native American/Native Hawaiian Museum Services Program. 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 May 19, 2024.

ADDRESSES: Send comments to Sandra Narva, Senior Grants Management Specialist—Team Lead, 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: For IMLS Museum Grants for African American History and Culture Program, contact Jessica Ottley, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Ottley can be reached by telephone at 202–653–4666, or by email at *jottley@imls.gov.* For IMLS Native American/Native Hawaiian Museum Services Program, contact Sarah Glass, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Ms. Glass can be reached by telephone at 202–653–4668, or by email at *sglass@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. To learn more, visit *www.imls.gov.*

II. Current Actions

The goals of Museum Grants for African American History and Culture (AAHC) are to build the capacity of African American museums and to support the growth and development of museum professionals at African American museums.

The goal of Native American/Native Hawaiian Museum Services (NANH) grant program is to support the capacity of Native American Tribes and Native Hawaiian organizations to provide museum services to their communities.

This action is to renew the content, forms, and instructions for each of the two Notices of Funding Opportunity for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2025–2027 IMLS Museum Grants for African American History and Culture Program and IMLS Native American/Native Hawaiian Museum Services Program Notices of Funding Opportunity.

OMB Number: 3137–0095.

Respondents/Affected Public: Eligible museum organizations; Historically Black Colleges and Universities; Federally recognized Native American Tribes; non-profit organizations that primarily serve and represent Native Hawaiians.

Total Estimated Number of Annual Respondents: 130.

Frequency of Response: Once per year.

Estimated Average Burden Hours per Response: 45.

Total Estimated Number of Annual Burden Hours: 5,850.

Total Annual Cost Burden: $189,833.

Total Annual Federal Costs: $20,633.

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: March 15, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–05923 Filed 3–19–24; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: Collection of Information To Assess the Current State of Library and Museum Infrastructure To Identify Infrastructure Needs

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services (IMLS) announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This 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. This Notice proposes the clearance of the Collection of Information to Assess the Current State of Library and Museum Infrastructure to Identify Infrastructure Needs. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 19, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in 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 submission of responses).

FOR FURTHER INFORMATION CONTACT: Matthew Birnbaum, Ph.D., Director of Research and Evaluation, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Birnbaum can be reached by telephone: 202–653–4760, or by email at *mbirnbaum@imls.gov.* Persons who are deaf or hard of hearing (TTY users) may contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: 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.*

Current Actions: This Notice proposes the clearance of the Collection of Information to Assess the Current State of Library and Museum Infrastructure to Identify Infrastructure Needs. This study will be carried out according to the requirements set forth by The House Appropriations Labor, Health and Human Services Subcommittee's 2023 Appropriations Bill for the Department of Labor (*Report 117–403*), and the Senate Appropriations Subcommittee's Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (2023) (*S.4659*). The subcommittees recommended that IMLS conduct an investigation to examine the physical condition of museum and library facilities, prioritizing those serving rural and underserved communities and facilities affected by natural disasters and extreme weather events.

In compliance with this legislation, IMLS intends to assess museum and library infrastructures to ascertain the status of their physical condition. This study is a formative needs assessment, and as such, data collected will be used to illuminate priorities that the agency should consider in informing future data collections and potential future facilities investments throughout the United States.

The 60-day Notice was published in the **Federal Register** on December 26, 2023 (88 FR 88980) (Document Number: 2023–28405). The agency has taken into consideration one comment that was received under this Notice.

Agency: Institute of Museum and Library Services.

Title: Collection of Information to Assess the Current State of Library and Museum Infrastructure to Identify Infrastructure Needs.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Affected Public: Museum and library management; museum and library associations, state, municipal, and city level stakeholders.

Total Number of Respondents: 36.

Frequency of Response: Once per response.

Average Hours per Response: 1.25.

Total Estimated Annual Burden Hours: 45.

Total Annual Cost Burden: $1,814.

Total Annual Federal Costs: $15,684.

Dated: March 14, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–05843 Filed 3–19–24; 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: 2025–2027 IMLS Museums Empowered Notice of Funding Opportunity

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. By this Notice, IMLS is soliciting comments concerning the Notice of Funding Opportunity for Museums Empowered, a special initiative of the Museums for America grant program designed to support projects that use the transformative power of professional development and training to generate systemic change within museums of all types and sizes.

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 May 19, 2024.

ADDRESSES: Send comments to Sandra Narva, Senior Grants Management Specialist—Team Lead, 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: Mark Isaksen, Supervisory Grants Management Specialist, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Isaksen can be reached by telephone at 202–653–4667, or by email at *misaksen@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. To learn more, visit *www.imls.gov.*

II. Current Actions

The goal of Museums Empowered is to strengthen the ability of an individual museum to serve its public through professional development activities that cross-cut various departments to generate systemic change within the museum. It has four project categories: Diversity, Equity, and Inclusion; Digital Technology; Evaluation; and Organizational Management.

This action is to renew the content, forms, and instructions for the Notice of Funding Opportunity for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2025–2027 IMLS Museums Empowered Notice of Funding Opportunity.

OMB Number: 3137–0107.

Respondents/Affected Public: Museums that meet the IMLS Museums for America institutional eligibility criteria.

Total Estimated Number of Annual Respondents: 65.

Frequency of Response: Once per year.

Estimated Average Burden Hours per Response: 45.

Total Estimated Number of Annual Burden Hours: 2,925.

Total Annual Cost Burden: $94,917.

Total Annual Federal Costs: $10,087.

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: March 15, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–05929 Filed 3–19–24; 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: 2025–2027 IMLS National Leadership Grants for Museums and IMLS Museums for America Program Notices of Funding Opportunity

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. By this Notice, IMLS is soliciting comments concerning the Notices of Opportunity for two grant programs targeting the needs of museums nationwide: IMLS National Leadership Grants for Museums and IMLS Museums for America Program. 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 May 19, 2024.

ADDRESSES: Send comments to Sandra Narva, Senior Grants Management

Specialist—Team Lead, 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: For the IMLS National Leadership for Museums Program, contact Helen Wechsler, Supervisory Grants Management Specialist, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington DC 20024–2135. Ms. Wechsler can be reached by telephone at 202–653–4779, or by email at *hwechsler@imls.gov.* For the IMLS Museums for America Program, contact Mark Feitl, Senior Program Officer, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Mr. Feitl can be reached by telephone at 202–653–4635, or by email at *mfeitl@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. To learn more, visit *www.imls.gov.*

II. Current Actions

The goal of IMLS National Leadership Grants for Museums is to support projects that address critical needs of the museum field and that have the potential to advance practice in the profession so that museums can improve services for the American public. The goal of IMLS Museums for America Program is to support projects that strengthen the ability of an individual museum to serve its public. It has three project categories: Lifelong Learning, Community Engagement, and Collections Stewardship and Access. This action is to renew the content, forms, and instructions for each of the two Notices of Funding Opportunity for the next three years.

Agency: Institute of Museum and Library Services.

Title: 2025–2027 IMLS National Leadership Grants for Museums and IMLS Museums for America Program Notices of Funding Opportunity.

OMB Number: 3137–0094.

Respondents/Affected Public: Museum organization applicants.

Total Estimated Number of Annual Respondents: 395.

Frequency of Response: Once per year.

Estimated Average Burden Hours per Response: 50.

Total Estimated Number of Annual Burden Hours: 18,325.

Total Annual Cost Burden: $594,647.

Total Annual Federal Costs: $61,210.

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: March 15, 2024.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2024–05921 Filed 3–19–24; 8:45 am]

BILLING CODE 7036–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–206 and CP2024–212; MC2024–207 and CP2024–213]

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 22, 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

[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).

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).:* MC2024–206 and CP2024–212; *Filing Title:* USPS Request to Add Priority Mail & Ground Advantage Contract 200 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 14, 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 22, 2024.

2. *Docket No(s).:* MC2024–207 and CP2024–213; *Filing Title:* USPS Request to Add Priority Mail & Ground Advantage Contract 201 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 15, 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 22, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–05873 Filed 3–19–24; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensure that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: RUIA Investigations and Continuing Entitlement; OMB 3220–0025.

Under Section 1(k) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 231), unemployment and sickness benefits are not payable for any day remuneration is payable or accrues to the claimant. Also, Section 4(a–1) of the RUIA provides that unemployment or sickness benefits are not payable for any day the claimant receives the same benefits under any law other than the RUIA. Under Railroad Retirement Board (RRB) regulation 20 CFR 322.4(a), a claimant's certification or statement on an RRB-provided claim form, that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost, shall constitute sufficient evidence unless there is conflicting evidence. Further, under 20 CFR 322.4(b), when there is a question raised as to whether or not remuneration is payable or has accrued to a claimant with respect to a claimed day(s), an investigation shall be made with a view to obtaining information sufficient for a finding. The RRB utilizes the following three forms to obtain information from railroad employers, nonrailroad employers, and claimants, that is needed to determine whether a claimed day(s) of unemployment or sickness were improperly or fraudulently claimed: Form ID–5i, Request for Employment Information; Form ID–5R (SUP), Report of Employees Paid RUIA Benefits for Every Day in Month Reported as Month of Creditable Service; and Form UI–48, Statement Regarding Benefits Claimed for Days Worked. Completion is voluntary. One response is requested of each respondent.

To qualify for unemployment or sickness benefits payable under Section 2 of the Railroad Unemployment Insurance Act (RUIA), a railroad employee must have certain qualifying earnings in the applicable base year. In addition, to qualify for *extended* or *accelerated* benefits under Section 2 of the RUIA, a railroad employee who has exhausted his or her rights to normal benefits must have at least 10 years of railroad service (under certain conditions, military service may be credited as months of railroad service). Accelerated benefits are unemployment or sickness benefits that are payable to a railroad employee before the regular July 1 beginning date of a benefit year if an employee has 10 or more years of service and is *not* qualified for benefits in the current benefit year.

During the RUIA claims review process, the RRB may determine that unemployment or sickness benefits cannot be awarded because RRB records show insufficient qualifying service and/or compensation. When this occurs, the RRB allows the claimant the opportunity to provide additional information if they believe that the RRB service and compensation records are incorrect.

Depending on the circumstances, the RRB provides the following forms to obtain information needed to determine if a claimant has sufficient service or compensation to qualify for unemployment or sickness benefits. Form UI–9, *Statement of Employment and Wages;* Form UI–44, *Claim for Credit for Military Service;* Form ID–4U, *Advising of Service/Earnings Requirements for Unemployment Benefits;* and Form ID–4X, *Advising of Service/Earnings Requirements for Sickness Benefits.* Completion of these forms is required to obtain or retain a benefit. One response is required of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 2259 on January 12, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: RUIA Investigations and Continuing Entitlement.

OMB Control Number: 3220–0025.

Forms submitted: UI–9, UI–44, UI–48, ID–4U, ID–4X, ID–5I, ID–5R (SUP).

Type of request: Revision of a currently approved collection.

Affected public: Private Sector; Businesses or other for profits.

Abstract: The information collection has two purposes. When RRB records indicate that railroad service and/or compensation is insufficient to qualify a claimant for unemployment or sickness benefits, the RRB obtains information needed to reconcile the compensation and/or service on record with that claimed by the employee. Other forms in the collection allow the RRB to determine whether unemployment or sickness benefits were improperly obtained.

Changes proposed: The RRB proposes no changes to Form UI–9, UI–44, ID–4U, ID–4X, and UI–48.

The RRB proposes the following changes to Form ID–5i:

- add a 30-day time sensitive response on page 1,
- page 2 modification to earnings sentence to include ''if still employed, include earnings up to the current employment date.'',
- remove auto update of RRB letterhead address, phone number and email address,
- update RRB address to headquarters address,
- update RRB phone number to Unemployment and Programs Support Division,
- update RRB fax number to Unemployment and Programs Support Division,
- update RRB email address to Unemployment and Programs Support Division, and
- update RRB office hours.

The RRB proposes the following changes to ID–5R (SUP):

- change PRA/PA notice to update the officer title and
- update RRB zip code.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–9	69	10	11
UI–44	10	5	1
UI–48	14	12	3
ID–4U	35	5	3
ID–4X	25	5	2
ID–5i	* 1,000	15	250
ID–5i	** 50		12
ID–5R (SUP)	400	10	67
Total	1,603		349

* Private sector.
** State/local/etc.

2. *Title and Purpose of information collection:* Pension Plan Reports; OMB 3220–0089. Under Section 2(b) of the Railroad Retirement Act (RRA) (45 U.S.C. 231a), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least 1 month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained). Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employee receives monthly pension payments, or a lump-sum pension payment from a private pension from a railroad employer to the extent the payments are based on contributions from that employer. The employee's own contribution to their pension account does not cause a reduction. A private railroad employer pension is defined in 20 CFR 216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) the current status of railroad employer pension plans and whether such plans cause reductions to the supplemental annuity; (b) whether the employee receives monthly payments from a private railroad employer pension, elected to receive a lump sum in lieu of monthly pension payments from such a plan, or was required to receive a lump sum from such a plan due to the plan's small benefit provision; and (c) the amount of the payments attributable to the railroad employer's contributions. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form G–88p and G–88p (internet), *Employer's Supplemental Pension Report,* and Form G–88r, *Request for Information About New or Revised Employer Pension Plan,* to obtain the necessary information from railroad employers. One response is requested of each respondent. Completion is mandatory.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 2260 on January 12, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Pension Plan Reports.

OMB Control Number: 3220–0089.

Forms submitted: G–88p and G–88r.

Type of request: Extension without change of a currently approved collection.

Affected public: Businesses or other for-profits.

Abstract: The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Changes proposed: The RRB proposes no changes to G–88P and G–88P (internet), and G–88R.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88p	100	8	13
G–88p (internet)	200	6	20

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–88r	10	8	1
Total	310		34

3. Title and Purpose of information collection: Job Information Report, OMB 3220–0193.

The Railroad Retirement Board (RRB) occupational disability standards allow the RRB to request job information from railroad employers to determine an applicant's eligibility for an occupational disability.

To determine an occupational disability, the RRB must obtain the employee's work history and establish if the employee is precluded from performing his or her regular railroad occupation. This is accomplished by comparing the restrictions caused by the impairment(s) against the employee's ability to perform his or her job duties.

To collect the information needed to determine the effect of a disability on an employee applicant's ability to work, the RRB utilizes Form G–251, *Vocational Report* (OMB 3220–0141) which is completed by the applicant.

Form G–251A, Railroad Job Information, requests railroad employers to provide information regarding whether the employee has been medically disqualified from their railroad occupation; a summary of the employee's duties; the machinery, tools and equipment used by the employee; the environmental conditions under which the employee performs their duties; all sensory requirements (vision, hearing, speech) needed to perform the employee's duties; the physical actions and amount of time (frequency) allotted for those actions that may be required by the employee to perform their duties during a typical work day; any permanent working accommodations an employer may have made due to the employee's disability; as well as any other relevant information they may choose to include. Completion is voluntary.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 2260 on January 12, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Title: Job Information Report.

OMB Control Number: 3220–0193.

Form(s) submitted: G–251A.

Type of request: Revision of a currently approved collection.

Affected public: Businesses or other for profits.

Abstract: The collection obtains information used by the Railroad Retirement Board (RRB) to assist in determining whether a railroad employee is disabled from his or her regular occupation. It provides railroad employers with the opportunity to provide information to the RRB regarding the employee applicant's job duties.

Changes proposed: The RRB proposes no changes to Form G–251A.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–251A	436	60	436

4. Title and Purpose of information collection: Self-Employment/Corporate Officer Work and Earnings Monitoring; OMB 3220–0202.

Section 2 of the Railroad Retirement Act (RRA) (45 U.S.C. 231) provides for the payment of disability annuities to qualified employees. Section 2 also provides that if the Railroad Retirement Board (RRB) receives a report of an annuitant working for a railroad or earning more than prescribed dollar amounts from either nonrailroad employment or self-employment, the annuity is no longer payable, or can be reduced, for the months worked. The regulations related to the nonpayment or reduction of the annuity by reason of work are prescribed in 20 CFR 220.160–164.

Some activities claimed by the applicant as ''self-employment'' may actually be employment for someone else (*e.g.,* training officer, consultant, salesman). 20 CFR 216.22(c) states, for example, that an applicant is considered an employee, and not self-employed, when acting as a corporate officer, since the corporation is the applicant's employer. Whether the RRB classifies a particular activity as self-employment or as work for an employer depends upon the circumstances in each case. The circumstances are prescribed in 20 CFR 216.21–216–23.

Certain types of work may actually indicate an annuitant's recovery from disability. Regulations related to an annuitant's recovery from disability for work are prescribed in 20 CFR 220.17–220–20.

In addition, the RRB conducts continuing disability reviews (also known as a CDR), to determine whether the annuitant continues to meet the disability requirements of the law. Payment of disability benefits and/or a beneficiary's period of disability will end if medical evidence or other information shows that an annuitant is not disabled under the standards prescribed in Section 2 of the RRA. Continuing disability reviews are generally conducted if one or more of the following conditions are met: (1) the annuitant is scheduled for a routine periodic review, (2) the annuitant returns to work and successfully completes a trial work period, (3) substantial earnings are posted to the annuitant's wage record, or (4) information is received from the annuitant or a reliable source that the annuitant has recovered or returned to work. Provisions relating to when and how often the RRB conducts disability reviews are prescribed in 20 CFR 220.186.

To enhance program integrity activities, the RRB utilizes Form G–252, *Self-Employment/Corporate Officer Work and Earnings Monitoring.* Form G–252 obtains information from a disability annuitant who either claims to be self-employed or a corporate officer, or who the RRB determines to be self-employed or a corporate officer after a continuing disability review. The continuing disability review may be prompted by a report of work, return to railroad service, an allegation of a medical improvement or a routine disability review call-up. The information gathered is used to determine entitlement and/or continued entitlement to, and the amount of, the disability annuity, as prescribed in 20

CFR 220.176. Completion is required to retain benefits. One response is required of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (89 FR 2260 on January 12, 2024) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Self-Employment/Corporate Officer Work and Earnings Monitoring.

OMB Control Number: 3220–0202.

Form(s) submitted: G–252.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: To determine entitlement or continued entitlement to a disability annuity, the RRB will obtain information from disability annuitants who claim to be self-employed or a corporate officer or who the RRB determines to be self-employed or a corporate officer after a continuing disability review.

Changes proposed: The RRB proposes no changes to Form G–252.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–252	15	20	5
Total	15		5

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Kennisha Money at (312) 469–2591 or *Kennisha.Money@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or *Brian.Foster@rrb.gov.*

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.

Brian Foster,

Clearance Officer.

[FR Doc. 2024–05927 Filed 3–19–24; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99733; File Nos. SR–NSCC–2023–007]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1 and Amendment No. 2, To Modify the Amended and Restated Stock Options and Futures Settlement Agreement and Make Certain Revisions to the NSCC Rules

March 14, 2024.

I. Introduction

On August 10, 2023, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2023–007 (''Proposed Rule Change'') pursuant to section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to change terms related to the physical settlement of equities arising out of certain futures and options contracts.[3] On August 30, 2023, the Proposed Rule Change was published for public comment in the **Federal Register**.[4]

On September 25, 2023, pursuant to section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6]

On November 8, 2023, NSCC filed Partial Amendment No. 1 to the Proposed Rule Change.[7] On November 14, 2023, the Commission published notice of Partial Amendment No. 1 and instituted proceedings, pursuant to section 19(b)(2)(B) of the Exchange Act,[8] to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1.[9] On January 24, 2024, NSCC filed Amendment No. 2 to the Proposed Rule Change, which was published in the **Federal Register** for public comment on January 31, 2024.[10] The Commission has received public comment regarding the Proposed Rule Change.[11] On February 20, 2024, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.[12]

This order approves the Proposed Rule Change as modified by Partial Amendment No. 1 and Amendment No. 2 (hereinafter defined as ''Proposed Rule Change'').

II. Background

NSCC is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. The Options Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 88 FR 59968.

[4] Securities Exchange Act Release No. 98213 (Aug. 24, 2023), 88 FR 59968 (Aug. 30, 2023) (File No. SR–NSCC–2023–007) (''Notice of Filing'').

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 98508 (Sep. 25, 2023), 88 FR 67407 (Sep. 29, 2023) (File No. SR–NSCC–2023–007).

[7] Partial Amendment No. 1 delays implementation of the proposed change. In Partial Amendment No. 1, NSCC proposes to implement the proposed rule change within 90 days of receiving all necessary regulatory approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] Securities Exchange Act Release No. 98930 (Nov. 14, 2023), 88 FR 80790 (Nov. 20, 2023) (File No. SR–NSCC–2023–007).

[10] Securities Exchange Act Release No. 99432 (Jan. 25, 2024), 89 FR 6140 (Jan. 31, 2024) (File No. SR–NSCC–2023–007) (''Notice of Amendment''). Amendment No. 2 adds a second phase of changes to the proposed rule change. The changes added in Phase 2 include improved information sharing between OCC and NSCC and are designed to facilitate the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[11] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-nscc-2023-007/srnscc2023007.htm.* The Commission received comments on the proposed rule change that express concerns unrelated to the substance of the filing. *See, e.g.,* comment from JT Clark (Oct. 10, 2024) (general concern about corruption in the markets) and comment from Anthony LaBree (Oct. 12, 2024) (concerns about OCC's business practices).

[12] Securities Exchange Act Release No. 99567 (Feb. 20, 2024), 89 FR 14122 (Feb. 26, 2024) (File No. SR–NSCC–2023–007).

Corporation (''OCC'') is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically settled'' options).[13] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (''Exercise and Assignment Activity'' or ''E&A Activity''). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord,'' that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (''Common Members'').

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a Common Member for whom NSCC has ceased to act (*e.g.,* due to a default by that member). To the extent NSCC chooses not to guaranty such transactions of a defaulting Clearing Member, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default. This presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as $300 billion.[14] Second, because NSCC's netting process dramatically decreases the volume of securities settlement obligations that must be addressed, settlement of physically-settled options and futures outside of NSCC introduces significant operational complexities. Specifically, without NSCC's netting process, OCC would have to coordinate a significantly increased number of transactions on a broker-to-broker basis rather than through a single central counterparty, and the total value of settlement obligations that would need to be processed would be significantly higher.[15]

NSCC proposes to revise the Accord to address these liquidity and operational issues. In particular, OCC and NSCC have agreed to modify the Accord to require NSCC to accept E&A Activity from OCC (*i.e.,* guaranty the positions of a defaulting Common Member), provided that OCC makes a payment to NSCC called the ''Guaranty Substitution Payment,'' or ''GSP.'' The GSP is designed to cover OCC's share of the incremental risk to NSCC posed by the defaulting Common Member's positions. The total risk posed to NSCC by a defaulting Common Member would be the sum of (i) the defaulter's unpaid deposit to the NSCC Clearing Fund (''Required Fund Deposit''),[16] and (ii) the defaulter's unpaid Supplemental Liquidity Deposit (''SLD'').[17] If OCC pays the GSP to NSCC, NSCC would be obligated under the amended Accord to accept that member's E&A activity from OCC and conduct settlement through NSCC's netting process and systems. NSCC would calculate how much of the defaulting Common Member's Required Fund Deposit and SLD are attributable to the E&A Activity that OCC sends to NSCC, and that amount would be the GSP. Based on historical data, OCC's GSP could be as much as $6 billion, which is significantly less than the potential $300 billion that could be required for alternative settlement outside of NSCC.[18]

As noted above, NSCC amended the Proposed Rule Change after filing. The primary purposes of the Amendment No. 2 were to provide for improved information sharing between OCC and NSCC, and ensure that the new process and timing for NSCC to calculate the GSP and OCC to pay the GSP will be consistent with relevant process and timing requirements necessitated by the industry transitions to a T+1 settlement cycle for securities.[19] NSCC has labeled the proposed changes included in the initial filing to allow OCC to pay the GSP to NSCC as Phase 1 of the proposed changes, and the additional changes in the amendment to enhance information sharing and facilitate the transition to T+1 as Phase 2.[20]

NSCC also proposes to make conforming changes to its Rules & Procedures (''NSCC Rules'') to facilitate the proposed changes to the Accord.[21]

A. Information Sharing and the Guaranty Substitution Payment

The proposed revisions to the Accord designed to introduce and facilitate the new GSP include the following: changes designed to facilitate improved information sharing between OCC and NSCC; changes that would define the calculation of the GSP; changes that would define the process and timing by which guaranty of the E&A Activity would transfer from OCC to NSCC; [22] and additional conforming changes to the Accord to support these and the other changes described in more detail below.

Improved Information Sharing. Currently, NSCC sends a file daily to OCC defining which securities are eligible to settle through NSCC. OCC then delivers to NSCC a file identifying securities to be physically settled at NSCC as a result of E&A Activity. This process would continue under the proposal, however, as part of Phase 1 NSCC would also communicate the GSP daily to OCC.[23] In Phase 2, NSCC would continue to communicate the GSP daily to OCC, but the calculation would differ, as described in more detail below.

Also in Phase 2, OCC and NSCC would share additional information beyond the daily exchange of position files and communication of the GSP. Specifically, NSCC would communicate

[13] The term ''physically-settled'' as used throughout the OCC Rulebook, refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). The OCC By-Laws and OCC Rules are available *at www.theocc.com/company-information/documents-and-archives/by-laws-and-rules.* When a contract settles into its underlying interest, shares of stock are sent (*i.e.,* delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and at the time of maturity in the case of a future.

[14] *See* Notice of Filing, 88 FR at 59969.

[15] For example, in 2022 it is estimated that netting through NSCC's continuous net settlement (''CNS'') accounting system reduced the value of CNS settlement obligations from $519 trillion to $9 trillion, an approximately 98 percent reduction. *See id.*

[16] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. *See* Notice of Filing, 88 FR at 59971, n.26.

[17] Under the NSCC Rules, in certain circumstances, NSCC collects the Supplemental Liquidity Deposit, which is an additional cash deposit from each of those Members who would generate the largest settlement debits in stressed market conditions. *See* Rule 4A of the NSCC Rules. *See also* Notice of Filing, 88 FR at 59971, n.27.

[18] *See* Notice of Filing, 88 FR at 59969.

[19] On February 15, 2023, the Commission adopted rules to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[20] NSCC has proposed a two-step implementation based on the categorization of changes as part of Phase 1 and Phase 2. *See* Notice of Amendment, 89 FR at 6151.

[21] Capitalized terms not defined herein are defined in the NSCC Rules. The NSCC Rules are available at *www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[22] Here, the ''transfer'' of the guaranty refers to the point at which OCC's settlement guaranty with respect to E&A Activity ends and NSCC's settlement guaranty begins.

[23] NSCC would communicate both the total amount of collateral required to cover the risk presented by each common clearing member and what percentage of that risk is attributable to OCC (*i.e.,* the GSP) and therefore OCC would need to pay to require NSCC to guaranty the positions of a Common Member for whom NSCC has ceased to act.

to OCC daily the single largest GSP observed in the prior 12 months (the ''Historical Peak GSP''), which would in turn provide a data point for discussion between OCC and NSCC to confirm that OCC will likely be in a position to commit to paying the actual GSP in the event of the default of a Common Member.[24] NSCC would also communicate a set of margin and liquidity-related data to OCC daily (the ''GSP Monitoring Data''). The GSP Monitoring Data would be for informational purposes and would facilitate OCC's daily assessment of its ability to commit to pay the actual GSP in the event of the default of a Common Member.

The Guaranty Substitution Payment. As described above, NSCC would communicate to OCC the GSP amount each day. In the event of a Common Member default, this is the amount OCC would need to pay to require NSCC to guaranty the positions of the defaulting Common Member. Under both Phases 1 and 2, the GSP for a given member would be the amount necessary to cover the risk posed by the member's E&A Activity, and would be calculated by determining the portion of the defaulting Clearing Member's Required Fund Deposit and SLD that the member owes to NSCC that is attributable to the member's E&A Activity at OCC. The calculation of OCC's portion of the Required Fund Deposit obligation would differ between Phases 1 and 2, with a precise calculation in Phase 2 replacing a proxy from Phase 1.

In Phase 1, NSCC would approximate the percentage of the member's Required Fund Deposit attributable to E&A Activity by referencing the day-over-day change in gross market value of the Common Member's positions at NSCC. NSCC acknowledges that this gross market value proxy methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A Activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member.[25] The Phase 2 changes to the Accord would introduce a more precise allocation of the Required Fund Deposit portion of the GSP, which would help eliminate the potential over- or under-estimation of OCC's portion of the Required Fund Deposit.[26] Specifically, in Phase 2, NSCC would calculate OCC's portion of the Required Fund Deposit as a difference between the Required Fund Deposit of the Common Member's entire portfolio and the Required Fund Deposit of the Common Member's portfolio prior to the submission of E&A Activity. This more precise calculation would completely replace the Phase 1 gross market value proxy. Under both Phases 1 and 2, the SLD portion of the GSP would be the Common Member's unpaid SLD associated with any E&A Activity.

Guaranty Transfer. As described above, the purpose of the proposed changes is to increase the circumstances under which NSCC must assume the obligation to guaranty E&A Activity. Currently, the guaranty for such transactions transfers from OCC to NSCC after NSCC has received Required Fund Deposits from the Common Members. The guaranty would not transfer if a member fails to satisfy its obligations to NSCC. Under the proposed changes, the guaranty would transfer after NSCC has received Required Fund Deposits from the Common Members or at such time that OCC pays the GSP if a Common Member fails to satisfy its obligations to NSCC.

B. Phase 1 Changes to the NSCC Rules

NSCC is also proposing changes to its Rules in connection with the proposed changes to the Existing Accord. First, NSCC would amend Rule 18 (Procedures for When the Corporation Ceases to Act), which describes how NSCC handles a Member's transactions after NSCC ceases to act for that Member.[27] Specifically, newly-added section 9(a) would specify that following a Member default, NSCC may continue to act and provide the NSCC Guaranty pursuant to a ''Close-Out Agreement'' such as the Existing Accord (as it is proposed to be amended).[28] A new section 9(b) would specify that any transactions undertaken pursuant to a Close-Out Agreement would be treated as having been received, provided or undertaken for the account of the Member for which NSCC has ceased to act, but that any deposit, payment, financial assurance or other accommodation provided to NSCC pursuant to a Close-Out Agreement shall be returned or released as provided for in the agreement. A new section 9(c) would provide that NSCC shall have a lien upon, and may apply, any property of the defaulting Member in satisfaction of any obligation, liability or loss that relates to a transaction undertaken or service provided pursuant to a Close-Out Agreement. NSCC would also propose clarifications to Sections 4, 6(b)(iii)(B) and 8 of Rule 18 to use more precise references to the legal entity described in those sections of this Rule.

Second, NSCC would amend Section B of Procedure III and Addendum K of the NSCC Rules to provide that the NSCC Guaranty would not attach to Defaulted NSCC Member Transactions except as provided for in the Existing Accord (as it is proposed to be amended), and that the NSCC Guaranty attaches, with respect to obligations arising from the exercise or assignment of OCC options settled at NSCC or stock futures contracts cleared by OCC, as provided for in the Existing Accord (as it is proposed to be amended) or other arrangement with OCC. Finally, the proposed changes to Procedure III would clarify that Guaranty Substitution occurs when NSCC receives both the Required Fund Deposit SLD, consistent with the proposed revisions to Section 5 of the Current Accord. As noted above, the proposed collection of the SLD in connection with the Guaranty Substitution reflect OCC and NSCC's agreement that both amounts are components of the Guaranty Substitution Payment. NSCC also proposes to make a number of non-substantive clean up changes to Procedure III, such as correcting references to NSCC's ''guaranty.''

NSCC states that these proposed changes would establish and clarify the rights of both NSCC and a Member for which NSCC has ceased to act and the operation and applicability of any Close-Out Agreement, and would make it clear that any payments received pursuant to a Close-Out Agreement and NSCC's acceptance of a Mutually Suspended Member's transactions for clearance and settlement pursuant to a Close-Out Agreement are intended to fall within the Bankruptcy Code and Securities Investor Protection Act ''safe harbors.'' [29]

[24] NSCC would provide the Historical Peak GSP to OCC daily, and OCC would communicate to NSCC whether OCC has Clearing Fund cash in excess of the Historical Peak GSP. If OCC does not have sufficient cash in the Clearing Fund, this would allow OCC and NSCC to escalate discussion of whether OCC will likely be in a position to commit to paying the actual GSP (*e.g.,* what other resources OCC has, whether the actual GSP is likely to be as large as the historical peak). The comparison of OCC's resources to the Historical Peak GSP would not affect whether OCC is permitted to send E&A Activity to NSCC.

[25] *See* Notice of Amendment, 89 FR at 6144.

[26] *See id.* OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of the proposal. NSCC will incorporate those technology updates in connection with Phase 2 of this proposal. *Id.*

[27] *See supra* note 21.

[28] The Existing Accord is currently the only agreement that would be considered a ''Close-Out Agreement'' under this new Section 9(b). *See* Notice of Amendment, 89 FR at 6147, n.54.

[29] *See id.* at 6147–48.

C. Transition to T+1

Phase 1 of the proposed changes are primarily designed to provide OCC the right to require NSCC to accept and guaranty the E&A Activity of a Common Member even if that member has not met its obligations to NSCC. The mechanism by which OCC would exercise that right would be the payment of the GSP to NSCC, and OCC would account for such payment as a potential liquidity demand that it must manage. Phase 1 does not, however, materially change the time at which OCC would cease (and NSCC would start) to guaranty the E&A Activity.[30]

Under the current Accord, NSCC's guaranty attaches (and OCC's ceases) when NSCC has received all Required Fund Deposits taking into account the E&A Activity.[31] Currently, NSCC's guaranty would not attach if a Common Member defaults on its obligations to NSCC. Under Phase 1 of the proposed changes, however, OCC would have the opportunity to pay the GSP to NSCC as an effective substitution for the defaulted member's obligations with respect to the E&A Activity. Phase 1, therefore, allows for a change in who pays NSCC, but does not alter the timing of payment.

Phase 2 will alter the timing of payment, primarily to accommodate the transition from a T+2 settlement cycle to a T+1 settlement cycle.[32] Under the current process, which takes place in a T+2 settlement cycle, there is sufficient time after expiration for NSCC and OCC to determine whether a member has defaulted before NSCC begins to process settlement of the E&A Activity. However, in a T+1 settlement cycle, settlement processing could begin before NSCC or OCC become aware of a member default. Thus, in a T+1 environment, the timing and process by which OCC's guaranty would cease (and NSCC's would attach) would need to shift.

Specifically, under Phase 2, OCC would commit to payment of the GSP (regardless of whether a member has defaulted) prior to NSCC's acceptance of E&A Activity. If OCC is unable to commit to pay the GSP, NSCC would be permitted, but not required, to reject the E&A Activity. The process would vary slightly between expirations occurring on a Friday and expirations occurring Monday through Thursday. For a Friday expiration, NSCC would communicate the GSP to OCC and OCC would subsequently commit to pay the GSP on Saturday morning. For Monday through Thursday expirations, OCC's transmission of the E&A Activity itself to NSCC would constitute a commitment by OCC to pay the GSP related to that E&A Activity.[33] For all expirations, OCC would send the E&A Activity to NSCC by 1 a.m. the morning after expiration (*e.g.,* 1 a.m. Saturday for a Friday expiration). This would help ensure that, in a T+1 settlement environment, NSCC has OCC's commitment to pay the GSP before NSCC must begin processing any E&A Activity from OCC.

D. Phase 2 Changes to the NSCC Rules

NSCC is also proposing conforming changes to its Rules to align with the Phase 2 Accord. Specifically, NSCC would amend Section B of Procedure III of the NSCC to remove references to Balance Order Securities and the Balance Order Accounting Operation in Procedure III to align with the removal of Balance Order transactions from the types of Eligible Securities under the Phase 2 Accord. NSCC would also update a reference to the Settlement Date for OCC E&A/Delivery Transactions to reflect that it would be one business day (rather than two business days) after exercise/assignment under the forthcoming T+1 settlement cycle. In addition, NSCC would clarify in Procedure III that E&A/Delivery Transactions that are indicated in a report or Consolidated Trade Summary will have no impact on NSCC's guaranty or a Member's ultimate obligation to deliver or pay for the receipt of such securities unless and until such transactions have satisfied all requirements for the NSCC's guaranty under Addendum K and the new Accord (unless NSCC notifies Members to the contrary). NSCC would also clarify that E&A/Delivery Transactions indicated in a report or Consolidated Trade Summary for which the NSCC's guaranty does become effective will be canceled and thereafter null and void and such cancelation will be reflected in the next available report or Consolidated Trade Summary. The proposed changes are intended to reflect the timing of the receipt and processing of E&A/Delivery Transactions under the T+1 settlement cycle and the ultimate Guaranty Substitution and Guaranty Substitution Time under the Phase 2 Accord.[34]

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[35] After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to NSCC. More specifically, the Commission finds that the Proposed Rule Change is consistent with section 17A(b)(3)(F) of the Exchange Act,[36] and Rules 17Ad–22(e)(1), (e)(7), and (e)(20)[37] thereunder, as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[38] Based on its review of the record, and for the reasons described below, allowing NSCC to make the changes described above is consistent with promoting prompt and accurate clearance and settlement of securities transactions, fostering cooperation and coordination between with persons engaged in the clearance and settlement of securities transactions, and, in general, the protection of investors and the public interest.

By providing OCC with the ability to make a Guarantee Substitution Payment to NSCC for any unmet obligations of a Mutually Suspended Member, the proposed changes to the Accord and conforming changes to the NSCC Rules would allow NSCC to continue to accept E&A Activity during a Common Member default while ensuring that it has sufficient liquid resources to address the

[30] The Commission described the current timing and process under which OCC's guaranty ceases and NSCC's guaranty attaches in a prior order. *See* Securities Exchange Act Release No. 81266 (July 31, 2017), 82 FR 36484, 36486–87 (Aug. 4, 2017) (File No. SR–OCC–2017–013).

[31] *See id.* at 36487.

[32] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[33] The requirement to commit prior to calculation of the final GSP for E&A Activity arising Monday through Thursday highlights the importance of the improved information sharing described above.

[34] *See* Notice of Amendment, 89 FR at 6151.

[35] 15 U.S.C. 78s(b)(2)(C).

[36] 15 U.S.C. 78q–1(b)(3)(A).

[37] 17 CFR 240.17Ad–22(e)(1); 17 CFR 240.17Ad–22(e)(7); and 17 CFR 240.17Ad–22(e)(20).

[38] 15 U.S.C. 78q–1(b)(3)(F).

credit and liquidity risks that the defaulting Common Member would pose to NSCC. Processing E&A Activity through NSCC's netting system would also significantly reduce the risk posed by such E&A Activity by reducing the volume and value of settlement obligations.[39] Further, the information sharing contemplated under the proposed changes would allow NSCC to better understand and monitor its exposures and provide for more dialogue between NSCC and OCC, which could, in turn, allow them to better manage the processing of E&A Activity. Therefore, the Proposed Rule Change should promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.[40]

Phase 2 contemplates further enhancement of information sharing between two clearing agencies as well as updating the Accord to support the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. Enhanced information sharing would support closer coordination and cooperation between OCC and NSCC through frequent dialogue. For example, the communication of the Historical Peak GSP would allow OCC to assess its liquidity resources and facilitate discussion of whether OCC will likely be in a position to commit to paying the actual GSP. The changes to support the shortening of the standard settlement cycle would allow OCC and NSCC to coordinate as they seek to comply with the relevant rulemaking adopted by the Commission under the Exchange Act consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.[41]

Finally, the ability for OCC to make a Guarantee Substitution Payment to NSCC for any unmet obligations of a Mutually Suspended Member would allow NSCC to continue to accept E&A Activity during a Common Member default while ensuring that it has sufficient liquid resources to address the credit and liquidity risks that the defaulting Common Member would pose to NSCC and also reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market.[42] The Proposed Rule Change would, therefore, generally support the protection of investors and the public interest, consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act,[43] because it would reduce systemic risk.

Accordingly, and for the reasons stated above, the Proposed Rule Change is consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.[44]

B. Consistency With Rule 17Ad–22(e)(1) Under the Exchange Act

Rule 17Ad–22(e)(1) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[45] In adopting Rule 17Ad–22(e)(1), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address legal risk.[46] The Commission stated that a covered clearing agency should consider, *inter alia,* whether its contracts are consistent with relevant laws and regulations.[47]

On February 15, 2023, the Commission adopted a final rule to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date.[48] Currently, and under Phase 1, the terms of the Accord are designed for consistency with a T+2 settlement cycle. As described above, the terms of the Accord under Phase 2, which NSCC intends to implement on the T+1 compliance date established by the Commission,[49] would be designed for consistency with a T+1 settlement cycle.

Accordingly, the proposal to amend the Accord to conform to a T+1 settlement cycle is consistent with Rule 17Ad–22(e)(1) under the Exchange Act.[50]

C. Consistency With Rule 17Ad–22(e)(7) Under the Exchange Act

Rule 17Ad–22(e)(7) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[51] In adopting Rule 17Ad–22(e)(7), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address liquidity risk.[52] The Commission stated that a covered clearing agency should consider, *inter alia,* whether it maintains sufficient liquid resources in all relevant currencies to settle securities-related payments and meet other payment obligations on time with a high degree of confidence under a wide range of stress scenarios.[53]

The proposed changes to the Accord would provide OCC with the ability to make a cash payment to NSCC (*i.e.,* the GSP) for any unmet obligations of a Mutually Suspended Member. As a result, the GSP would allow NSCC to accept E&A Activity during a Common Member default while ensuring that it has sufficient liquid resources to address the credit and liquidity risks that the defaulting Common Member would pose to NSCC. As a result, the proposed changes would facilitate the NSCC's management of its liquidity risks posed by E&A Activity because, any increase to NSCC's liquidity needs that may be created by applying the NSCC Guaranty to Defaulted Member Transactions would occur with a simultaneous increase to its liquidity resources in the form of the Guaranty Substitution Payment.

Accordingly, the proposed changes to the Accord and NSCC's Rules are consistent with Rule 17Ad–22(e)(7) under the Exchange Act.[54]

[39] As noted above, it is estimated that, in 2022, netting through NSCC's CNS accounting system reduced the value of CNS settlement obligations by approximately 98 percent or $510 trillion from $519 trillion to $9 trillion. *See* Notice of Filing, 88 FR at 59969.

[40] 15 U.S.C. 78q–1(b)(3)(F).

[41] 15 U.S.C. 78q–1(b)(3)(F).

[42] OCC has been designated as a systemically important financial market utility, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets. *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Feb. 17, 2022).

[43] 15 U.S.C. 78q–1(b)(3)(F).

[44] 15 U.S.C. 78q–1(b)(3)(F).

[45] 17 CFR 240.17Ad–22(e)(1).

[46] *See* Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards'').

[47] *See id.*

[48] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[49] *See* Notice of Amendment, 89 FR at 6152.

[50] 17 CFR 240.17Ad–22(e)(1).

[51] 17 CFR 240.17Ad–22(e)(7).

[52] *See* Covered Clearing Agency Standards, 81 FR at 70823.

[53] *See id.*

[54] 17 CFR 240.17Ad–22(e)(7).

D. Consistency With Rule 17Ad–22(e)(20) Under the Exchange Act

Rule 17Ad–22(e)(20) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.[55] For the purposes of Rule 17Ad–22(e)(20), ''link'' means, among other things, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purpose of participating in settlement.[56]

In adopting Rule 17Ad–22(e)(20), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address links.[57] Notably, the Commission stated that a covered clearing agency should consider whether a link has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the covered clearing agencies involved in the link.[58]

As described above, the Accord is a contractual arrangement between NSCC and OCC that governs the processing of E&A Activity, which consists of settlement obligations arising out of certain products cleared by OCC. The Accord, therefore, is a link for the purposes of Rule 17Ad–22(e)(20). The specific legal basis for the Accord to conform to a T+1 settlement cycle was discussed above in section III.B. Likewise, Section II discussed the ways the Accord provides adequate protection to both OCC and NSCC by introducing the GSP, enhancing information sharing between OCC and NSCC, and ensuring that OCC and NSCC have the tools and information they need to monitor the potential liquidity need posed by the GSP.

For the reasons discussed in those sections, the Accord between OCC and NSCC has a well-founded legal basis that supports its design and provides adequate protection to the covered clearing agencies involved in the Accord. Accordingly, the proposed changes to the Accord and NSCC's Rules are consistent with Rule 17Ad–22(e)(20) under the Exchange Act.[59]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change, as modified by Partial Amendment No. 1 and Amendment No. 2, is consistent with the requirements of the Exchange Act, and in particular, the requirements of section 17A of the Exchange Act[60] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[61] that the Proposed Rule Change, as modified by Partial Amendment No. 1 and Amendment No. 2, (SR–NSCC–2023–007) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[62]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05832 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99740; File No. SR–CBOE–2024–012]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 14, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 5, 2024, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3]

New XSP RTH LMM Program

The Exchange proposes to amend its Fees Schedule to adopt a Regular Trading Hours (''RTH'') XSP Lead Market-Makers (''LMMs'') Incentive Program (the ''Program'') under which LMMs appointed to the Program would receive the proposed payment and rebate if they provide continuous electronic quotes during RTH from 8:30 a.m. CST to 3:15 p.m. CST that meet or exceed the proposed quoting standards under the Program (as described in further detail below).

As proposed, if an LMM appointed to the Program provides continuous electronic quotes during RTH that meet or exceed the proposed heightened quoting standards (below) in at least 95% of the series 93% of the time in a given month, the LMM will receive (i) a payment for that month in the amount of $40,000 and (ii) a rebate of $0.27 per

[55] 17 CFR 240.17Ad–22(e)(20).

[56] 17 CFR 240.17Ad–22(a)(8).

[57] *See* Covered Clearing Agency Standards, 81 FR at 70841.

[58] *Id.*

[59] 17 CFR 240.17Ad–22(e)(20).

[60] In approving the Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[61] 15 U.S.C. 78s(b)(2).

[62] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on March 1, 2024 (SR–CBOE–2024–011). On March 5, 2024, the Exchange withdrew that filing and submitted this proposal.

XSP contract that is executed in RTH in Market-Maker capacity and adds liquidity electronically contra to non-customer capacity.

WIDTH

Moneyness [4]	Expiring option	1 day	2 days to 5 days	6 days to 14 days	15 days to 35 days
VIX Value at Prior Close ≤30					
[>3% ITM)	$0.20	$0.25	$0.25	$0.50	$1.00
[3% ITM to 2% ITM)	0.10	0.15	0.15	0.25	0.75
[2% ITM to 0.25% ITM)	0.04	0.05	0.05	0.06	0.10
[0.25% ITM to ATM)	0.02	0.03	0.04	0.05	0.08
[ATM to 1% OTM)	0.02	0.02	0.02	0.03	0.06
[>1% OTM]	0.02	0.02	0.02	0.02	0.04
VIX Value at Prior Close >30					
[>3% ITM)	0.25	0.30	0.30	0.55	1.05
[3% ITM to 2% ITM)	0.15	0.20	0.20	0.30	0.80
[2% ITM to 0.25% ITM)	0.05	0.06	0.06	0.07	0.11
[0.25% ITM to ATM)	0.03	0.04	0.05	0.06	0.09
[ATM to 1% OTM)	0.03	0.03	0.03	0.04	0.07
[>1% OTM]	0.03	0.03	0.03	0.03	0.05

Moneyness	Size (0 to 35 days to expiry)
[>3% ITM)	5
[3% ITM to 2% ITM)	10
[2% ITM to 0.25% ITM)	15
[0.25% ITM to ATM)	20
[ATM to 1% OTM)	20
[>1% OTM]	20

Meeting or exceeding the heightened quoting standards in XSP, as proposed, to receive the proposed compensation payment(s) is optional for any LMM appointed to the Program. The Exchange may consider other exceptions to this quoting standard based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM met the heightened quoting standard each month, the Exchange will exclude from the calculation in that month the business day in which the LMM missed meeting or exceeding the heightened quoting standard in the highest number of series. The heightened quoting requirements offered by the Program are designed to incentivize LMMs appointed to the Program to provide significant liquidity in XSP options during the RTH session, which, in turn, would provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in XSP.

[4] Moneyness is calculated as 1—strike/index for calls, strike/index—1 for puts. Negative numbers are Out of the Money (''OTM'') and positive values are In the Money (''ITM''). A Moneyness value of zero for either calls or puts is considered At the Money (''ATM''). For example, if the index is at 400, the 396 call = 1 − 396/400 = 0.01 = 1% ITM, whereas the 396 put = 396/400 − 1 = −0.01 = 1% OTM.

Routing Fee Codes Changes

The Exchange also proposes to modify fees associated with certain routing fee codes. The Fees Schedule currently lists fee codes and their corresponding transaction fee for routed Customer orders to other options exchanges specifically in Exchange Traded Funds (''ETF'') and equity options, and for non-Customer orders routed in Penny and Non-Penny options classes.

The Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as a flat $0.15 assessment that covers costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The Exchange notes that at least one other options exchange currently assesses routing fees in a similar manner as the Exchange's current approach to assessing approximate routing fees.[5]

The Exchange assesses fees in connection with orders routed away to various exchanges. Currently, under the Routing Fees table of the Fee Schedule, fee codes RD, RF, and RI are appended to certain Customer orders in ETF and Equity options, as follows:

- fee code RD is appended to Customer orders in ETF/Equity options routed to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Nasdaq BX Options (''BX''), Cboe EDGX Exchange, Inc. (''EDGX''), MIAX Options Exchange (''MIAX'') or Nasdaq PHLX LLC (''PHLX'') (excluding orders in SPY options), and assesses a charge of $0.25 per contract;
- fee code RF is appended to Customer orders in ETF/Equity, Penny options routed to NYSE Arca, Inc (''ARCA''), Cboe BZX Exchange, Inc. (''BZX''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE (''ISE''), ISE Gemini, LLC (''GMNI''), ISE Mercury, LLC (''MERC''), MIAX Emerald Exchange (''EMLD''), MIAX Pearl Exchange (''PERL''), Nasdaq Options Market LLC (''NOM''), or PHLX (for orders in SPY options only) and assesses a charge of $0.75 per contract;
- fee code RI is appended to Customer orders in ETF/Equity, Non-Penny options routed to ARCA, BZX, C2, ISE, GMNI, MERC, EMLD, PERL or NOMX, and assesses a charge of $1.25 per contract.
- fee code TD is appended to Customer orders in ETF options originating on an Exchange-sponsored terminal for greater than or equal to 100 contracts routed to AMEX, BOX, BX, EDGX, MIAX, or PHLX, and assesses a charge of $0.18 per contract;
- fee code TE is appended to Customer orders in ETF/Equity options originating on an Exchange-sponsored terminal for less than 100 contracts routed to AMEX, BOX, BX, EDGX, MIAX, PHLX, and assesses no charge per contract;

[5] *See e.g.,* MIAX Options Exchange Fee Schedule, Section 1(c), ''Fees for Customer Orders Routed to Another Options Exchange.''

• fee code TF is appended to Customer orders in ETF, Penny options originating on an Exchange-sponsored terminal for greater than or equal to 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, MERC, or NOM, and assesses a charge of $0.18 per contract;
• fee code TG is appended to Customer orders in ETF, Non-Penny options originating on an Exchange-sponsored terminal for greater than or equal to 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, MERC, or NOM, and assesses $0.18 per contract;
• fee code TH is appended to Customer orders in ETF/Equity, Penny options originating on an Exchange-sponsored terminal for less than 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, MERC, or NOM, and assesses no charge per contract; and
• fee code TI is appended to Customer orders in ETF/Equity, Non-Penny options originating on an Exchange-sponsored terminal for less than 100 contracts routed to ARCA, BZX, C2, ISE, GMNI, EMLD, PERL, or NOM, and assesses no charge per contract.

The Exchange proposes to amend fee code RD, TD, and TE to exclude applicable Customer orders routed to Nasdaq BX Options (BX) and to amend fee codes RF, RI, TF, TG, TH, and TI to add applicable Customer orders routed to BX. The charges assessed per contract for each fee code remain the same under the proposed rule change.

The proposed changes result in an assessment of fees that, given fees of an away options exchange, is more in line with the Exchange's current approach to routing fees, that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's Routing Costs).[6] The Exchange notes that routing through the Exchange is optional and that TPHs will continue to be able to choose where to route applicable Customer orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,[10] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed XSP RTH LMM Incentive Program is reasonable, equitable and not unfairly discriminatory. Particularly, the proposed Program is a reasonable financial incentive program because the proposed heightened quoting standards and rebate amounts for meeting the heightened quoting standards in XSP series are reasonably designed to incentivize LMMs appointed to the Program to meet the proposed heightened quoting standards during RTH for XSP, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants.

The Exchange believes that the proposed heightened quoting standards are reasonable because they are similar to the detail and format of the quoting standards currently in place for LMM Incentive Programs for other proprietary Exchange products that trade during RTH.[11] The Exchange also believes that proposed heightened quoting requirements are reasonably tailored to reflect market characteristics of XSP. For example, the Exchange believes the generally smaller widths appropriately reflect the lower-priced and smaller notional sized XSP product (XSP options are 1/10th the size of SPX options). The Exchange believes utilizing moneyness as a quoting standard is reasonable, given the program objectives to achieve tight liquidity in a market where options premiums change quickly.

The Exchange also believes that the proposed incentive payment for appointed LMMs that meet the proposed heightened quoting standards in XSP in a month is reasonable and equitable as it is comparable to the incentive payments offered for other LMM Incentive Programs for other proprietary products. For example, the GTH1 and GTH2 LMM Incentive Programs for SPX/SPXW offer incentive payments of $40,000 per month, in which an appointed LMM meets the given quoting standards.[12] The Exchange also believes it is reasonable to offer to an appointed LMM that meets the given quoting standards a rebate of $0.27 per XSP contract that is executed in RTH in Market-Maker capacity and adds liquidity electronically contra to non-customer capacity because the proposed rebate is an incentive reasonably designed to encourage appointed LMMs to provide liquidity electronically contra to non-customer capacity in XSP options during the trading day.

Finally, the Exchange believes it is equitable and not unfairly discriminatory to offer the financial incentive to LMMs appointed to the Program because it will benefit all market participants trading in XSP during RTH by encouraging the appointed LMMs to satisfy the heightened quoting standards, which incentivizes continuous increased liquidity and thereby may provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade XSP, which can lead to increased volume, providing for robust markets. The Exchange ultimately proposes to offer the Program to sufficiently incentivize the appointed LMMs to provide key liquidity and active markets in XSP options to encourage liquidity, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to the Program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity). The

[6] *See* BX Options 7 (Pricing Schedule), Section 2.
[7] 15 U.S.C. 78f(b).
[8] 15 U.S.C. 78f(b)(5).
[9] *Id.*
[10] 15 U.S.C. 78f(b)(4).
[11] *See* Cboe Options Fees Schedule, ''RTH SPESG LMM Incentive Program'', ''MRUT LMM Incentive Program'', ''NANOS LMM Incentive Program'', and ''MSCI LMM Incentive Program.''
[12] *See* Cboe Options Fees Schedule, SPX/SPXW LMM Incentive Program'', and GTH2 SPX/SPXW LMM Incentive Program.''

Exchange believes the Program is equitable and not unfairly discriminatory because similar programs currently exist for LMMs appointed to programs in other proprietary products,[13] including for XSP during the GTH session, and the Program will equally apply to any TPH that is appointed as an LMM to the Program. Additionally, if an appointed LMM does not satisfy the heightened quoting standard in XSP for any given month, then it simply will not receive the offered payments or rebates for that month.

The Exchange also believes the proposed rule change to amend fee codes RD, RF, RI, TD, TE, TF, TG, TH, and TI to account for BX's current assessment of fees for Customer orders is reasonable because it is reasonably designed to assess routing fees in line with the Exchange's current approach to routing fees. That is, the proposed rule change is intended to include Customer orders in ETF and equity options routed to BX in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as Routing Costs to the Exchange. As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange notes that routing through the Exchange is optional and that TPHs will continue to be able to choose where to route their Customer orders in ETF and equity options in the same sub-category group of away exchanges as they currently may choose to route. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all TPHs. The Exchange further notes that at least one other options exchange currently approximates routing fees in a similar manner as the Exchange's current approach.[14] The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all TPHs' applicable Customer orders in ETF and equity options routed to BX will be automatically and uniformly assessed the applicable routing charges.

[13] *See supra* notes 11 and 12.

[14] *See supra* note 4.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange also does not believe that the Program would impose any burden on intramarket competition because it applies to all LMMs appointed to the Program in a uniform manner, in the same way similar programs apply to LMMs in other proprietary products today. To the extent these LMMs receive a benefit that other market participants do not, as stated, LMMs have different obligations and are held to different standards. For example, LMMs play a crucial role in providing active and liquid markets in their appointed products, thereby providing a robust market which benefits all market participants. Such Market-Makers also have obligations and regulatory requirements that other participants do not have.

The Exchange does not believe the proposed rule change to amend fee codes RD, RF, RI, TD, TE, TF, TG, TH, and TI will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. All TPHs' Customer orders routing to BX and currently yielding fee code RD, TD, or TE will yield fee code RF, RI, RF, TG, TH, or TI (depending on the order) and will automatically and uniformly be assessed the current fees already in place for such routed orders, as applicable.

The Exchange does not believe that the proposed rule change to establish the Program will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed incentive payment and rebate apply to a product exclusively listed on the Exchange.

Further, the Exchange does not believe the proposed rule change to amend fee codes RD, RF, RI, TD, TE, TF, TG, TH, and TI will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that at least one other options exchange approximates routing costs in a similar manner as the Exchange's current approach.[15] Also, the Exchange operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.[16] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [17] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[18] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[15] *Id.*

[16] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (February 26, 2024), available at *https://markets.cboe.com/us/options/market_statistics/*.

[17] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[18] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 [20] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CBOE–2024–012 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–CBOE–2024–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CBOE–2024–012 and should be submitted on or before April 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05838 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99734; File No. SR–NASDAQ–2024–010]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify Its Listing Standards Related to Notification and Disclosure of Reverse Stock Splits

March 14, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify its listing standards related to notification and disclosure of reverse stock splits.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 21, 2023, Nasdaq filed with the Commission a proposed rule change related to notification and disclosure of reverse stock splits.[3] On November 1, 2023, the Commission approved the proposed rule changes.[4] Nasdaq is proposing to amend Rule IM–5250–3 without changing the substance of the rule. Nasdaq also is proposing an additional change to the Company Event Notification Form to further clarify the requirement for companies to submit a complete form.

Nasdaq Rule 5250(e)(7) already provides that if a company takes legal action to effect a reverse stock split notwithstanding its failure to timely satisfy the requirements of Rules 5250(b)(4) and (e)(7), or provides incomplete or inaccurate information about the timing or ratio of the reverse stock split in its public disclosure, Nasdaq will halt the stock in accordance with the procedure set forth in Equity 4, Rule 4120(a)(1).[5] Nasdaq IM–5250–3

[3] *See* Securities Exchange Act Release No. 98014 (July 28, 2023), 88 FR 51376 (August 3, 2023).

[4] *See* Securities Exchange Act Release No. 98843 (November 1, 2023), 88 FR 76867 (November 7, 2023).

[5] Equity 4, Rule 4120(a)(1) provides Nasdaq with the authority to halt trading to permit the

Continued

contains similar language, but does not specifically reference the halt authority in in Equity 4, Rule 4120(a)(1). Nasdaq now proposes to clarify in IM–5250–3 by including a reference to the halt procedure set forth in Equity 4, Rule 4120(a)(1).

Nasdaq is also attaching an updated Company Event Notification Form as *Exhibit 3* to the rule filing. Based on Nasdaq's experience to date with company filings under the rule, Nasdaq is making changes to the form to clarify that the company must have already obtained a new CUSIP number and that CUSIP number must be made eligible by DTC before the submission of the form. Nasdaq also is making minor wording changes to clarify that shareholder approval must be obtained (as opposed to be planned) before the form can be submitted, similar to other dates collected on the form such as the date that DTC made the new CUSIP eligible.[6] These changes are consistent with the existing requirements of Rule 5250(e)(7), which requires the company to submit a complete Company Event Notification Form no later than 12:00 p.m. ET five (5) business days prior to the proposed market effective date, and which provides that Nasdaq will not process a reverse stock split unless all information required by the form is timely provided.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by eliminating potential confusion and enhancing clarity and transparency in its rules. The proposal is consistent with the Exchange's original proposal, as approved by the Commission, and does not have any substantive effect on IM–5250–3.

The proposal intends to clarify that Nasdaq will use its material news halt under Equity 4, Rule 4120(a)(1) to halt trading in the security of any issuer that effects a reverse stock split without meeting the requirements set forth in Rules 5250(b)(4) and (e)(7). Nasdaq believes that this will help promote clarity, transparency and consistency for market participants and companies.

The proposal also intends to clarify on the Company Event Notification Form that a company must file a complete Company Event Notification Form no later than 12:00 p.m. ET five (5) business days prior to the proposed market effective date, and such submission must include all the relevant information required by the form. Nasdaq believes that these changes will memorialize changes to our current process and better reflect the original intent of the rule, which will in turn help promote clarity, transparency and consistency for companies submitting the form.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to more clearly describe the current operation and original intent of an existing rule and related Company Event Notification Form, without changing its substance and, therefore, Nasdaq believes that the proposed change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing and states that the waiver will allow it to reflect the Exchange's original intent and reduce potential confusion for companies and investors. As the proposed rule change raises no new or novel issues and promotes clarity and consistency with the original intent of Rule IM–5250–3, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

dissemination of material news under Equity 4, Rule 4120(a)(1). Equity 4, 4120(a)(14) provides Nasdaq with the authority to halt trading of a security for which Nasdaq is the Primary Listing Market before the end of Post-Market Hours on the day immediately before the market effective date of a reverse stock split.

[6] We are also making some minor typographical edits in the Corporate Events Notification Form, that do not change the substance of the rule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–010 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–NASDAQ–2024–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–010 and should be submitted on or before April 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05833 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99735; File Nos. SR–OCC–2023–007]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1 and Amendment No. 2, Concerning Modifications to the Amended and Restated Stock Options and Futures Settlement Agreement Between The Options Clearing Corporation and the National Securities Clearing Corporation

March 14, 2024.

I. Introduction

On August 10, 2023, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2023–007 (''Proposed Rule Change'') pursuant to section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to change terms related to the physical settlement of equities arising out of certain futures and options contracts.[3] On August 30, 2023, the Proposed Rule Change was published for public comment in the **Federal Register**.[4]

On September 25, 2023, pursuant to section 19(b)(2) of the Exchange Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On November 8, 2023, OCC filed Partial Amendment No. 1 to the Proposed Rule Change.[7] On November 14, 2023, the Commission published notice of Partial Amendment No. 1 and instituted proceedings, pursuant to section 19(b)(2)(B) of the Exchange Act,[8] to determine whether to approve or disapprove the proposed rule change, as modified by the Partial Amendment No. 1.[9] On January 23, 2024, OCC filed Amendment No. 2 to the Proposed Rule Change, which was published in the **Federal Register** for public comment on January 30, 2024.[10] The Commission has received public comment regarding the Proposed Rule Change.[11] On February 20, 2024, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change.[12] This order approves the Proposed Rule Change as modified by Partial Amendment No. 1 and Amendment No.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 88 FR 59976.

[4] Securities Exchange Act Release No. 98215 (Aug. 24, 2023), 88 FR 59976 (Aug. 30, 2023) (File No. SR–OCC–2023–007) (''Notice of Filing''). On Aug. 10, 2023, OCC also filed a related advance notice (SR–OCC–2023–801) with the Commission pursuant to section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b–4(n)(1)(i) under the Exchange Act (''Advance Notice''). 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. The Advance Notice was published in the **Federal Register** on Aug. 30, 2023. Securities Exchange Act Release No. 98214 (Aug. 24, 2023), 88 FR 59988 (Aug. 30, 2023) (File No. SR–OCC–2023–801).

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 98508 (Sep. 25, 2023), 88 FR 67407 (Sep. 29, 2023) (File No. SR–OCC–2023–007).

[7] Partial Amendment No. 1 delays implementation of the proposed change. In Partial Amendment No. 1, OCC proposes to implement the proposed rule change within 90 days of receiving all necessary regulatory approvals and would announce the specific date of implementation on its public website at least 14 days prior to implementation. The delay is proposed in light of the technical system changes that are required to implement the liquidity stress testing enhancements and to be able to provide sufficient notice to Clearing Members following receipt of approval.

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 98932 (Nov. 14, 2023), 88 FR 80781 (Nov. 20, 2023) (File No. SR–OCC–2023–007).

[10] *See* Securities Exchange Act Release No. 99426 (Jan. 24, 2024), 89 FR 5974 (Jan. 30, 2024) (File No. SR–OCC–2023–007) (''Notice of Amendment''). Amendment No. 2 adds a second phase of changes to the proposed rule change. The changes added in Phase 2 include improved information sharing between OCC and NSCC and are designed to facilitate the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).]

[11] Comments on the Proposed Rule Change are available at *https://www.sec.gov/comments/sr-occ-2023-007/srocc2023007.htm.* The Commission received comments on the proposed rule change that express concerns unrelated to the substance of the filing. *See, e.g.,* comment from Gregory Englebert (Feb. 2, 2024) (raising concerns about a conflict of interest in the role of Financial Risk Management Officers as well as margin calls), comment from Curtis H. (Feb. 3, 2024) (referencing short selling and margin), and comment from CK Kashyap (Feb. 5, 2024) (referring to broker risk management in response to margin). Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice. Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2023-801/srocc2023801.htm.* The Commission received one comment supporting the proposed changes. *See* comment from John P. Davidson, Principal, Pirnie Advisory (Oct. 4, 2023), available at *https://www.sec.gov/comments/sr-occ-2023-801/srocc2023801-268179-645042.htm.*

[12] Securities Exchange Act Release No. 99568 (Feb. 20, 2024), 89 FR 14121 (Feb. 26, 2024) (File No. SR–OCC–2023–007).

2 (hereinafter defined as ''Proposed Rule Change'').

II. Background

The National Securities Clearing Corporation (''NSCC'') is a clearing agency that provides clearing, settlement, risk management, and central counterparty services for trades involving equity securities. OCC is the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, including options that contemplate the physical delivery of equities cleared by NSCC in exchange for cash (''physically settled'' options).[13] OCC also clears certain futures contracts that, at maturity, require the delivery of equity securities cleared by NSCC in exchange for cash. As a result, the exercise and assignment of certain options or maturation of certain futures cleared by OCC effectively results in stock settlement obligations to be cleared by NSCC (''Exercise and Assignment Activity'' or ''E&A Activity''). NSCC and OCC maintain a legal agreement, generally referred to by the parties as the ''Accord,'', that governs the processing of such E&A Activity for firms that are members of both OCC and NSCC (''Common Members'').[14]

Under certain circumstances, the Accord currently allows NSCC not to guaranty the settlement of securities arising out of E&A Activity for a Common Member for whom NSCC has ceased to act (*e.g.,* due to a default by that member). To the extent NSCC chooses not to guaranty such transactions of a defaulting Clearing Member, OCC would have to engage in an alternate method of settlement outside of NSCC to manage the default. This presents two issues. First, based on historical data, the cash required for such alternative settlement could be as much as $300 billion.[15] Second, because NSCC's netting process dramatically decreases the volume of securities settlement obligations that must be addressed, settlement of physically-settled options and futures outside of NSCC introduces significant operational complexities. Specifically, without NSCC's netting process, OCC would have to coordinate a significantly increased number of transactions on a broker-to-broker basis rather than through a single central counterparty, and the total value of settlement obligations that would need to be processed would be significantly higher.[16]

OCC proposes to revise the Accord to address these liquidity and operational issues. In particular, OCC and NSCC have agreed to modify the Accord to require NSCC to accept E&A Activity from OCC (*i.e.,* guaranty the positions of a defaulting Common Member), provided that OCC makes a payment to NSCC called the ''Guaranty Substitution Payment,'' or ''GSP.'' The GSP is designed to cover OCC's share of the incremental risk to NSCC posed by the defaulting Common Member's positions. The total risk posed to NSCC by a defaulting Common Member would be the sum of (i) the defaulter's unpaid deposit to the NSCC Clearing Fund (''Required Fund Deposit''),[17] and (ii) the defaulter's unpaid Supplemental Liquidity Deposit (''SLD'').[18] If OCC pays the GSP to NSCC, NSCC would be obligated under the amended Accord to accept that member's E&A activity from OCC and conduct settlement through NSCC's netting process and systems. NSCC would calculate how much of the defaulting Common Member's Required Fund Deposit and SLD are attributable to the E&A Activity that OCC sends to NSCC, and that amount would be the GSP. Based on historical data, OCC's GSP could be as much as $6 billion, which is significantly less than the potential $300 billion that could be required for alternative settlement outside of NSCC.[19]

As noted above, OCC amended the Proposed Rule Change after filing. The primary purposes of the Amendment No. 2 were to provide for improved information sharing between OCC and NSCC, and ensure that the new process and timing for NSCC to calculate the GSP and OCC to pay the GSP will be consistent with relevant process and timing requirements necessitated by the industry transitions to a T+1 settlement cycle for securities.[20] OCC has labeled the proposed changes included in the initial filing to allow OCC to pay the GSP to NSCC and enhance OCC's liquidity stress testing as Phase 1 of the proposed changes, and the additional changes in the amendment to enhance information sharing and facilitate the transition to T+1 as Phase 2.[21]

OCC also proposes to make conforming changes throughout its rules to accommodate the changes summarized above, as well as a number of changes to its rules to facilitate the proposed changes to the Accord noted above. For example, OCC proposes to change its rules to permit payment of the GSP to NSCC and revise other of its rules related to liquidity risk management to account for the potential need to make such a cash payment to NSCC.

A. Information Sharing and the Guaranty Substitution Payment

The proposed revisions to the Accord designed to introduce and facilitate the new GSP include the following: changes designed to facilitate improved information sharing between OCC and NSCC; changes that would define the calculation of the GSP; changes that would define the process and timing by which guaranty of the E&A Activity would transfer from OCC to NSCC; [22] and additional conforming changes to the Accord to support these and the other changes described in more detail below.

Improved Information Sharing. Currently, NSCC sends a file daily to OCC defining which securities are eligible to settle through NSCC. OCC then delivers to NSCC a file identifying securities to be physically settled at NSCC as a result of E&A Activity. This process would continue under the

[13] The term ''physically-settled'' as used throughout the OCC Rulebook refers to cleared contracts that settle into their underlying interest (*i.e.,* options or futures contracts that are not cash-settled). When a contract settles into its underlying interest, shares of stock are sent (*i.e.,* delivered) to contract holders who have the right to receive the shares from contract holders who are obligated to deliver the shares at the time of exercise/assignment in the case of an option and at the time of maturity in the case of a future. Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[14] Pursuant to OCC Rule 302, outside of certain limited exceptions, every Clearing Member that effects transactions in physically-settled options or futures must also be a participant in NSCC.

[15] *See* Notice of Filing, 88 FR at 59977.

[16] For example, in 2022 it is estimated that netting through NSCC's continuous net settlement (''CNS'') accounting system reduced the value of CNS settlement obligations from $519 trillion to $9 trillion, an approximately 98 percent reduction. *See id.*

[17] The Required Fund Deposit is calculated pursuant to Rule 4 (Clearing Fund) and Procedure XV (Clearing Fund Formula and Other Matters) of the NSCC Rules. *See* Notice of Filing, 88 FR at 59979, n.27.

[18] Under the NSCC Rules, in certain circumstances, NSCC collects the Supplemental Liquidity Deposit, which is an additional cash deposit from each of those Members who would generate the largest settlement debits in stressed market conditions. *See* Rule 4A of the NSCC Rules. *See also* Notice of Filing, 88 FR at 59979, n.28.

[19] *See* Notice of Filing, 88 FR at 59977.

[20] On February 15, 2023, the Commission adopted rules to shorten the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[21] OCC has proposed a two-step implementation based on the categorization of changes as part of Phase 1 and Phase 2. *See* Notice of Amendment, 89 FR at 5988.

[22] Here, the ''transfer'' of the guaranty refers to the point at which OCC's settlement guaranty with respect to E&A Activity ends and NSCC's settlement guaranty begins.

proposal, however, as part of Phase 1 NSCC would also communicate the GSP daily to OCC.[23] In Phase 2, NSCC would continue to communicate the GSP daily to OCC, but the calculation would differ, as described in more detail below.

Also in Phase 2, OCC and NSCC would share additional information beyond the daily exchange of position files and communication of the GSP. Specifically, NSCC would communicate to OCC daily the single largest GSP observed in the prior 12 months (the ''Historical Peak GSP''), which would in turn provide a data point for discussion between OCC and NSCC to confirm that OCC will likely be in a position to commit to paying the actual GSP in the event of the default of a Common Member.[24] NSCC would also communicate a set of margin and liquidity-related data to OCC daily (the ''GSP Monitoring Data''). The GSP Monitoring Data would be for informational purposes and would facilitate OCC's daily assessment of its ability to commit to pay the actual GSP in the event of the default of a Common Member.

The Guaranty Substitution Payment. As described above, NSCC would communicate to OCC the GSP amount each day. In the event of a Common Member default, this is the amount OCC would need to pay to require NSCC to guaranty the positions of the defaulting Common Member. Under both Phases 1 and 2, the GSP for a given member would be the amount necessary to cover the risk posed by the member's E&A Activity, and would be calculated by determining the portion of the defaulting Clearing Member's Required Fund Deposit and SLD that the member owes to NSCC that is attributable to the member's E&A Activity at OCC. The calculation of OCC's portion of the Required Fund Deposit obligation would differ between Phases 1 and 2, with a precise calculation in Phase 2 replacing a proxy from Phase 1.

In Phase 1, NSCC would approximate the percentage of the member's Required Fund Deposit attributable to E&A Activity by referencing the day-over-day change in gross market value of the Common Member's positions at NSCC. OCC acknowledges that this gross market value proxy methodology overestimates or underestimates the Required Fund Deposit attributable to a Common Member's E&A Activity, but states that current technology constraints prohibit NSCC from performing a precise calculation of the GSP on a daily basis for every Common Member. The Phase 2 changes to the Accord would introduce a more precise allocation of the Required Fund Deposit portion of the GSP, which would help eliminate the potential over- or under-estimation of OCC's portion of the Required Fund Deposit.[25] Specifically, in Phase 2, NSCC would calculate OCC's portion of the Required Fund Deposit as a difference between the Required Fund Deposit of the Common Member's entire portfolio and the Required Fund Deposit of the Common Member's portfolio prior to the submission of E&A Activity. This more precise calculation would completely replace the Phase 1 gross market value proxy. Under both Phases 1 and 2, the SLD portion of the GSP would be the Common Member's unpaid SLD associated with any E&A Activity.

Guaranty Transfer. As described above, the purpose of the proposed changes is to increase the circumstances under which NSCC must assume the obligation to guaranty E&A Activity. Currently, the guaranty for such transactions transfers from OCC to NSCC after NSCC has received Required Fund Deposits from the Common Members. The guaranty would not transfer if a member fails to satisfy its obligations to NSCC. Under the proposed changes, the guaranty would transfer after NSCC has received Required Fund Deposits from the Common Members or at such time that OCC pays the GSP if a Common Member fails to satisfy its obligations to NSCC.

B. Liquidity Risk Management

The changes to the Accord regarding the GSP and transfer of the guaranty are designed to resolve a potential gap in OCC's liquidity risk management. As noted above, the potential liquidity exposure to OCC posed by E&A Activity would be dramatically reduced by the proposed changes because it would go through NSCC's netting process. However, that reduction would only occur if OCC has sufficient liquid resources to pay the GSP. The potential payment of the GSP is, therefore, a liquidity demand that OCC must manage.

OCC's Liquidity Risk Management Framework (''LRMF'') sets forth a comprehensive overview of OCC's liquidity risk management practices and governs OCC's policies and procedures as they relate to liquidity risk management.[26] OCC proposes changes to the LRMF as well as to *OCC's Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description*[27] to incorporate the GSP into OCC's liquidity stress testing practices by treating the GSP as a potential liquidity demand.[28]

To implement this change, OCC would add an amount representing the potential GSP to each member account on each day on which options expire. The amount would be based on historical data. Specifically, OCC would add the peak GSP observed in the prior 12 months for the member to the potential liquidity risk posed by the member.[29] The reliance on the peak GSP observed in a 12-month lookback, however, raises two issues that OCC proposes to address in its management of liquidity risk.

First, future liquidity exposures may exceed past exposures, so holding enough liquidity to meet historical demands does not ensure that OCC will hold enough to meet future exposures. To address this issue, OCC proposes to incorporate a member's total Required Fund Deposit and SLD obligations to

[23] NSCC would communicate both the total amount of collateral required to cover the risk presented by each common clearing member and what percentage of that risk is attributable to OCC (*i.e.,* the GSP) and therefore OCC would need to pay to require NSCC to guaranty the positions of a Common Member for whom NSCC has ceased to act. As described further below, OCC proposes to incorporate the total risk presented by each common member into its management of liquidity risk.

[24] NSCC would provide the Historical Peak GSP to OCC daily, and OCC would communicate to NSCC whether OCC has Clearing Fund cash in excess of the Historical Peak GSP. If OCC does not have sufficient cash in the Clearing Fund, this would allow OCC and NSCC to escalate discussion of whether OCC will likely be in a position to commit to paying the actual GSP (*e.g.,* what other resources OCC has, whether the actual GSP is likely to be as large as the historical peak). The comparison of OCC's resources to the Historical Peak GSP would not affect whether OCC is permitted to send E&A Activity to NSCC.

[25] *See* Notice of Amendment, 89 FR at 5986. OCC and NSCC agreed that performing the necessary technology build during Phase 1 would delay the implementation of the proposal. NSCC will incorporate those technology updates in connection with Phase 2 of this proposal. *See* Notice of Amendment, 89 FR at 5978, n.31.

[26] *See* Securities Exchange Act Release No. 89014 (June 4, 2020), 85 FR 35446 (June 10, 2020) (File No. SR–OCC–2020–003).

[27] OCC provided a marked version of the *Comprehensive Stress Testing & Clearing Fund Methodology, and Liquidity Risk Management Description* to the Commission as exhibit 5E to File No. SR–OCC–2023–007.

[28] OCC would incorporate this potential liquidity demand at the level of a group of affiliated members.

[29] OCC states that the one-year lookback allows for the best like-to-like application of a historical GSP as there is a cyclical nature to option standard expirations with quarterly (*i.e.,* Mar., June, Sep., and Dec.) and Jan. generally being more impactful than non-quarterly expirations. *See* Notice of Filing, 88 FR at 59986. OCC states further that the one-year lookback allows behavior changes of a Clearing Member to be recognized within an annual cycle. *See id.*

NSCC (not just the portion represented in the GSP), into its liquidity risk management. As with most risk management, there is no guaranty that a future GSP could not exceed OCC's stress test exposures, but the proposed change increases the likelihood that OCC would have sufficient cash to pay the GSP.[30]

Second, the more E&A Activity that OCC sends to NSCC, the larger the amount of Required Fund Deposit and SLD attributable to E&A Activity. However, the level of E&A Activity varies predictably based on the expiration cycle of options such that different expiration cycles consistently present different volumes. Put simply, different expiration cycles are likely to pose different levels of liquidity risk to OCC in the form of the potential size of the GSP. Based on its analysis, OCC proposes to separate expirations into five categories.[31] For each day, OCC proposes to apply the peak obligation observed over the prior 12 months within the relevant expiration category for that day.[32] The five categories that OCC proposes to employ are the following:

- Standard Monthly Expiration: typically the third Friday of each month;
- End of Week Expirations: the last business day of the week, excluding the third Friday of each month;
- End of Month Expirations: the last trading day of the month;
- Bank Holiday Expirations: days where banks are closed but the markets are open; [33]
- Daily Expirations: all other days with an expiration that do not fall into any of the categories above (typically most Mondays through Thursdays).

Notwithstanding this categorization and the underlying analysis, OCC proposes to impose two floors to certain expirations. First, the peak obligation applied in the End of Week, End of Month, and Bank Holiday categories cannot be lower than the peak obligation observed in the Daily Expirations category. Second, the obligation applied in the Standard Monthly Expiration category cannot be lower than the peak obligation observed in either the End of Week, End of Month, or Daily Expiration category. As discussed below, the imposition of the floors would help OCC control for the possibility of an unusually large liquidity demand that is not related to the different expiration cycles.

The liquidity risk management changes described above are part of Phase 1. Additionally, OCC proposes changes to its Rules and By-Laws to allow OCC to pay the GSP out of its liquid resources.[34] Under Phase 2, OCC proposes to make further clarifying and definitional changes in the LRMF, but the substance of the Phase 1 changes would persist in Phase 2.

C. Transition to T+1

Phase 1 of the proposed changes are primarily designed to provide OCC the right to require NSCC to accept and guaranty the E&A Activity of a Common Member even if that member has not met its obligations to NSCC. The mechanism by which OCC would exercise that right would be the payment of the GSP to NSCC, and OCC would account for such payment as a potential liquidity demand that it must manage. Phase 1 does not, however, materially change the time at which OCC would cease (and NSCC would start) to guaranty the E&A Activity.[35]

Under the current Accord, NSCC's guaranty attaches (and OCC's ceases) when NSCC has received all Required Fund Deposits taking into account the E&A Activity.[36] Currently, NSCC's guaranty would not attach if a Common Member defaults on its obligations to NSCC. Under Phase 1 of the proposed changes, however, OCC would have the opportunity to pay the GSP to NSCC as an effective substitution for the defaulted member's obligations with respect to the E&A Activity. Phase 1, therefore, allows for a change in who pays NSCC, but does not alter the timing of payment.

Phase 2 will alter the timing of payment, primarily to accommodate the transition from a T+2 settlement cycle to a T+1 settlement cycle.[37] Under the current process, which takes place in a T+2 settlement cycle, there is sufficient time after expiration for NSCC and OCC to determine whether a member has defaulted before NSCC begins to process settlement of the E&A Activity. However, in a T+1 settlement cycle, settlement processing could begin before NSCC or OCC become aware of a member default. Thus, in a T+1 environment, the timing and process by which OCC's guaranty would cease (and NSCC's would attach) would need to shift.

Specifically, under Phase 2, OCC would commit to payment of the GSP (regardless of whether a member has defaulted) prior to NSCC's acceptance of E&A Activity. If OCC is unable to commit to pay the GSP, NSCC would be permitted, but not required, to reject the E&A Activity. The process would vary slightly between expirations occurring on a Friday and expirations occurring Monday through Thursday. For a Friday expiration, NSCC would communicate the GSP to OCC and OCC would subsequently commit to pay the GSP on Saturday morning. For Monday through Thursday expirations, OCC's transmission of the E&A Activity itself to NSCC would constitute a commitment by OCC to pay the GSP related to that E&A Activity.[38] For all expirations, OCC would send the E&A Activity to NSCC by 1 a.m. the morning after expiration (*e.g.,* 1 a.m. Saturday for a Friday expiration). This would help ensure that, in a T+1 settlement environment, NSCC has OCC's commitment to pay the GSP before NSCC must begin processing any E&A Activity from OCC.

[30] For example, assume the largest member obligation to NSCC would have been $100, but the largest GSP (representing the amount attributable to E&A Activity) would only have been $75. Rather than hold $75 and hope that the future exposures do not exceed past demands, OCC would hold $100 to cover a future GSP.

[31] OCC provided its analysis supporting the specific categories to the Commission in confidential Exhibit 3E to File No. SR–OCC–2023–007. The confidential Exhibit 3E sets forth data related to OCC's liquidity stress testing for Sufficiency and Adequacy scenarios with and without the inclusion of the GSP, including Available Liquidity Resources, Minimum Cash Requirement thresholds, and liquidity breaches.

[32] For example, for a standard monthly expiration, which is typically the third Friday of the month, OCC would look at the peak obligation observed across all standard monthly expirations in the preceding 12 months.

[33] The Bank Holiday category recognizes that for Veterans Day and Columbus Day, the equity and equity derivative markets are open for trading, but the banking system is closed. Because of this, settlement at NSCC encompasses two days of equity trading and E&A Activity. This creates the possibility of a significant outlying GSP requirement due to the settlement of two days of activity simultaneously. In OCC's view this necessitates the ability to separately risk manage such occurrences through the creation of the Bank Holiday category. Additional supporting data in support of the creation of the Bank Holiday Expiration category is included as Exhibit 3E to File No. SR–OCC–2023–007.

[34] For example, OCC proposes changes to its rules to allow OCC to borrow funds from the Clearing Fund to pay the GSP, which is consistent with OCC's use of the Clearing Fund to address other liquidity needs such as to cover losses resulting from a member's failure to satisfy an obligation on a confirmed trade accepted by OCC. *See* OCC Rule 1006(a)(i).

[35] The Commission described the current timing and process under which OCC's guaranty ceases and NSCC's guaranty attaches in a prior order. *See* Securities Exchange Act Release No. 81266 (July 31, 2017), 82 FR 36484, 36486–87 (Aug. 4, 2017) (File No. SR–OCC–2017–013).

[36] *See id.* at 36487.

[37] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

[38] The requirement to commit prior to calculation of the final GSP for E&A Activity arising Monday through Thursday highlights the importance of the improved information sharing described above.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[39] After carefully considering the Proposed Rule Change, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the Proposed Rule Change is consistent with section 17A(b)(3)(F) of the Exchange Act,[40] and Rules 17Ad–22(e)(1), (e)(7), and (e)(20)[41] thereunder, as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[42] Based on its review of the record, and for the reasons described below, allowing OCC to make the changes described above is consistent with promoting prompt and accurate clearance and settlement of securities transactions, fostering cooperation and coordination between with persons engaged in the clearance and settlement of securities transactions, and, in general, the protection of investors and the public interest.

OCC proposes changes to its rule related to the management of liquidity risk management, such as the introduction of the GSP, which would allow OCC to require NSCC to accept E&A Activity in the event of a Common Member default, so long as OCC pays the GSP to NSCC. Processing E&A Activity through NSCC's netting system would significantly reduce the risk posed by such E&A Activity by reducing the volume and value of settlement obligations.[43] It would also reduce OCC's potential liquidity demands as a result of the E&A Activity from an amount that could exceed its available liquid resources to an amount that would fall well within its current liquid resources. Further, the information sharing contemplated under the proposed changes would allow OCC to better understand and monitor its exposures and provide for more dialogue between NSCC and OCC, which could, in turn, allow them to better manage the risks posed by the E&A Activity.

OCC is the only clearing agency for standardized U.S. securities options listed on Commission-registered national securities exchanges (''listed options'').[44] Strengthening OCC's overall approach to liquidity risk management, strengthens OCC's ability to manage Clearing Member defaults, which, in turn, facilitates the clearance and settlement of listed options. The Proposed Rule Change would promote the prompt and accurate clearance and settlement of securities transactions and is, therefore, consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.[45]

Phase 2 contemplates further enhancement of information sharing between two clearing agencies as well as updating the Accord to support the shortening of the standard settlement cycle for most broker-dealer transactions from T+2 to T+1. Enhanced information sharing would support closer coordination and cooperation between OCC and NSCC through frequent dialogue. For example, the communication of the Historical Peak GSP would allow OCC to assess its liquidity resources and facilitate discussion of whether OCC will likely be in a position to commit to paying the actual GSP. The changes to support the shortening of the standard settlement cycle would allow OCC and NSCC to coordinate as they seek to comply with the relevant rulemaking adopted by the Commission under the Exchange Act consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.[46]

Further, OCC has been designated as a systemically important financial market utility, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[47] The proposed changes would support OCC's ability to continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Common Member. OCC's continued operations would, in turn, reduce systemic risk by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market. The Proposed Rule Change would, therefore, generally support the protection of investors and the public interest, consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act,[48] because it would reduce systemic risk.

Accordingly, and for the reasons stated above, the Proposed Rule Change is consistent with the requirements of section 17A(b)(3)(F) of the Exchange Act.[49]

B. Consistency With Rule 17Ad–22(e)(1) Under the Exchange Act

Rule 17Ad–22(e)(1) under the Exchange Act requires, in part, that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[50] In adopting Rule 17Ad–22(e)(1), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address legal risk.[51] The Commission stated that a covered clearing agency should consider, *inter alia,* whether its contracts are consistent with relevant laws and regulations.[52]

On February 15, 2023, the Commission adopted a final rule to shorten the standard settlement cycle for most broker-dealer transactions from two business days after the trade date to one business day after the trade date.[53]

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[39] 15 U.S.C. 78s(b)(2)(C).

[40] 15 U.S.C. 78q–1(b)(3)(A).

[41] 17 CFR 240.17Ad–22(e)(1); 17 CFR 240.17Ad–22(e)(7); and 17 CFR 240.17Ad–22(e)(20).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] As noted above, it is estimated that, in 2022, netting through NSCC's CNS accounting system reduced the value of CNS settlement obligations by approximately 98% or $510 trillion from $519 trillion to $9 trillion. *See* Notice of Filing, 88 FR at 59977.

[44] *See* Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR–OCC–2015–02).

[45] 15 U.S.C. 78q–1(b)(3)(F).

[46] 15 U.S.C. 78q–1(b)(3)(F).

[47] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Feb. 17, 2022).

[48] 15 U.S.C. 78q–1(b)(3)(F).

[49] 15 U.S.C. 78q–1(b)(3)(F).

[50] 17 CFR 240.17Ad–22(e)(1).

[51] *See* Securities Exchange Act Release No. 78961 (Sept. 28, 2016), 81 FR 70786, 70802 (Oct. 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards'').

[52] *See id.*

[53] *See* Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7–05–22).

Currently, and under Phase 1, the terms of the Accord are designed for consistency with a T+2 settlement cycle. As described above, the terms of the Accord under Phase 2, which OCC intends to implement on the T+1 compliance date established by the Commission,[54] would be designed for consistency with a T+1 settlement cycle.

Accordingly, the proposal to amend the Accord to conform to a T+1 settlement cycle is consistent with Rule 17Ad–22(e)(1) under the Exchange Act.[55]

C. Consistency With Rule 17Ad–22(e)(7) Under the Exchange Act

Rule 17Ad–22(e)(7) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity.[56] In adopting Rule 17Ad–22(e)(7), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address liquidity risk.[57] The Commission stated that a covered clearing agency should consider, *inter alia,* whether it maintains sufficient liquid resources in all relevant currencies to settle securities-related payments and meet other payment obligations on time with a high degree of confidence under a wide range of stress scenarios.[58]

OCC's LRMF sets forth a comprehensive overview of OCC's liquidity risk management practices and governs OCC's policies and procedures as they relate to liquidity risk management. As described above, the potential cash necessary to manage a member default without utilizing NSCC's settlement process could exceed OCC's available liquid resources. The proposed changes to the Accord would allow OCC to send E&A Activity to NSCC even in the event of a Common Member default, which, based on an analysis of historical data, would reduce OCC's potential liquidity to an amount that is within the scope of its current resources.

To take advantage of the proposed changes to the Accord, OCC must be prepared to make a cash payment to NSCC (*i.e.,* the GSP). OCC proposes to recognize that potential payment obligation as an input to OCC's liquidity risk processes. In particular, OCC proposes to consider the full amount of a Common Member's past obligations to NSCC rather than consider only the portion of such obligation attributable to E&A Activity. OCC's reliance on historical data would allow it to approximate, but not predict potential future exposures. Reliance solely on past GSP requirements would not position OCC to cover a future peak GSP. The incorporation of the full amount of a Common Member's past obligations, however, would provide a buffer to increase the likelihood that OCC would be in a position to pay a future GSP that exceeds historical GSP requirements. OCC also proposes to align its measurement of the potential obligation to pay NSCC with the cyclical nature of the products that OCC clears,[59] and to increase its information sharing with NSCC, which would allow OCC to better monitor the potential liquidity need posed by the GSP.

Accordingly, the proposed changes to the Accord regarding the GSP and to OCC's internal liquidity risk management rules are consistent with Rule 17Ad–22(e)(7) under the Exchange Act.[60]

D. Consistency With Rule 17Ad–22(e)(20) Under the Exchange Act

Rule 17Ad–22(e)(20) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.[61] For the purposes of Rule 17Ad–22(e)(20), ''link'' means, among other things, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purpose of participating in settlement.[62]

In adopting Rule 17Ad–22(e)(20), the Commission provided guidance that a covered clearing agency generally should consider in establishing and maintaining policies and procedures that address links.[63] Notably, the Commission stated that a covered clearing agency should consider whether a link has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the covered clearing agencies involved in the link.[64]

As described above, the Accord is a contractual arrangement between NSCC and OCC that governs the processing of E&A Activity, which consists of settlement obligations arising out of certain products cleared by OCC. The Accord, therefore, is a link for the purposes of Rule 17Ad–22(e)(20). The specific legal basis for the Accord to conform to a T+1 settlement cycle was discussed above in section III.B. Likewise, Section III.C. discussed the ways the Accord provides adequate protection to both OCC and NSCC by introducing the GSP, enhancing information sharing between OCC and NSCC, and ensuring that OCC and NSCC have the tools and information they need to monitor the potential liquidity need posed by the GSP.

For the reasons discussed in those sections, the Accord between OCC and NSCC has a well-founded legal basis that supports its design and provides adequate protection to the covered clearing agencies involved in the Accord. Accordingly, the proposed changes to the Accord are consistent with Rule 17Ad–22(e)(20) under the Exchange Act.[65]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change, as modified by Partial Amendment No. 1 and Amendment No. 2, is consistent with the requirements of the Exchange Act, and in particular, the requirements of section 17A of the Exchange Act[66] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[67] that the Proposed Rule Change, as modified by Partial Amendment No. 1

[54] *See* Notice of Amendment, 89 FR at 5968.

[55] 17 CFR 240.17Ad–22(e)(1).

[56] 17 CFR 240.17Ad–22(e)(7).

[57] *See* Covered Clearing Agency Standards, 81 FR at 70823.

[58] *See id.*

[59] Alignment with the cyclical nature of the products would be achieved, as described above, through the use of expiration categories when incorporating collateral requirements into OCC's stress testing. To balance this process, however, OCC would also impose floors across expiration categories that would help control for the possibility for an unusually large liquidity demand that is not related to the different expiration cycles.

[60] 17 CFR 240.17Ad–22(e)(7).

[61] 17 CFR 240.17Ad–22(e)(20).

[62] 17 CFR 240.17Ad–22(a)(8).

[63] *See* Covered Clearing Agency Standards, 81 FR at 70841.

[64] *Id.*

[65] 17 CFR 240.17Ad–22(e)(20).

[66] In approving the Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[67] 15 U.S.C. 78s(b)(2).

and Amendment No. 2, (SR–OCC–2023–007) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[68]

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99741; File No. SR–CboeEDGX–2024–016]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 14, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.vcboe.com/us/equities/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective March 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. The Fees Schedule currently lists fee codes and their corresponding transaction fees for certain Customer orders routed to other options exchanges. Currently, under the Fee Codes and Associated Fees section of the Fees Schedule, fee code RP is appended to routed Customer orders to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Nasdaq BX Options (''BX''), Cboe Exchange, Inc. (''Cboe''), MIAX Options Exchange (''MIAX'') or Nasdaq PHLX LLC (''PHLX'') (excluding orders in SPY options) and assesses a charge of $0.25 per contract; fee code RQ is appended to routed Customer orders in Penny classes to NYSE Arca, Inc (''ARCA''), Cboe BZX Exchange, Inc. (''BZX''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE (''ISE''), ISE Gemini, LLC (''GMNI''), ISE Mercury, LLC (''MERC''), MIAX Emerald Exchange (''EMLD''), MIAX Pearl Exchange (''PERL''), Nasdaq Options Market LLC (''NOM''), MEMX LLC (''MEMX''), or PHLX (for orders in SPY options) and assesses a charge of $0.85 per contract; and fee code RR is appended to routed Customer orders in Non-Penny classes to ARCA, BZX, C2, ISE, GMNI, MERC, EMLD, PERL, NOM, or MEMX and assesses a charge of $1.25.

The Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs and are not significantly higher or lower in any area. The Exchange notes that at least one other options exchange currently assesses routing fees in a similar manner as the Exchange's current approach to assessing approximate routing fees.[4]

The Exchange proposes to amend fee code RP to exclude applicable Customer orders routed to Nasdaq BX Options (*i.e.,* BX) and to amend fee codes RQ and RR to add applicable Customer orders routed to BX. The charge assessed per contract for each fee code remain the same under the proposed rule change.

The proposed changes result in an assessment of fees that, given fees of an away options exchange, is more in line with the Exchange's current approach to routing fees, that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's Routing Costs).[5] The Exchange notes that routing through the Exchange is optional and that Members will

[68] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (February 26, 2024), available at *https://markets.cboe.com/us/options/market_statistics/.*

[4] *See, e.g.,* MIAX Options Exchange Fee Schedule, Section 1(c), ''Fees for Customer Orders Routed to Another Options Exchange.''

[5] *See* BX Options 7 (Pricing Schedule), Section 2.

continue to be able to choose where to route applicable Customer orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to amend fee codes RP, RQ, and RR to account for BX's current assessment of fees for Customer orders is reasonable because it is reasonably designed to assess routing fees in line with the Exchange's current approach to routing fees. That is, the proposed rule change is intended to include Customer orders in Penny Program and Non-Penny classes routed to BX in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as Routing Costs to the Exchange.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange notes that at least one other options exchange currently approximates routing fees in a similar manner as the Exchange's current approach.[10]

Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' Customer orders in Penny Program and Non-Penny classes routed to BX will automatically yield fee codes RQ or RR, respectively, and uniformly be assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to amend fee codes RP, RQ, and RR will impose any burden on intramarket competition. All Members' Customer orders routing to BX and currently yielding fee code RP will, as proposed, yield fee code RQ or RR (depending on whether the order is in Penny Program or Non-Penny classes, respectively) and will automatically and uniformly be assessed the current fees already in place for such routed orders, as applicable.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that at least one other options exchange approximates routing costs in a similar manner as the Exchange's current approach.[11] Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.[12] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[14] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[15] and paragraph (f) of Rule 19b–4[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

[10] *See supra* note 4.

[11] *Id.*

[12] *See supra* note 3.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–016 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–CboeEDGX–2024–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2024–016 and should be submitted on or before April 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05839 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 35154; 812–15546]

Felicitas Private Markets Fund and Skypoint Capital Advisors, LLC.

March 15, 2024.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

APPLICANTS: Felicitas Private Markets Fund and Skypoint Capital Advisors, LLC.

FILING DATES: The application was filed on February 1, 2024.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 9, 2024, and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Joshua B. Deringer, Esq., Faegre Drinker Biddle & Reath LLP, *joshua.deringer@faegredrinker.com,* Veena K. Jain, Faegre Drinker Biddle & Reath LLP, *veena.jain@faegredrinker.com,* with a copy to Brian Smith, Skypoint Capital Advisors, LLC, *bsmith@skypointfunds.com.*

FOR FURTHER INFORMATION CONTACT: Trace W. Rakestraw, Senior Special Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, filed February 1, 2024, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05918 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99737; File No. SR–EMERALD–2024–09]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

March 14, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange''), filed with the

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to (i) amend the fees for the MIAX Emerald Top of Market (''ToM'') data feed; and (ii) establish fees for the MIAX Emerald Complex Top of Market (''cToM'') data feed.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings,* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) amend the fees for ToM; and (ii) establish fees for cToM. The ToM data feed contains top of book quotations based on options orders [3] and quotes [4] resting on the Exchange's Simple Order Book [5] as well as administrative messages.[6] The cToM data feed includes the same types of information as ToM, but for Complex Orders [7] on the Exchange's Strategy Book.[8] This information includes the Exchange's best bid and offer for a complex strategy,[9] with aggregate size, based on displayable orders in the complex strategy. The cToM data feed also provides subscribers with the following information: (i) the identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

The Exchange notes that there is no requirement that any Member [10] or market participant subscribe to either the ToM or cToM data feeds. Instead, a Member may choose to maintain subscriptions to ToM or cToM based on their trading strategies and individual business decisions. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information [11] from the Options Price Reporting Authority (''OPRA'') for the same classes or series of options that are included in the proprietary data feed (including for exclusively listed products), and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are purely optional and only those that deem the product to be of sufficient overall value and usefulness would purchase it. The proposed fees described below would not apply differently based upon the size or type of firm, but rather based upon the type of subscription a firm has to ToM or cToM and their use thereof, which are based upon factors deemed relevant by each firm. The proposed pricing for ToM and cToM is set forth below.[12]

ToM

The Exchange currently charges a monthly fee of $1,250 to Internal Distributors [13] and $1,750 to External Distributors. The Exchange proposes to charge a monthly fee of $2,000 to Internal Distributors and $3,000 to External Distributors. The proposed fee increases are intended to cover the Exchange's increasing costs with compiling and producing the ToM data feed described in the Exchange's Cost Analysis detailed below. The Exchange does not currently charge, nor does it now propose to charge any additional fees based on a Distributor's use of the ToM and cToM data feeds (*e.g.,* displayed versus non-displayed use), redistribution fees, or individual per user fees.

cToM

The Exchange previously adopted rules governing the trading of Complex Orders on the MIAX Emerald System in 2018,[14] ahead of the Exchange's planned

[3] The term ''order'' means a firm commitment to buy or sell option contracts. *See* Exchange Rule 100.

[4] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* Exchange Rule 100.

[5] The term ''Simple Order Book'' means the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[6] *See* Fee Schedule, Section 6)a).

[7] In sum, a ''Complex Order'' is ''any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the 'legs' or 'components' of the complex order), for the same account . . . .'' *See* Exchange Rule 518(a)(5).

[8] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[9] The term ''complex strategy'' means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. *See* Exchange Rule 518(a)(6).

[10] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] The term ''consolidated Options Information'' means ''consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. . .'' Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[12] The Exchange first filed the proposed fee change on December 28, 2022. *See* Securities Exchange Act Release No. 96625 (January 10, 2023), 88 FR 2688 (January 17, 2023) (SR–EMERALD–2022–37). After serval withdrawals and re-filings, the Commission Staff suspended the proposed fees on August 3, 2023. *See* Securities Exchange Act Release No. 98051 (August 3, 2023), 88 FR 53937 (August 9, 2023) (SR–EMERALD–2023–13). On January 17, 2024, the Exchange withdrew the suspended proposed fee change. *See* Securities Exchange Act Release No. 99407 (January 22, 2024), 89 FR 5273 (January 26, 2024).

[13] A ''Distributor'' of MIAX Emerald data is any entity that receives a feed or file of data either directly from MIAX Emerald or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Emerald Distributor Agreement. *See* Fee Schedule, Section 6)a).

[14] *See* Securities Exchange Act Release Nos. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (In the Matter of the Application of MIAX

launch, which took place on March 1, 2019. Shortly thereafter, the Exchange adopted the cToM data feed product and expressly waived fees for cToM to incentivize market participants to subscribe.[15] In the five years since the Exchange launched operations and adopted Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 3.53% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality based on the month of January 2024.[16] During that same period, the Exchange experienced a steady increase in the number of cToM subscribers. Until the Exchange initially filed to adopt cToM fees in July of 2021,[17] the Exchange did not charge fees for subscriptions to the cToM data feed. The objective of this approach was to eliminate any fee-based barriers for Members when the Exchange first launched Complex Order functionality, which the Exchange believed was necessary to attract order flow as a relatively new exchange at that time. During that time, the Exchange absorbed all costs associated with compiling and disseminating the cToM data feed. The Exchange now proposes to establish fees for the cToM data feed to recoup its ongoing costs going forward, as described below.

The Exchange proposes to charge a monthly fee of $2,000 to Internal Distributors and $3,000 to External Distributors of the cToM data feed. The proposed fees are identical to those proposed herein for the ToM data feed. Like the ToM data feed, the Exchange does not propose to adopt separate redistribution fees for the cToM data feed. However, the recipient of cToM data would be required to become a Distributor and would be subject to the applicable Distribution fees. Also like the ToM data feed, the Exchange does not propose to charge individual per user fees or any additional fees based on a subscriber's use of the cToM data feed (*e.g.,* displayed versus non-displayed use).

The Exchange proposes to assess cToM fees to Internal and External Distributors in the same manner as it currently does for the ToM data feed. Each Distributor would be charged for each month it is credentialed to receive cToM in the Exchange's production environment. Also, fees for cToM will be reduced for new mid-month Distributors for the first month they subscribe. New mid-month cToM Distributors would be assessed a pro-rata percentage of the applicable Distribution fee based on the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been first credentialed to receive cToM in the production environment, divided by the total number of trading days in the affected calendar month.

Minor, Non-Substantive Changes

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6)a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule. This proposed change does not alter the operation of either fee.

Implementation

The proposed fee changes are effective beginning March 1, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)[18] of the Act in general, and furthers the objectives of section 6(b)(4)[19] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of section 6(b)(5)[20] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2019, Commission staff published guidance suggesting the types of information that self-regulatory organizations (''SROs'') may use to demonstrate that their fee filings comply with the standards of the Exchange Act (the ''Staff Guidance'').[21] While the Exchange understands that the Staff Guidance does not create new legal obligations on SROs, the Staff Guidance is consistent with the Exchange's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. The Staff Guidance provides that in assessing the reasonableness of a fee, the Staff would consider whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, the Staff Guidance further provides that the Staff would consider whether the evidence provided by an SRO in a Fee Filing proposal demonstrates (i) that there are reasonable substitutes for the product or service that is the subject of a proposed fee; (ii) that ''platform'' competition constrains the fee; and/or (iii) that the revenue and cost analysis provided by the SRO otherwise demonstrates that the proposed fee would not result in the SRO taking supra-competitive profits.[22] The Exchange provides sufficient evidence below to support the findings that the proposed fees are constrained by competitive forces; the ToM and cToM data feeds each have a reasonable substitute; and that the proposed fees would not result in a supra-competitive profit.

As noted above, the Exchange also adopted the cToM data feed and expressly waived fees over two years to incentivize market participants to subscribe and make the Exchange's cToM data more widely available.[23] In the five years since the Exchange launched operations and adopted Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 3.53% of the total electronic complex

EMERALD, LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission); *and* 85345 (March 18, 2019), 84 FR 10848 (March 22, 2019) (SR–EMERALD–2019–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders).

[15] *See* Securities Exchange Act Release No. 85207 (February 27, 2019), 84 FR 7963 (March 5, 2019) (SR–EMERALD–2019–09) (providing a complete description of the cToM data feed).

[16] The Exchange notes that it receives complex market data for all U.S. options exchanges that offer complex functionality from direct feeds from OPRA.

[17] *See* Securities Exchange Act Release Nos. 92358 (July 9, 2021), 86 FR 37361 (July 15, 2021) (SR–EMERALD–2021–21); 98051 (August 3, 2023), 88 FR 53937 (August 9, 2023) (SR–EMERALD–2023–13) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[22] *Id.*

[23] *See supra* note 15.

non-index volume executed on U.S. options exchanges offering complex functionality for the month of January 2024. One of the primary objectives of the Exchange is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure.

The Proposed Fees for the ToM and cToM Data Products Are Subject to Significant Competitive Forces and the Fee Levels Are Comparable to the Fees Charged by Other Exchanges for Similar Data Products

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the ToM and cToM data feeds further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data products also promotes increased transparency through the dissemination of information regarding quotes and last sale information during the trading day, which may allow market participants to make better informed trading decisions throughout the day.

As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well market data fees. Indeed, there are currently 17 registered exchanges that trade equity options. For the month of January 2024, based on publicly available information, no single options exchange had more than approximately 13–14% of the equity options market share and the Exchange represented only approximately 3.59% of the equity options market share for the month of January 2024.[24] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [25] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [26]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [28] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [29] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [30] In the Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [31] In this case, the Exchange provided the below Cost Analysis.

The Exchange notes that the proposed fees are consistent with the fee amounts charged by competing U.S. securities exchanges. For this reason, the Exchange believes that the proposed fees are consistent with the Act generally, and section 6(b)(5) [32] of the Act in particular. The Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar market data feeds provided by other options exchanges with comparable market shares. As such, the Exchange believes that denying its ability to adopt the proposed fees that would allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

First, the proposed fees for ToM are comparable to the fees currently in place for the options exchanges, particularly Nasdaq ISE, LLC (''ISE'').[33] For the month of January 2024, the Exchange had 3.59% market share of equity options volume; for that same month, ISE had 6.19% market share of

[24] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[26] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[28] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[29] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[30] *Id.*

[31] *See supra* note 21.

[32] 15 U.S.C. 78f(b)(5).

[33] *See* ISE Options 7 Pricing Schedule, Section 10, H., *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (assessing Professional internal and external distributors $3,000 per month, plus $20 per month per controlled device for ISE's Top Quote Feed).

equity options volume.[34] The Exchange's proposed fees for ToM are equal to, and for Internal Distributors, lower than, the rates data recipients pay for comparable data feeds from ISE. The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca, Inc. (''NYSE Arca'').[35] However, the Exchange has focused its comparison on ISE because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges. The fees for the ISE Top Quote Feed, similar to ToM, includes top of book, trades, and security status messages, and costs market participants an internal distributor access fee of $3,000 per month (50% higher than the Exchange's proposed rate), and an external distributor access fee of $3,000 per month (equal to the Exchange's proposed rate).[36] ISE's overall charge to receive the ISE Top Quote Feed may be even higher than the Exchange's proposed rates because ISE charges additional per controlled device fees that can cause the distribution fee to reach up to $5,000 per month.[37] The Exchange's proposed rates do not include additional fees.

Like ToM described above, the proposed fees for cToM are comparable to the fees currently in place for competing options exchanges, particularly NYSE American, LLC (''NYSE American'').[38] As noted above, for the month of January 2024, the Exchange had 3.59% of the total equity options market share and 3.53% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality. For that same month, NYSE American had 7.44% of the total equity options market share and 5.90% of the total electronic complex non-index volume.[39] The Exchange proposes fees for cToM that are comparable to the rates data recipients pay for comparable data feeds from NYSE American. The Exchange has focused its comparison on NYSE American because it is the closest market in terms of market share. The fees for the NYSE American Options Complex data feed, which, similar to cToM, includes top of book, trades, and security status messages for complex orders, costs market participants an internal distributor access fee of $1,500 per month (slightly lower than the Exchange's proposed rate), and an external distributor access fee of $1,000 per month (resulting in a total external distribution fee of $2,500 per month).[40] However, NYSE American's overall charge to receive NYSE American Options Complex data may be even higher than the Exchange's proposed rates because NYSE American charges additional non-displayed usage fees (each are $1,000 per month and a subscriber may pay multiple non-displayed usage fees), per user fees ($20 per month for professional users and $1.00 per month for non-professional users), and multiple data feed fees ($200 per month), all of which the Exchange does not propose to charge. These additional charges by NYSE American can cause the total cost to receive NYSE American Complex data to exceed the rates that the Exchange proposes to charge.

There Are Reasonable Substitutes for the ToM and cToM Data Feeds

Each options exchange offers top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the ToM data feed. Further, the quote and last sale data contained in the ToM data feed is identical to the data sent to OPRA for redistribution to the public.[41] Accordingly, market participants can substitute ToM data with feeds from other exchanges and/or through OPRA. Exchange top-of-book data is therefore widely available today from a number of different sources.

Further, cToM is not the exclusive source for Complex Order information from the Exchange. It is a business decision of market participants whether to subscribe to cToM or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information from other Exchange sources, including, for example, the MIAX Emerald Order Feed (''MOR'').[42] The following cToM information is included in MOR: the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to MOR, complex strategy last sale information can be derived from ToM. Specifically, market participants may deduce that last sale information for multiple trades in related options series with the same timestamps disseminated via ToM are likely part of a Complex Order transaction and last sale.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members—to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about

[34] *See* Market Share section of *https://www.miaxglobal.com/.*

[35] Fees for the NYSE Arca Options Top Feed, which is the comparable product to ToM, are $3,000 per month for access (internal use) and an additional $2,000 per month for redistribution (external distribution), compared to the Exchange's proposed fees of $2,000 and $3,000 for Internal and External Distributors, respectively. In addition, for its NYSE Arca Options Top Feed, NYSE Arca charges for three different categories of non-display usage, and user fees, both of which the Exchange does not propose to charge, causing the overall cost of NYSE Arca Options Top Feed to far exceed the Exchange's proposed rates. *See* NYSE Arca Options Proprietary Market Data Fees, *available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[36] *See supra* note 33.

[37] *Id.*

[38] *See* NYSE American Options Proprietary Market Data Fees, *available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[39] *See supra* note 34.

[40] *See supra* note 38.

[41] The Exchange notes that it makes available to subscribers that is included in the ToM data feed no earlier than the time at which the Exchange sends that data to OPRA.

[42] *See* MIAX Emerald website, Market Data & Offerings, *available at https://www.miaxglobal.com/company/data/data-products-services/market-data* (last visited February 28, 2024). In general, MOR provides real-time ultra-low latency updates on the following information: new Simple Orders added to the MIAX Emerald Order Book; updates to Simple Orders resting on the MIAX Emerald Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX Emerald listed series updates; MIAX Emerald Complex Strategy definitions; the state of the MIAX Emerald System; and MIAX Emerald's underlying trading state.

market competition in the context of this filing because the proposed fees are consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[43] and Rule 19b–4 thereunder,[44] with respect to the types of information SROs should provide when filing fee changes, and section 6(b) of the Act,[45] which requires, among other things, that exchange fees be reasonable and equitably allocated,[46] not designed to permit unfair discrimination,[47] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[48] This proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[49] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets [50] for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[51] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (for example, 61.9% of the data center total expense amount is allocated to 10Gb ULL connectivity), with smaller allocations to ToM and cToM (1.1% combined), and the remainder to the provision of other connectivity, ports, transaction execution, membership services and other market data services (37%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary

[43] 15 U.S.C. 78s(b)(1).

[44] 17 CFR 240.19b–4.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[50] The affiliated markets include Miami International Securities Exchange, LLC (''MIAX''); separately, the options and equities markets of MIAX PEARL, LLC (''MIAX Pearl''); and MIAX Emerald, LLC (''MIAX Emerald'').

[51] For example, MIAX maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, which was again recently further refined, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of ToM and cToM data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of ToM and cToM data feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to ToM and cToM data feeds. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide ToM and cToM data feeds is $62,626 (the Exchange divided the annual cost for each of ToM and cToM by 12 months, then added both numbers together), as further detailed below.

Costs Related to Offering ToM and cToM Data Feeds

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the ToM and cToM data feeds to its Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 2.3% of its overall Human Resources cost to offering ToM and cToM data feeds).

Cost drivers	Allocated annual cost [a]	Allocted monthly cost [b]	Percent of all
Human Resources	$509,350	$42,446	2.3
Connectivity (external fees, cabling, switches, etc.)	1,011	84	1.1
Internet Services and External Market Data	0.00	0.00	0.0
Data Center	16,624	1,385	1.1
Hardware and Software Maintenance & Licenses	18,958	1,580	1.1
Depreciation	17,853	1,488	0.5
Allocated Shared Expenses	187,711	15,643	2.1
Total	751,507	62,626	2.0

[a] The Annual Cost includes figures rounded to the nearest dollar.
[b] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering ToM and cToM. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated market, MIAX, in its similar proposed fee change for ToM and cToM. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences, if any.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. This is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the

overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining ToM and cToM data feeds and performance thereof (primarily the Exchange's network infrastructure team, which spends a portion of their time performing functions necessary to provide market data). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to market data. From that portion allocated to the Exchange that applied to market data, the Exchange then allocated a weighted average of 2.1% of each employee's time from the above group to ToM and cToM data feeds (which excludes an allocation for the recently hired Head of Data Services for the Exchange and its affiliates).

The Exchange also allocated Human Resources costs to provide ToM and cToM to a limited subset of personnel with ancillary functions related to establishing and maintaining such market data feeds (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing market data feeds) and then applied a smaller allocation to such employees' time to ToM and cToM (less than 1.6%, which includes an allocation for the Head of Data Services). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to providing ToM and cToM, whether it is a sales person selling a market data feed, finance personnel billing for market data feeds or providing budget analysis, or information security ensuring that such market data feeds are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing market data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing ToM and cToM data feeds: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 2.1% of each of their employee's time assigned to the Exchange for ToM and cToM, as stated above. Employees from these departments perform numerous functions to support ToM and cToM data feeds, such as the configuration and maintenance of the hardware necessary to support the ToM and cToM data feeds. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting ToM and cToM data feeds and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support ToM and cToM, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the ToM and cToM related Human Resources costs to the extent that they are involved in overseeing tasks related to providing market data. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.) [52]

The Connectivity cost driver includes cabling and switches required to generate and disseminate the ToM and cToM data feeds and operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete Member subscriptions to ToM and cToM and the servers used at the Exchange's primary and back-up data centers specifically for the ToM and cToM data feeds. Further, as certain servers are only partially utilized to generate and disseminate the ToM and cToM data feeds, only the percentage of such servers devoted to generating and disseminating the ToM and cToM data feeds was included (*i.e.,* the capacity of such servers allocated to the ToM and cToM data feeds).[53]

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth

[52] This cost driver was titled ''Network Infrastructure'' in prior proposals. The Exchange has updated this section to now be in line with its similar cost analysis and cost driver descriptions for other non-transaction fee filings. *See, e.g.,* Securities Exchange Act Release No. 99475 (February 5, 2024), 89 FR 9223 (February 9, 2024) (SR–EMERALD–2024–03).

[53] The Exchange understands that the Investors Exchange, Inc. (''IEX'') and MEMX LLC (''MEMX'') both allocated a percentage of their servers to the production and dissemination of market data to support proposed market data fees. *See* Securities Exchange Act Release Nos. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) *and* 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04). The Exchange does not have insight into either MEMX's or IEX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its Connectivity cost driver to market data based on a percentage of overall cost, not on a per server basis.

connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange allocate any costs associated with internet services or external market data to the ToM and cToM data feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide ToM and cToM in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 1.1% to the applicable Data Center costs for the ToM and cToM data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of the Connectivity cost driver.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the ToM and cToM data feeds.[54] Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 1.1% of its costs for Hardware and Software Maintenance and Licenses to the ToM and cToM data feeds. The Exchange notes that this allocation is less than MIAX as MIAX allocated 1.3% of its Hardware and Software Maintenance and License expense to ToM and cToM, while MIAX Emerald allocated 1.1% of its Hardware and Software Maintenance and License expense to ToM and cToM. MIAX's allocation results in a slightly higher dollar amount of $8,000 per year (or approximately $667 per month, when dividing the annual cost difference by 12 months and rounding to the nearest dollar) compared to the annual cost of MIAX Emerald for its Hardware and Software Maintenance and License cost driver. This is because MIAX is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance, including dissemination of ToM and cToM. At the time of this filing, MIAX is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, MIAX has a slightly higher expense than MIAX Emerald.

Depreciation

All physical assets, software, and hardware used to provide ToM and cToM, which also includes assets used for testing and monitoring of Exchange infrastructure to provide market data, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to ToM and cToM in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to ToM and cToM. As noted above, the Exchange allocated 0.5% of its allocated depreciation costs to providing ToM and cToM.

The vast majority of the software the Exchange uses for its operations to generate and disseminate the ToM and cToM data feeds has been developed in-house over an extended period. This software development also requires quality assurance and thorough testing to ensure the software works as intended. Hardware used to generate and disseminate the ToM and cToM data feeds, which includes servers and other physical equipment the Exchange purchased. Accordingly, the Exchange included depreciation costs related to depreciated hardware and software used to generate and disseminate the ToM and cToM data feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the ToM and cToM data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the ToM and cToM data feeds.

The Exchange notes that this allocation differs from its affiliated market, MIAX, due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the Exchange notes that the percentages it and its affiliate, MIAX, allocated to the depreciation of software and hardware used to generate and disseminate their respective ToM and cToM data feeds are similar (0.8% for MIAX and 0.5% for MIAX Emerald). However, MIAX's dollar amount is greater than that of MIAX Emerald by approximately $17,000 per year (albeit a relatively small amount of approximately $1,415 per month, when rounding to the nearest dollar). This is due to two primary factors. First, MIAX has undergone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware and software that is subject to depreciation. Second, MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of MIAX's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on MIAX.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to the provision of ToM and cToM data feeds. These general shared costs are integral to exchange operations, including its ability to provide ToM and cToM. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general

[54] This expense may be less than the Exchange's affiliated markets, specifically MIAX. This is because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

shared expense cost driver.[55] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to ToM and cToM pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including market data. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* ToM and cToM as sub-categories of market data. In determining the percentage of general shared expenses allocated to market data that ultimately apply to ToM and cToM, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to ToM and cToM. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as ToM and cToM.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all market data products offered by the Exchange. The Exchange then allocated 2.1% of the portion allocated to market data to ToM and cToM. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 2.1% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to ToM and cToM also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster market data feeds than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance market data services, of which ToM and cToM are main contributors.

The Exchange notes that this allocation differs from its affiliated market, MIAX, due to a number of factors, such as the increase in overall headcount, thus providing a higher contribution on MIAX to the depreciated cost. The Exchange notes that the percentages it and its affiliate, MIAX, allocated to this cost driver are similar (2.5% for MIAX and 2.1% for MIAX Emerald). However, MIAX's dollar amount is greater than that of MIAX Emerald by approximately $38,000 per year (albeit a relatively small amount of approximately $3,192 per month, when rounding to the nearest dollar). This is due primarily to significant exchange staff headcount increases. As mentioned above, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (with a projected 60 additional staff in 2024). Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange and its affiliated markets.

* * * * *

Approximate Cost for ToM and cToM per Month

After determining the approximate allocated monthly cost related to ToM and cToM combined, the total monthly cost for ToM and cToM of $62,626 was divided by the number of total subscribers to ToM and cToM that the Exchange maintained at the time that proposed pricing was determined (34 Distributors), to arrive at a cost of approximately $1,842 per month per subscription (rounded to the nearest dollar). Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of ToM and cToM subscribers.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service (including market data) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange recently submitted proposing fees for certain connectivity and ports offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to market data based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (5.9%) given their focus on functions necessary to provide market data. The salaries of those same personnel were allocated only 2.1% to ToM and cToM and the remaining 97.9% was allocated to other market data products offered by the Exchange (MOR, AIS, etc.), connectivity services, port services, transaction services, and membership services. The Exchange did not allocate any other Human Resources expense for providing market data to any other employee group, outside of a smaller allocation of 2.1% for ToM and cToM of the cost associated with certain specified personnel who work closely with and support network infrastructure personnel.

In total, the Exchange allocated 2.3% of its personnel costs (Human Resources) to providing ToM and cToM. In turn, the Exchange allocated the remaining 97.7% of its Human Resources expense to membership services, transaction services, connectivity services, port services and other market data products. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including market data, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were

[55] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors in a similar non-transaction fee filing. *See* Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide ToM and cToM data feeds to its Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing ToM and cToM, but instead allocated approximately 0.5% of the Exchange's overall depreciation and amortization expense to ToM and cToM combined. The Exchange allocated the remaining depreciation and amortization expense (99.5%) toward the cost of providing transaction services, membership services, connectivity services, port services, and other market data products.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from ToM and cToM, the Exchange will have to be successful in retaining existing clients that wish to maintain subscriptions to those market data feeds or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of market data services it will receive additional revenue to offset future cost increases. However, if use of market data services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [56]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with creating, generating, and disseminating the ToM and cToM data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for market data subscribers. Subscribers, particularly those of ToM and cToM, expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide ToM and cToM will equal $751,507. Based on current ToM and cToM subscribers, the Exchange would generate annual revenue of approximately $872,880 for ToM and cToM combined. The Exchange believes this represents a modest profit of 13.9% when compared to the cost of providing ToM and cToM data feeds.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing ToM and cToM data feeds versus the total projected revenue of the Exchange associated with ToM and cToM.

The Exchange also notes that the resultant profit margin differs slightly from the profit margins set forth in a similar fee filing by its affiliated market, MIAX. This is not atypical among exchanges and is due to a number of factors that differ between these two markets, including: different market models, market structures, and product offerings (price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines); and different maturity phase of MIAX and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and differing level of profit margin per exchange.

Further, MIAX and MIAX Emerald propose to charge the same rates for their respective ToM and cToM data feeds, which are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for Internal Distributors of ToM and cToM, the Exchange proposes a lower fee than the fee charged by ISE for ISE's Top Quote Feed ($2,000 for the Exchange vs. $3,000 for ISE).[57] NYSE Arca charges even higher fees for the NYSE Arca Options Top Feed than the Exchange's proposed fees ($2,000 for the Exchange vs. $3,000 per month plus an additional $2,000 for redistribution on NYSE Arca).[58] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to ToM

[56] For purposes of calculating projected 2024 revenue for ToM and cToM, the Exchange used revenues for the most recently completed full month.

[57] *See supra* note 33.

[58] *See supra* note 35.

and/or cToM on MIAX or MIAX Emerald and vice versa).

The Exchange also reiterates that prior to July of 2021, the month in which it first proposed to adopt fees for cToM, the Exchange did not charge any fees for cToM and its allocation of costs to cToM was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, IEX and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms.[59] The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff should consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect. Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone are used to justify fees increases.

Accordingly, while the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits, the standard set forth in the Staff Guidance. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that such costs will either decrease or increase. To the extent the Exchange sees growth in use of ToM and cToM data feeds it will receive additional revenue to offset future cost increases. However, if use of ToM and cToM data feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the exchange making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the exchange has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the exchange taking supra-competitive profits. If the exchange demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the exchange must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a

[59] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* notes 53 and 55. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the ToM and cToM data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing ToM and cToM data with a reasonable mark-up. As discussed in the Purpose section, the Exchange estimates this fee filing will result in annual revenue of approximately $872,880, representing a potential mark-up of just 13.9% over the cost of providing ToM and cToM data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup all of its expenses for providing the ToM and cToM data products (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the ToM and cToM data feeds are reasonable when compared to fees for comparable products, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the ToM and cToM data feeds.

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the ToM and cToM data feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fee for cToM is reasonable as it is similar to the amount charged by at least one other exchange of comparable size for comparable data products, and lower than the fees charged by other exchange for comparable data products.[60]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the ToM and cToM data feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any ToM and cToM data feeds, regardless of the number of customers to which that vendor redistributes the data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the ToM and cToM data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the ToM and cToM data feeds. Any subscriber or vendor that chooses to subscribe to the ToM and cToM data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more ToM and cToM data feeds is based on objective differences in usage of ToM and cToM data feeds among different Members, which are still ultimately in the control of any particular Member. The Exchange believes the proposed pricing of the ToM and cToM data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the ToM and cToM data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the ToM and cToM data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing ToM and cToM data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the ToM and cToM data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that decide to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[61] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[62] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[63] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the ToM and cToM data feeds by charging their customers fees for receipt of the Exchange's cToM data. Internal Distributors do not have the same ability to monetize the Exchange's ToM and cToM data feeds. Accordingly, the Exchange believes it is fair,

[60] *See supra* notes 33, 35, and 38.

[61] *See* Exchange Data Agreement, *available at https://www.miaxglobal.com/markets/us-options/all-options/market-data-vendor-agreements.*

[62] *See id.*

[63] *See id.*

reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's ToM and cToM data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[64] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing cToM data in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of the cToM data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are equitably allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[65] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other exchanges that is not necessary or appropriate. In particular, market participants are not forced to subscribe to either data feed, as described above. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.[66] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees (as the Exchange did for cToM) for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[67] and Rule 19b–4(f)(2)[68] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–EMERALD–2024–09 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–EMERALD–2024–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number

[64] *See* Section 6 of the Exchange's Market Data Policies, *available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.*

[65] 15 U.S.C. 78f(b)(8).

[66] *See supra* notes 33, 35, and 38.

[67] 15 U.S.C. 78s(b)(3)(A)(ii).

[68] 17 CFR 240.19b–4(f)(2).

SR–EMERALD–2024–09 and should be submitted on or before April 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05836 Filed 3–19–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99736; File No. SR–MIAX–2024–13]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product

March 14, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Fee Schedule (''Fee Schedule'') to: (i) amend the fees for the MIAX Top of Market (''ToM'') data feed; and (ii) establish fees for the MIAX Complex Top of Market (''cToM'') data feed.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/all-options-exchanges/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) amend the fees for ToM; and (ii) establish fees for cToM. The ToM data feed contains top of book quotations based on options orders [3] and quotes [4] resting on the Exchange's Simple Order Book [5] as well as administrative messages.[6] The cToM data feed includes the same types of information as ToM, but for Complex Orders [7] on the Exchange's Strategy Book.[8] This information includes the Exchange's best bid and offer for a complex strategy,[9] with aggregate size, based on displayable orders in the complex strategy. The cToM data feed also provides subscribers with the following information: (i) the identification of the complex strategies currently trading on the Exchange; (ii) complex strategy last sale information; and (iii) the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). ToM subscribers are not required to subscribe to cToM, and cToM subscribers are not required to subscribe to ToM.

The Exchange notes that there is no requirement that any Member [10] or market participant subscribe to either the ToM or cToM data feeds. Instead, a Member may choose to maintain subscriptions to ToM or cToM based on their trading strategies and individual business decisions. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information [11] from the Options Price Reporting Authority (''OPRA'') for the same classes or series of options that are included in the proprietary data feed (including for exclusively listed products), and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are purely optional and only those that deem the product to be of sufficient overall value and usefulness would purchase it. The proposed fees described below would not apply differently based upon the size or type of firm, but rather based upon the type of subscription a firm has to ToM or cToM and their use thereof, which are based upon factors deemed relevant by each firm. The proposed pricing for ToM and cToM is set forth below.[12]

[69] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''order'' means a firm commitment to buy or sell option contracts. *See* Exchange Rule 100.

[4] The term ''quote'' or ''quotation'' means a bid or offer entered by a Market Maker that is firm and may update the Market Maker's previous quote, if any. The Rules of the Exchange provide for the use of different types of quotes, including Standard quotes and eQuotes, as more fully described in Exchange Rule 517. A Market Maker may, at times, choose to have multiple types of quotes active in an individual option. *See* Exchange Rule 100.

[5] The term ''Simple Order Book'' means the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(17).

[6] *See* Fee Schedule, Section 6)a).

[7] In sum, a ''Complex Order'' is ''any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the 'legs' or 'components' of the complex order), for the same account . . . .'' *See* Exchange Rule 518(a)(5).

[8] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(19).

[9] The term ''complex strategy'' means a particular combination of components and their ratios to one another. New complex strategies can be created as the result of the receipt of a complex order or by the Exchange for a complex strategy that is not currently in the System. The Exchange may limit the number of new complex strategies that may be in the System at a particular time and will communicate this limitation to Members via Regulatory Circular. *See* Exchange Rule 518(a)(6).

[10] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] The term ''consolidated Options Information'' means ''consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA . . .'' Access to consolidated Options Information is deemed ''equivalent'' if both kinds of information are equally accessible on the same terminal or work station. *See* Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''OPRA Plan''), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

[12] The Exchange first filed the proposed fee change on December 28, 2022. *See* Securities Exchange Act Release No. 96626 (January 10, 2023), 88 FR 2699 (January 17, 2023) (SR–MIAX–2022–49). After serval withdrawals and re-filings, the Commission Staff suspended the proposed fees on August 3, 2023. *See* Securities Exchange Act Release No. 98050 (August 3, 2023), 88 FR 53941 (August 9, 2023) (SR–MIAX–2023–23). On January 17, 2024, the Exchange withdrew the suspended proposed fee change. *See* Securities Exchange Act Release No. 99408 (January 22, 2024), 89 FR 5271 (January 26, 2024).

ToM

The Exchange currently charges a monthly fee of $1,250 to Internal Distributors [13] and $1,750 to External Distributors. The Exchange proposes to charge a monthly fee of $2,000 to Internal Distributors and $3,000 to External Distributors. The proposed fee increases are intended to cover the Exchange's increasing costs with compiling and producing the ToM data feed described in the Exchange's Cost Analysis detailed below. The Exchange does not currently charge, nor does it now propose to charge any additional fees based on a Distributor's use of the ToM and cToM data feeds (*e.g.,* displayed versus non-displayed use), redistribution fees, or individual per user fees.

cToM

The Exchange previously adopted rules governing the trading of Complex Orders in 2016.[14] At that time, the Exchange also adopted the cToM data feed and expressly waived fees over six years to incentivize market participants to subscribe and make the Exchange's cToM data more widely available.[15] In the eight years since the Exchange adopted Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 11.47% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality based on the month of January 2024.[16] During that same period, the Exchange experienced a steady increase in the number of cToM subscribers. Until the Exchange initially filed to adopt cToM fees in July of 2021,[17] the Exchange did not charge fees for subscriptions to the cToM data feed. The objective of this approach was to eliminate any fee-based barriers for Members when the Exchange first launched Complex Order functionality, which the Exchange believed was necessary to attract order flow as a relatively new exchange at that time. During that time, the Exchange absorbed all costs associated with compiling and disseminating the cToM data feed. The Exchange now proposes to establish fees for the cToM data feed to recoup its ongoing costs going forward, as described below.

The Exchange proposes to charge a monthly fee of $2,000 to Internal Distributors and $3,000 to External Distributors of the cToM data feed. The proposed fees are identical to those proposed herein for the ToM data feed. Like the ToM data feed, the Exchange does not propose to adopt separate redistribution fees for the cToM data feed. However, the recipient of cToM data would be required to become a Distributor and would be subject to the applicable Distribution fees. Also like the ToM data feed, the Exchange does not propose to charge individual per user fees or any additional fees based on a subscriber's use of the cToM data feed (*e.g.,* displayed versus non-displayed use).

The Exchange proposes to assess cToM fees to Internal and External Distributors in the same manner as it currently does for the ToM data feed. Each Distributor would be charged for each month it is credentialed to receive cToM in the Exchange's production environment. Also, fees for cToM will be reduced for new mid-month Distributors for the first month they subscribe. New mid-month cToM Distributors would be assessed a pro-rata percentage of the applicable Distribution fee based on the percentage of the number of trading days remaining in the affected calendar month as of the date on which they have been first credentialed to receive cToM in the production environment, divided by the total number of trading days in the affected calendar month.

Minor, Non-Substantive Changes

The Exchange also proposes to amend the paragraph below the table of fees for ToM and cToM in Section 6)a) of the Fee Schedule to make a minor, non-substantive correction by deleting the phrase ''(as applicable)'' in the first sentence following the table of fees for ToM and cToM. The purpose of this proposed change is to remove unnecessary text from the Fee Schedule. This proposed change does not alter the operation of either fee.

Implementation

The proposed fee changes are effective beginning March 1, 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) [18] of the Act in general, and furthers the objectives of section 6(b)(4) [19] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of section 6(b)(5) [20] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In 2019, Commission staff published guidance suggesting the types of information that self-regulatory organizations (''SROs'') may use to demonstrate that their fee filings comply with the standards of the Exchange Act (the ''Staff Guidance'').[21] While the Exchange understands that the Staff Guidance does not create new legal obligations on SROs, the Staff Guidance is consistent with the Exchange's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. The Staff Guidance provides that in assessing the reasonableness of a fee, the Staff would consider whether the fee is constrained by significant competitive forces. To determine whether a proposed fee is constrained by significant competitive forces, the Staff Guidance further provides that the Staff would consider whether the evidence provided by an SRO in a Fee Filing proposal demonstrates (i) that there are reasonable substitutes for the product or service that is the subject of a proposed fee; (ii) that ''platform'' competition constrains the fee; and/or (iii) that the

[13] A ''Distributor'' of MIAX data is any entity that receives a feed or file of data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All Distributors are required to execute a MIAX Distributor Agreement. *See* Fee Schedule, Section 6)a).

[14] *See* Securities Exchange Act Release No. 79072 (October 7, 2016), 81 FR 71131 (October 14, 2016) (SR–MIAX–2016–26) (Order Approving a Proposed Rule Change to Adopt New Rules to Govern the Trading of Complex Orders).

[15] *See* Securities Exchange Act Release No. 79146 (October 24, 2016), 81 FR 75171 (October 28, 2016) (SR–MIAX–2016–36) (providing a complete description of the cToM data feed).

[16] The Exchange notes that it receives complex market data for all U.S. options exchanges that offer complex functionality from direct feeds from OPRA.

[17] *See* Securities Exchange Act Release Nos. 92359 (July 9, 2021), 86 FR 37393 (July 15, 2021) (SR–MIAX–2021–28); 98050 (August 3, 2023), 88 FR 53941 (August 9, 2023) (SR–MIAX–2023–23) (Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Increase Fees for the ToM Market Data Product and Establish Fees for the cToM Market Data Product).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), *available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

revenue and cost analysis provided by the SRO otherwise demonstrates that the proposed fee would not result in the SRO taking supra-competitive profits.[22] The Exchange provides sufficient evidence below to support the findings that the proposed fees are constrained by competitive forces; the ToM and cToM data feeds each have a reasonable substitute; and that the proposed fees would not result in a supra-competitive profit.

As noted above, the Exchange also adopted the cToM data feed and expressly waived fees over six years to incentivize market participants to subscribe and make the Exchange's cToM data more widely available.[23] In the eight years since the Exchange adopted Complex Order functionality, the Exchange has grown its monthly complex market share from 0% to 11.47% of the total electronic complex non-index volume executed on U.S. options exchanges offering complex functionality for the month of January 2024. One of the primary objectives of the Exchange is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure.

The Proposed Fees for the ToM and cToM Data Products Are Subject to Significant Competitive Forces and the Fee Levels Are Comparable to the Fees Charged by Other Exchanges for Similar Data Products

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Particularly, the ToM and cToM data feeds further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data products also promotes increased transparency through the dissemination of information regarding quotes and last sale information during the trading day, which may allow market participants to make better informed trading decisions throughout the day.

As a threshold matter, the Exchange is subject to significant competitive forces, which constrains its pricing determinations for transaction fees as well market data fees. Indeed, there are currently 17 registered exchanges that trade equity options. For the month of January 2024, based on publicly available information, no single options exchange had more than approximately 13–14% of the equity options market share and the Exchange represented only approximately 6.49% of the equity options market share for the month of January 2024.[24] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [25] Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products.

The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [26]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [27]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [28] As a result, and as evidenced above, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [29] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [30] In the Staff Guidance, Commission Staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [31] In this case, the Exchange provided the below Cost Analysis.

The Exchange notes that the proposed fees are consistent with the fee amounts charged by competing U.S. securities exchanges. For this reason, the Exchange believes that the proposed fees are consistent with the Act generally, and section 6(b)(5) [32] of the Act in particular. The Exchange believes the proposed fees are competitive and reasonable because the proposed fees are similar to or less than fees charged for similar market data feeds provided by other options exchanges with comparable market shares. As such, the

[22] *Id.*

[23] *See supra* note 15.

[24] *See* the ''Market Share'' section of the Exchange's website, *available at https://www.miaxglobal.com/.*

[25] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[26] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[27] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[28] *See NetCoalition,* 615 F.3d at 534–35; see also H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[29] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[30] *Id.*

[31] *See supra* note 21.

[32] 15 U.S.C. 78f(b)(5).

Exchange believes that denying its ability to adopt the proposed fees that would allow the Exchange to recoup its costs with a reasonable margin in a manner that is closer to parity with legacy exchanges, in effect, impedes its ability to compete, including in its pricing of transaction fees and ability to invest in competitive infrastructure and other offerings.

First, the proposed fees for ToM are comparable to the fees currently in place for the options exchanges, particularly Nasdaq ISE, LLC (''ISE'').[33] For the month of January 2024, the Exchange had 6.49% market share of equity options volume; for that same month, ISE had 6.19% market share of equity options volume.[34] The Exchange's proposed fees for ToM are equal to, and for Internal Distributors, lower than, the rates data recipients pay for comparable data feeds from ISE. The Exchange notes that other competitors maintain fees applicable to market data that are considerably higher than those proposed by the Exchange, including NYSE Arca, Inc. (''NYSE Arca'').[35] However, the Exchange has focused its comparison on ISE because it is the closest market in terms of market share and offers market data at prices lower than several other incumbent exchanges. The fees for the ISE Top Quote Feed, similar to ToM, includes top of book, trades, and security status messages, and costs market participants an internal distributor access fee of $3,000 per month (50% higher than the Exchange's proposed rate), and an external distributor access fee of $3,000 per month (equal to the Exchange's proposed rate).[36] ISE's overall charge to receive the ISE Top Quote Feed may be even higher than the Exchange's proposed rates because ISE charges additional per controlled device fees that can cause the distribution fee to reach up to $5,000 per month.[37] The Exchange's proposed rates do not include additional fees.

Like ToM described above, the proposed fees for cToM are comparable to the fees currently in place for competing options exchanges, particularly NYSE American, LLC (''NYSE American'').[38] As noted above, for the month of January 2024, the Exchange had 6.49% of the total equity options market share and 11.47% of the total electronic complex non-index volume executed on exchanges offering electronic complex functionality. For that same month, NYSE American had 7.44% of the total equity options market share and 5.90% of the total electronic complex non-index volume.[39] The Exchange proposes fees for cToM that are comparable to the rates data recipients pay for comparable data feeds from NYSE American. The Exchange has focused its comparison on NYSE American because it is the closest market in terms of market share. The fees for the NYSE American Options Complex data feed, which, similar to cToM, includes top of book, trades, and security status messages for complex orders, costs market participants an internal distributor access fee of $1,500 per month (slightly lower than the Exchange's proposed rate), and an external distributor access fee of $1,000 per month (resulting in a total external distribution fee of $2,500 per month).[40] However, NYSE American's overall charge to receive NYSE American Options Complex data may be even higher than the Exchange's proposed rates because NYSE American charges additional non-displayed usage fees (each are $1,000 per month and a subscriber may pay multiple non-displayed usage fees), per user fees ($20 per month for professional users and $1.00 per month for non-professional users), and multiple data feed fees ($200 per month), all of which the Exchange does not propose to charge. These additional charges by NYSE American can cause the total cost to receive NYSE American Complex data to exceed the rates that the Exchange proposes to charge.

There Are Reasonable Substitutes for the ToM and cToM Data Feeds

Each options exchange offers top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the ToM data feed. Further, the quote and last sale data contained in the ToM data feed is identical to the data sent to OPRA for redistribution to the public.[41] Accordingly, market participants can substitute ToM data with feeds from other exchanges and/or through OPRA. Exchange top-of-book data is therefore widely available today from a number of different sources.

Further, cToM is not the exclusive source for Complex Order information from the Exchange. It is a business decision of market participants whether to subscribe to cToM or not. Market participants that choose not to subscribe to cToM can derive much, if not all, of the same information from other Exchange sources, including, for example, the MIAX Order Feed (''MOR'').[42] The following cToM information is included in MOR: the Exchange's best bid and offer for a complex strategy, with aggregate size, based on displayable orders in the complex strategy on the Exchange; the identification of the complex strategies currently trading on the Exchange; and the status of securities underlying the complex strategy (*e.g.,* halted, open, or resumed). In addition to MOR, complex strategy last sale information can be derived from ToM. Specifically, market participants may deduce that last sale information for multiple trades in related options series with the same timestamps disseminated via ToM are likely part of a Complex Order transaction and last sale.

Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet high standards of transparency to demonstrate why each

[33] *See* ISE Options 7 Pricing Schedule, Section 10, H., *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (assessing Professional internal and external distributors $3,000 per month, plus $20 per month per controlled device for ISE's Top Quote Feed).

[34] *See* Market Share section of *https://www.miaxglobal.com/.*

[35] Fees for the NYSE Arca Options Top Feed, which is the comparable product to ToM, are $3,000 per month for access (internal use) and an additional $2,000 per month for redistribution (external distribution), compared to the Exchange's proposed fees of $2,000 and $3,000 for Internal and External Distributors, respectively. In addition, for its NYSE Arca Options Top Feed, NYSE Arca charges for three different categories of non-display usage, and user fees, both of which the Exchange does not propose to charge, causing the overall cost of NYSE Arca Options Top Feed to far exceed the Exchange's proposed rates. *See* NYSE Arca Options Proprietary Market Data Fees, *available at: https://www.nyse.com/publicdocs/nyse/data/NYSE_Arca_Options_Proprietary_Data_Fee_Schedule.pdf.*

[36] *See supra* note 33.

[37] *Id.*

[38] *See* NYSE American Options Proprietary Market Data Fees, *available at https://www.nyse.com/publicdocs/nyse/data/NYSE_American_Options_Market_Data_Fee_Schedule.pdf.*

[39] *See supra* note 34.

[40] *See supra* note 38.

[41] The Exchange notes that it makes available to subscribers that is included in the ToM data feed no earlier than the time at which the Exchange sends that data to OPRA.

[42] *See* MIAX website, Market Data & Offerings, *available at https://www.miaxglobal.com/company/data/data-products-services/market-data* (last visited February 28, 2024). In general, MOR provides real-time ultra-low latency updates on the following information: new Simple Orders added to the MIAX Order Book; updates to Simple Orders resting on the MIAX Order Book; new Complex Orders added to the Strategy Book (*i.e.,* the book of Complex Orders); updates to Complex Orders resting on the Strategy Book; MIAX listed series updates; MIAX Complex Strategy definitions; the state of the MIAX System; and MIAX's underlying trading state.

new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs.

Accordingly, in proposing to charge fees for market data, the Exchange is especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and in carefully and transparently assessing the impact on Members—both generally and in relation to other Members—to ensure the fees will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are consistent with the Act based on its Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[43] and Rule 19b–4 thereunder,[44] with respect to the types of information SROs should provide when filing fee changes, and section 6(b) of the Act,[45] which requires, among other things, that exchange fees be reasonable and equitably allocated,[46] not designed to permit unfair discrimination,[47] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[48] This proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.

In 2019, the Exchange completed a study of its aggregate costs to produce market data and connectivity (the ''Cost Analysis'').[49] The Cost Analysis required a detailed analysis of the Exchange's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services, physical connectivity, and port access (which provide order entry, cancellation and modification functionality, risk functionality, the ability to receive drop copies, and other functionality). The Exchange separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers'').

As an initial step, the Exchange determined the total cost for the Exchange and its affiliated markets[50] for each cost driver as part of its 2024 budget review process. The 2024 budget review is a company-wide process that occurs over the course of many months, includes meetings among senior management, department heads, and the Finance Team. Each department head is required to send a ''bottom up'' budget to the Finance Team allocating costs at the profit and loss account and vendor levels for the Exchange and its affiliated markets based on a number of factors, including server counts, additional hardware and software utilization, current or anticipated functional or non-functional development projects, capacity needs, end-of-life or end-of-service intervals, number of members, market model (*e.g.,* price time or pro-rata, simple only or simple and complex markets, auction functionality, etc.), which may impact message traffic, individual system architectures that impact platform size,[51] storage needs, dedicated infrastructure versus shared infrastructure allocated per platform based on the resources required to support each platform, number of available connections, and employees allocated time. All of these factors result in different allocation percentages among the Exchange and its affiliated markets, *i.e.,* the different percentages of the overall cost driver allocated to the Exchange and its affiliated markets will cause the dollar amount of the overall cost allocated among the Exchange and its affiliated markets to also differ. Because the Exchange's parent company currently owns and operates four separate and distinct marketplaces, the Exchange must determine the costs associated with each actual market—as opposed to the Exchange's parent company simply concluding that all costs drivers are the same at each individual marketplace and dividing total cost by four (4) (evenly for each marketplace). Rather, the Exchange's parent company determines an accurate cost for each marketplace, which results in different allocations and amounts across exchanges for the same cost drivers, due to the unique factors of each marketplace as described above. This allocation methodology also ensures that no cost would be allocated twice or double-counted between the Exchange and its affiliated markets. The Finance Team then consolidates the budget and sends it to senior management, including the Chief Financial Officer and Chief Executive Officer, for review and approval. Next, the budget is presented to the Board of Directors and the Finance and Audit Committees for each exchange for their approval. The above steps encompass the first step of the cost allocation process.

The next step involves determining what portion of the cost allocated to the Exchange pursuant to the above methodology is to be allocated to each core service, *e.g.,* connectivity and ports, market data, and transaction services. The Exchange and its affiliated markets adopted an allocation methodology with thoughtful and consistently applied principles to guide how much of a particular cost amount allocated to the Exchange should be allocated within the Exchange to each core service. This is the final step in the cost allocation process and is applied to each of the cost drivers set forth below. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (for example, 59% of the data center total expense amount is allocated to 10Gb ULL connectivity), with smaller allocations to ToM and cToM (1.3% combined), and the remainder to the provision of other connectivity, ports, transaction execution, membership services and other market data services (39.7%). This next level of the allocation methodology at the individual exchange level also took into account factors similar to those set forth under the first step of the allocation methodology process described above, to determine the appropriate allocation to connectivity or market data versus allocations for other services. This allocation methodology

[43] 15 U.S.C. 78s(b)(1).

[44] 17 CFR 240.19b–4.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(4).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78f(b)(8).

[49] The Exchange frequently updates it Cost Analysis as strategic initiatives change, costs increase or decrease, and market participant needs and trading activity changes. The Exchange's most recent Cost Analysis was conducted ahead of this filing.

[50] The affiliated markets include Miami International Securities Exchange, LLC (''MIAX''); separately, the options and equities markets of MIAX PEARL, LLC (''MIAX Pearl''); and MIAX Emerald, LLC (''MIAX Emerald'').

[51] For example, MIAX maintains 24 matching engines, MIAX Pearl Options maintains 12 matching engines, MIAX Pearl Equities maintains 24 matching engines, and MIAX Emerald maintains 12 matching engines.

was developed through an assessment of costs with senior management intimately familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an allocation of each cost driver to each core service, resulting in the cost allocations described below. Each of the below cost allocations is unique to the Exchange and represents a percentage of overall cost that was allocated to the Exchange pursuant to the initial allocation described above.

By allocating segmented costs to each core service, the Exchange was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity and port services, membership fees, regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue. The Exchange also notes that as a general matter each of these sources of revenue is based on services that are interdependent. For instance, the Exchange's system for executing transactions is dependent on physical hardware and connectivity; only Members and parties that they sponsor to participate directly on the Exchange may submit orders to the Exchange; many Members (but not all) consume market data from the Exchange in order to trade on the Exchange; and, the Exchange consumes market data from external sources in order to comply with regulatory obligations. Accordingly, given this interdependence, the allocation of costs to each service or revenue source required judgment of the Exchange and was weighted based on estimates of the Exchange that the Exchange believes are reasonable, as set forth below. While there is no standardized and generally accepted methodology for the allocation of an exchange's costs, the Exchange's methodology is the result of an extensive review and analysis and will be consistently applied going forward for any other cost-justified potential fee proposals. In the absence of the Commission attempting to specify a methodology for the allocation of exchanges' interdependent costs, the Exchange will continue to be left with its best efforts to attempt to conduct such an allocation in a thoughtful and reasonable manner.

Through the Exchange's extensive Cost Analysis, which was again recently further refined, the Exchange analyzed nearly every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of ToM and cToM data feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of ToM and cToM data feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to ToM and cToM data feeds. In turn, the Exchange allocated certain costs more to physical connectivity and others to ports, while certain costs were only allocated to such services at a very low percentage or not at all, using consistent allocation methodologies as described above. Based on this analysis, the Exchange estimates that the aggregate monthly cost to provide ToM and cToM data feeds is $74,789 (the Exchange divided the annual cost for each of ToM and cToM by 12 months, then added both numbers together), as further detailed below.

Costs Related to Offering ToM and cToM Data Feeds

The following chart details the individual line-item (annual) costs considered by the Exchange to be related to offering the ToM and cToM data feeds to its Members and other customers, as well as the percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 2.6% of its overall Human Resources cost to offering ToM and cToM data feeds).

Cost drivers	Allocated annual cost [a]	Allocated monthly cost [b]	Percentage of all
Human Resources	$588,806	$49,067	2.6
Connectivity (external fees, cabling, switches, etc.)	1,205	101	1.3
Internet Services and External Market Data	0.00	0.00	0.0
Data Center	19,292	1,608	1.3
Hardware and Software Maintenance & Licenses	26,386	2,199	1.3
Depreciation	35,967	2,997	0.8
Allocated Shared Expenses	225,807	18,817	2.5
Total	897,463	74,789	2.2

[a] The Annual Cost includes figures rounded to the nearest dollar.
[b] The Monthly Cost was determined by dividing the Annual Cost for each line item by twelve (12) months and rounding up or down to the nearest dollar.

Below are additional details regarding each of the line-item costs considered by the Exchange to be related to offering ToM and cToM. While some costs were attempted to be allocated as equally as possible among the Exchange and its affiliated markets, the Exchange notes that some of its cost allocation percentages for certain cost drivers differ when compared to the same cost drivers for the Exchange's affiliated market, MIAX Emerald, in its similar proposed fee change for ToM and cToM. This is because the Exchange's cost allocation methodology utilizes the actual projected costs of the Exchange (which are specific to the Exchange and are independent of the costs projected and utilized by the Exchange's affiliated markets) to determine its actual costs, which may vary across the Exchange and its affiliated markets based on factors that are unique to each marketplace. The Exchange provides additional explanation below (including the reason for the deviation) for the significant differences, if any.

The Exchange also notes that expenses included in its 2024 fiscal year budget and this proposal are generally higher than its 2023 fiscal year budget and Cost Analysis included in prior filings. This is due to a number of factors, such as, critical vendors and suppliers increasing costs they charge the Exchange, significant exchange staff headcount increases, increased data center costs from the Exchange's data center providers in multiple locations and facilities, higher technology and communications costs, planned

hardware refreshes, and system capacity upgrades that increase depreciation expense. Specifically, with regard to employee compensation, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (the Exchange and its affiliated companies are projected to hire over 60 additional staff in 2024). Hardware and software expenses have also increased primarily due to price increases from critical vendors and equipment suppliers. Further, the Exchange budgeted for additional hardware and software needs to support the Exchange's continued growth and expansion. Depreciation and amortization have likewise increased due to recent and planned refreshes in Exchange hardware and software. This new equipment and software then becomes depreciable, as described below. Data center costs have also increased due the following: the Exchange expanding its footprint within its data center; and the data center vendor increasing the costs it charges the Exchange. Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange as described below.

Human Resources

The Exchange notes that it and its affiliated markets anticipate that by year-end 2024, there will be 289 employees (excluding employees at non-options/equities exchange subsidiaries of Miami International Holdings, Inc. (''MIH''), the holding company of the Exchange and its affiliated markets), and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. Specifically, twice a year, and as needed with additional new hires and new project initiatives, in consultation with employees as needed, managers and department heads assign a percentage of time to every employee and then allocate that time amongst the Exchange and its affiliated markets to determine each market's individual Human Resources expense. Then, managers and department heads assign a percentage of each employee's time allocated to the Exchange into buckets including network connectivity, ports, market data, and other exchange services. This process ensures that every employee is 100% allocated, ensuring there is no double counting between the Exchange and its affiliated markets.

For personnel costs (Human Resources), the Exchange calculated an allocation of employee time for employees whose functions include providing and maintaining ToM and cToM data feeds and performance thereof (primarily the Exchange's network infrastructure team, which spends a portion of their time performing functions necessary to provide market data). As described more fully above, the Exchange's parent company allocates costs to the Exchange and its affiliated markets and then a portion of the Human Resources costs allocated to the Exchange is then allocated to market data. From that portion allocated to the Exchange that applied to market data, the Exchange then allocated a weighted average of 2.6% of each employee's time from the above group to ToM and cToM data feeds (which excludes an allocation for the recently hired Head of Data Services for the Exchange and its affiliates).

The Exchange also allocated Human Resources costs to provide ToM and cToM to a limited subset of personnel with ancillary functions related to establishing and maintaining such market data feeds (such as information security, sales, membership, and finance personnel). The Exchange allocated cost on an employee-by-employee basis (*i.e.,* only including those personnel who support functions related to providing market data feeds) and then applied a smaller allocation to such employees' time to ToM and cToM (less than 1.7%, which includes an allocation for the Head of Data Services). This other group of personnel with a smaller allocation of Human Resources costs also have a direct nexus to providing ToM and cToM, whether it is a sales person selling a market data feed, finance personnel billing for market data feeds or providing budget analysis, or information security ensuring that such market data feeds are secure and adequately defended from an outside intrusion.

The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing market data feeds, and confirming that the proposed allocations were reasonable based on an understanding of the percentage of time such employees devote to those tasks. This includes personnel from the Exchange departments that are predominately involved in providing ToM and cToM data feeds: Business Systems Development, Trading Systems Development, Systems Operations and Network Monitoring, Network and Data Center Operations, Listings, Trading Operations, and Project Management. Again, the Exchange allocated 2.6% of each of their employee's time assigned to the Exchange for ToM and cToM, as stated above. Employees from these departments perform numerous functions to support ToM and cToM data feeds, such as the configuration and maintenance of the hardware necessary to support the ToM and cToM data feeds. This hardware includes servers, routers, switches, firewalls, and monitoring devices. These employees also perform software upgrades, vulnerability assessments, remediation and patch installs, equipment configuration and hardening, as well as performance and capacity management. These employees also engage in research and development analysis for equipment and software supporting ToM and cToM data feeds and design, and support the development and on-going maintenance of internally-developed applications as well as data capture and analysis, and Member and internal Exchange reports related to network and system performance. The above list of employee functions is not exhaustive of all the functions performed by Exchange employees to support ToM and cToM, but illustrates the breath of functions those employees perform in support of the above cost and time allocations.

Lastly, the Exchange notes that senior level executives' time was only allocated to the ToM and cToM related Human Resources costs to the extent that they are involved in overseeing tasks related to providing market data. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions.

Connectivity (External Fees, Cabling, Switches, etc.) [52]

The Connectivity cost driver includes cabling and switches required to generate and disseminate the ToM and cToM data feeds and operate the Exchange. The Connectivity cost driver is more narrowly focused on technology used to complete Member subscriptions to ToM and cToM and the servers used at the Exchange's primary and back-up data centers specifically for the ToM

[52] This cost driver was titled ''Network Infrastructure'' in prior proposals. The Exchange has updated this section to now be in line with its similar cost analysis and cost driver descriptions for other non-transaction fee filings. *See, e.g.,* Securities Exchange Act Release No. 99476 (February 5, 2024), 89 FR 9194 (February 9, 2024) (SR–MIAX–2024–06).

and cToM data feeds. Further, as certain servers are only partially utilized to generate and disseminate the ToM and cToM data feeds, only the percentage of such servers devoted to generating and disseminating the ToM and cToM data feeds was included (*i.e.,* the capacity of such servers allocated to the ToM and cToM data feeds).[53]

Internet Services and External Market Data

The next cost driver consists of internet services and external market data. Internet services includes third-party service providers that provide the internet, fiber and bandwidth connections between the Exchange's networks, primary and secondary data centers, and office locations in Princeton and Miami. External market data includes fees paid to third parties, including other exchanges, to receive market data. The Exchange did not allocate any costs associated with internet services or external market data to the ToM and cToM data feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide ToM and cToM in the third-party data centers where it maintains its equipment (such as dedicated space, security services, cooling and power). The Exchange does not own the primary data center or the secondary data center, but instead leases space in data centers operated by third parties. As the Data Center costs are primarily for space, power, and cooling of servers, the Exchange allocated 1.3% to the applicable Data Center costs for the ToM and cToM data feeds. The Exchange believes it is reasonable to apply the same proportionate percentage of Data Center costs to that of the Connectivity cost driver.

Hardware and Software Maintenance and Licenses

Hardware and Software Maintenance and Licenses includes hardware and software licenses used to operate and monitor physical assets necessary to offer the ToM and cToM data feeds.[54] Because the hardware and software license fees are correlated to the servers used by the Exchange, the Exchange again applied an allocation of 1.3% of its costs for Hardware and Software Maintenance and Licenses to the ToM and cToM data feeds. The Exchange notes that this allocation is more than MIAX Emerald as MIAX allocated 1.3% of its Hardware and Software Maintenance and License expense to ToM and cToM, while MIAX Emerald allocated 1.1% of its Hardware and Software Maintenance and License expense to ToM and cToM. MIAX's allocation results in a slightly higher dollar amount of $8,000 per year (or approximately $667 per month, when dividing the annual cost difference by 12 months and rounding to the nearest dollar) compared to the annual cost of MIAX Emerald for its Hardware and Software Maintenance and License cost driver. This is because MIAX is in the process of replacing and upgrading various hardware and software used to operate its options trading platform in order to maintain premium network performance, including dissemination of ToM and cToM. At the time of this filing, MIAX is undergoing a major hardware refresh, replacing older hardware with new hardware. This hardware includes servers, network switches, cables, optics, protocol data units, and cabinets, to maintain a state-of-the-art technology platform. Because of the timing of the hardware refresh with the timing of this filing, MIAX has a slightly higher expense than MIAX Emerald.

Depreciation

All physical assets, software, and hardware used to provide ToM and cToM, which also includes assets used for testing and monitoring of Exchange infrastructure to provide market data, were valued at cost, and depreciated or leased over periods ranging from three to five years. Thus, the depreciation cost primarily relates to servers necessary to operate the Exchange, some of which are owned by the Exchange and some of which are leased by the Exchange in order to allow efficient periodic technology refreshes. The Exchange also included in the Depreciation cost driver certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to ToM and cToM in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to ToM and cToM. As noted above, the Exchange allocated 0.8% of its allocated depreciation costs to providing ToM and cToM.

The vast majority of the software the Exchange uses for its operations to generate and disseminate the ToM and cToM data feeds has been developed in-house over an extended period. This software development also requires quality assurance and thorough testing to ensure the software works as intended. Hardware used to generate and disseminate the ToM and cToM data feeds, which includes servers and other physical equipment the Exchange purchased. Accordingly, the Exchange included depreciation costs related to depreciated hardware and software used to generate and disseminate the ToM and cToM data feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the ToM and cToM data feeds in the near-term. As with the other allocated costs in the Exchange's updated Cost Analysis, the Depreciation cost was therefore narrowly tailored to depreciation related to the ToM and cToM data feeds.

The Exchange notes that this allocation differs from its affiliated market, MIAX Emerald, due to a number of factors, such as the age of physical assets and software (*e.g.,* older physical assets and software were previously depreciated and removed from the allocation), or certain system enhancements that required new physical assets and software, thus providing a higher contribution to the depreciated cost. For example, the Exchange notes that the percentages it and its affiliate, MIAX Emerald, allocated to the depreciation of software and hardware used to generate and disseminate their respective ToM and cToM data feeds are similar (0.8% for MIAX and 0.5% for MIAX Emerald). However, MIAX's dollar amount is greater than that of MIAX Emerald by approximately $17,000 per year (albeit a relatively small amount of approximately $1,415 per month, when rounding to the nearest dollar). This is due to two primary factors. First, the Exchange has undergone a technology refresh since the time MIAX Emerald launched in February 2019, leading to it having more hardware and software that

[53] The Exchange understands that the Investors Exchange, Inc. (''IEX'') and MEMX LLC (''MEMX'') both allocated a percentage of their servers to the production and dissemination of market data to support proposed market data fees. *See* Securities Exchange Act Release Nos. 94630 (April 7, 2022), 87 FR 21945, at page 21949 (April 13, 2022) (SR–IEX–2022–02) *and* 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04). The Exchange does not have insight into either MEMX's or IEX's technology infrastructure or what their determinations were based on. However, the Exchange reviewed its own technology infrastructure and believes based on its design, it is more appropriate for the Exchange to allocate a portion of its Connectivity cost driver to market data based on a percentage of overall cost, not on a per server basis.

[54] This expense may be more than the Exchange's affiliated markets, specifically MIAX Emerald. This is because each market may maintain and utilize a different amount of hardware and software based on its market model and infrastructure needs. The Exchange allocated a percentage of the overall cost based on actual amounts of hardware and software utilized by that market, which resulted in different cost allocations and dollar amounts.

is subject to depreciation. Second, the Exchange maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines. This also results in more of the Exchange's hardware and software being subject to depreciation than MIAX Emerald's hardware and software due to the greater amount of equipment and software necessary to support the greater number of matching engines on the Exchange.

Allocated Shared Expenses

Finally, as with other exchange products and services, a portion of general shared expenses was allocated to the provision of ToM and cToM data feeds. These general shared costs are integral to exchange operations, including its ability to provide ToM and cToM. Costs included in general shared expenses include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications. Similarly, the cost of paying directors to serve on the Exchange's Board of Directors is also included in the Exchange's general shared expense cost driver.[55] These general shared expenses are incurred by the Exchange's parent company, MIH, as a direct result of operating the Exchange and its affiliated markets.

The Exchange employed a process to determine a reasonable percentage to allocate general shared expenses to ToM and cToM pursuant to its multi-layered allocation process. First, general expenses were allocated among the Exchange and affiliated markets as described above. Then, the general shared expense assigned to the Exchange was allocated across core services of the Exchange, including market data. Then, these costs were further allocated to sub-categories within the final categories, *i.e.,* ToM and cToM as sub-categories of market data. In determining the percentage of general shared expenses allocated to market data that ultimately apply to ToM and cToM, the Exchange looked at the percentage allocations of each of the cost drivers and determined a reasonable allocation percentage. The Exchange also held meetings with senior management, department heads, and the Finance Team to determine the proper amount of the shared general expense to allocate to ToM and cToM. The Exchange, therefore, believes it is reasonable to assign an allocation, in the range of allocations for other cost drivers, while continuing to ensure that this expense is only allocated once. Again, the general shared expenses are incurred by the Exchange's parent company as a result of operating the Exchange and its affiliated markets and it is therefore reasonable to allocate a percentage of those expenses to the Exchange and ultimately to specific product offerings such as ToM and cToM.

Again, a portion of all shared expenses were allocated to the Exchange (and its affiliated markets) which, in turn, allocated a portion of that overall allocation to all market data products offered by the Exchange. The Exchange then allocated 2.5% of the portion allocated to market data to ToM and cToM. The Exchange believes this allocation percentage is reasonable because, while the overall dollar amount may be higher than other cost drivers, the 2.5% is based on and in line with the percentage allocations of each of the Exchange's other cost drivers. The percentage allocated to ToM and cToM also reflects its importance to the Exchange's strategy and necessity towards the nature of the Exchange's overall operations, which is to provide a resilient, highly deterministic trading system that relies on faster market data feeds than the Exchange's competitors to maintain premium performance. This allocation reflects the Exchange's focus on providing and maintaining high performance market data services, of which ToM and cToM are main contributors.

The Exchange notes that this allocation differs from its affiliated market, MIAX Emerald, due to a number of factors, such as the increase in overall headcount, thus providing a higher contribution to the depreciated cost. The Exchange notes that the percentages it and its affiliate, MIAX Emerald, allocated to this cost driver are similar (2.5% for MIAX and 2.1% for MIAX Emerald). However, MIAX's dollar amount is greater than that of MIAX Emerald by approximately $38,000 per year (albeit a relatively small amount of approximately $3,192 per month, when rounding to the nearest dollar). This is due primarily to significant exchange staff headcount increases. As mentioned above, the 2024 fiscal year budget includes additional expenses related to increased headcount and new hires that are needed to support the Exchange as it continues to grow (with a projected 60 additional staff in 2024). Lastly, allocated shared expenses have increased due to the overall budgeted increase in costs from 2023 to 2024 necessary to operate and support the Exchange and its affiliated markets.

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Approximate Cost for ToM and cToM Per Month

After determining the approximate allocated monthly cost related to ToM and cToM combined, the total monthly cost for ToM and cToM of $74,789 was divided by the number of total subscribers to ToM and cToM that the Exchange maintained at the time that proposed pricing was determined (41 Distributors), to arrive at a cost of approximately $1,824 per month per subscription (rounded to the nearest dollar). Due to the nature of this particular cost, this allocation methodology results in an allocation among the Exchange and its affiliated markets based on set quantifiable criteria, *i.e.,* actual number of ToM and cToM subscribers.

Cost Analysis—Additional Discussion

In conducting its Cost Analysis, the Exchange did not allocate any of its expenses in full to any core service (including market data) and did not double-count any expenses. Instead, as described above, the Exchange allocated applicable cost drivers across its core services and used the same Cost Analysis to form the basis of this proposal and the filings the Exchange recently submitted proposing fees for certain connectivity and ports offered by the Exchange. For instance, in calculating the Human Resources expenses to be allocated to market data based upon the above described methodology, the Exchange has a team of employees dedicated to network infrastructure and with respect to such employees the Exchange allocated network infrastructure personnel with a high percentage of the cost of such personnel (6.1%) given their focus on functions necessary to provide market data. The salaries of those same personnel were allocated only 2.6% to ToM and cToM and the remaining 97.4% was allocated to other market data products offered by the Exchange (MOR, AIS, etc.), connectivity services, port services, transaction services, and membership services. The Exchange did not allocate any other Human Resources expense for providing market data to any other employee group, outside of a smaller allocation of 2.6% for ToM and cToM of the cost associated with certain

[55] The Exchange notes that MEMX allocated a precise amount of 10% of the overall cost for directors in a similar non-transaction fee filing. *See* Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04). The Exchange does not calculate is expenses at that granular a level. Instead, director costs are included as part of the overall general allocation.

specified personnel who work closely with and support network infrastructure personnel.

In total, the Exchange allocated 2.6% of its personnel costs (Human Resources) to providing ToM and cToM. In turn, the Exchange allocated the remaining 97.4% of its Human Resources expense to membership services, transaction services, connectivity services, port services and other market data products. Thus, again, the Exchange's allocations of cost across core services were based on real costs of operating the Exchange and were not double-counted across the core services or their associated revenue streams.

As another example, the Exchange allocated depreciation expense to all core services, including market data, but in different amounts. The Exchange believes it is reasonable to allocate the identified portion of such expense because such expense includes the actual cost of the computer equipment, such as dedicated servers, computers, laptops, monitors, information security appliances and storage, and network switching infrastructure equipment, including switches and taps that were purchased to operate and support the network. Without this equipment, the Exchange would not be able to operate the network and provide ToM and cToM data feeds to its Members and their customers. However, the Exchange did not allocate all of the depreciation and amortization expense toward the cost of providing ToM and cToM, but instead allocated approximately 0.8% of the Exchange's overall depreciation and amortization expense to ToM and cToM combined. The Exchange allocated the remaining depreciation and amortization expense (99.2%) toward the cost of providing transaction services, membership services, connectivity services, port services, and other market data products.

The Exchange notes that its revenue estimates are based on projections across all potential revenue streams and will only be realized to the extent such revenue streams actually produce the revenue estimated. The Exchange does not yet know whether such expectations will be realized. For instance, in order to generate the revenue expected from ToM and cToM, the Exchange will have to be successful in retaining existing clients that wish to maintain subscriptions to those market data feeds or in obtaining new clients that will purchase such services. Similarly, the Exchange will have to be successful in retaining a positive net capture on transaction fees in order to realize the anticipated revenue from transaction pricing.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that actual costs may be higher or lower. To the extent the Exchange sees growth in use of market data services it will receive additional revenue to offset future cost increases. However, if use of market data services is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs. Similarly, the Exchange may propose to decrease fees in the event that revenue materially exceeds our current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds our current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Projected Revenue [56]

The proposed fees will allow the Exchange to cover certain costs incurred by the Exchange associated with creating, generating, and disseminating the ToM and cToM data feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.). The Exchange routinely works to improve the performance of the network's hardware and software. The costs associated with maintaining and enhancing a state-of-the-art exchange network is a significant expense for the Exchange, and thus the Exchange believes that it is reasonable and appropriate to help offset those costs by amending fees for market data subscribers. Subscribers, particularly those of ToM and cToM, expect the Exchange to provide this level of support so they continue to receive the performance they expect. This differentiates the Exchange from its competitors. As detailed above, the Exchange has five primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange must cover its expenses from these five primary sources of revenue.

The Exchange's Cost Analysis estimates the annual cost to provide ToM and cToM will equal $897,463. Based on current ToM and cToM subscribers, the Exchange would generate annual revenue of approximately $1,040,880 for ToM and cToM combined. The Exchange believes this represents a modest profit of 13.8% when compared to the cost of providing ToM and cToM data feeds.

Based on the above discussion, the Exchange believes that even if the Exchange earns the above revenue or incrementally more or less, the proposed fees are fair and reasonable because they will not result in pricing that deviates from that of other exchanges or a supra-competitive profit, when comparing the total expense of the Exchange associated with providing ToM and cToM data feeds versus the total projected revenue of the Exchange associated with ToM and cToM.

The Exchange also notes that the resultant profit margin differs slightly from the profit margins set forth in a similar fee filing by its affiliated market, MIAX Emerald. This is not atypical among exchanges and is due to a number of factors that differ between these two markets, including: different market models, market structures, and product offerings (price-time, pro-rata, simple, and complex); different pricing models; different number of market participants and connectivity subscribers; different maintenance and operations costs, as described in the cost allocation methodology above; different technical architecture (*e.g.,* the number of matching engines per exchange, *i.e.,* MIAX maintains 24 matching engines while MIAX Emerald maintains only 12 matching engines); and different maturity phase of MIAX and its affiliated markets (*i.e.,* start-up versus growth versus more mature). All of these factors contribute to a unique and

[56] For purposes of calculating projected 2024 revenue for ToM and cToM, the Exchange used revenues for the most recently completed full month.

differing level of profit margin per exchange.

Further, MIAX and MIAX Emerald propose to charge the same rates for their respective ToM and cToM data feeds, which are comparable to, or lower than, similar fees for similar products charged by competing exchanges. For example, for Internal Distributors of ToM and cToM, the Exchange proposes a lower fee than the fee charged by ISE for ISE's Top Quote Feed ($2,000 for the Exchange vs. $3,000 for ISE).[57] NYSE Arca charges even higher fees for the NYSE Arca Options Top Feed than the Exchange's proposed fees ($2,000 for the Exchange vs. $3,000 per month plus an additional $2,000 for redistribution on NYSE Arca).[58] Accordingly, the Exchange believes that comparable and competitive pricing are key factors in determining whether a proposed fee meets the requirements of the Act, regardless of whether that same fee across the Exchange's affiliated markets leads to slightly different profit margins due to factors outside of the Exchange's control (*i.e.,* more subscribers to ToM and/or cToM on MIAX or MIAX Emerald and vice versa).

The Exchange also reiterates that prior to July of 2021, the month in which it first proposed to adopt fees for cToM, the Exchange did not charge any fees for cToM and its allocation of costs to cToM was part of a holistic allocation that also allocated costs to other core services without double-counting any expenses. The Exchange is owned by a holding company that is the parent company of four exchange markets and, therefore, the Exchange and its affiliated markets must allocate shared costs across all of those markets accordingly, pursuant to the above-described allocation methodology. In contrast, IEX and MEMX, which are currently each operating only one exchange, in their recent non-transaction fee filings allocate the entire amount of that same cost to a single exchange. This can result in lower profit margins for the non-transaction fees proposed by IEX and MEMX because the single allocated cost does not experience the efficiencies and synergies that result from sharing costs across multiple platforms.[59] The Exchange and its affiliated markets often share a single cost, which results in cost efficiencies that can cause a broader gap between the allocated cost amount and projected revenue, even though the fee levels being proposed are lower or competitive with competing markets (as described above). To the extent that the application of a cost-based standard results in Commission Staff making determinations as to the appropriateness of certain profit margins, the Commission Staff should consider whether the proposed fee level is comparable to, or competitive with, the same fee charged by competing exchanges and how different cost allocation methodologies (such as across multiple markets) may result in different profit margins for comparable fee levels. If Commission Staff is making determinations as to appropriate profit margins, the Exchange believes that the Commission should be clear to all market participants as to what they have determined is an appropriate profit margin and should apply such determinations consistently and, in the case of certain legacy exchanges, retroactively, if such standards are to avoid having a discriminatory effect. Further, the proposal reflects the Exchange's efforts to control its costs, which the Exchange does on an ongoing basis as a matter of good business practice. A potential profit margin should not be judged alone based on its size, but is also indicative of costs management and whether the ultimate fee reflects the value of the services provided. For example, a profit margin on one exchange should not be deemed excessive where that exchange has been successful in controlling its costs, but not excessive where on another exchange where that exchange is charging comparable fees but has a lower profit margin due to higher costs. Doing so could have the perverse effect of not incentivizing cost control where higher costs alone are used to justify fees increases.

Accordingly, while the Exchange is supportive of transparency around costs and potential margins (applied across all exchanges), as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning—or seeking to earn—supra-competitive profits, the standard set forth in the Staff Guidance. The Exchange believes the Cost Analysis and related projections in this filing demonstrate this fact.

The Exchange notes that the Cost Analysis is based on the Exchange's 2024 fiscal year of operations and projections. It is possible, however, that such costs will either decrease or increase. To the extent the Exchange sees growth in use of ToM and cToM data feeds it will receive additional revenue to offset future cost increases. However, if use of ToM and cToM data feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs and a reasonable mark-up of such costs.

Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable mark-up, or decrease fees in the event that revenue or the mark-up materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

Reasonableness

Overall. With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the exchange making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general

[57] *See supra* note 33.

[58] *See supra* note 35.

[59] The Exchange acknowledges that IEX included in its proposal to adopt market data fees after offering market data for free an analysis of what its projected revenue would be if all of its existing customers continued to subscribe versus what its projected revenue would be if a limited number of customers subscribed due to the new fees. *See* Securities Exchange Act Release No. 94630 (April 7, 2022), 87 FR 21945 (April 13, 2022) (SR–IEX–2022–02). MEMX did not include a similar analysis in either of its recent non-transaction fee proposals. *See, e.g., supra* notes 53 and 55. The Exchange does not believe a similar analysis would be useful here because it is amending existing fees, not proposing to charge a new fee where existing subscribers may terminate connections because they are no longer enjoying the service at no cost.

the analysis considers whether the exchange has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the exchange taking supra-competitive profits. If the exchange demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the exchange must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's aggregate costs of offering the ToM and cToM data feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual costs of providing ToM and cToM data with a reasonable mark-up. As discussed in the Purpose section, the Exchange estimates this fee filing will result in annual revenue of approximately $1,040,880, representing a potential mark-up of just 13.8% over the cost of providing ToM and cToM data. Accordingly, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup all of its expenses for providing the ToM and cToM data products (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the ToM and cToM data feeds are reasonable when compared to fees for comparable products, compared to which the Exchange's proposed fees are generally lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the ToM and cToM data feeds.

Internal Distribution Fees. The Exchange believes that it is reasonable to charge fees to access the ToM and cToM data feeds for Internal Distribution because of the value of such data to subscribers in their profit-generating activities. The Exchange also believes that the proposed monthly Internal Distribution fee for cToM is reasonable as it is similar to the amount charged by at least one other exchange of comparable size for comparable data products, and lower than the fees charged by other exchanges for comparable data products.[60]

External Distribution Fees. The Exchange believes that it is reasonable to charge External Distribution fees for the ToM and cToM data feeds because vendors receive value from redistributing the data in their business products provided to their customers. The Exchange believes that charging External Distribution fees is reasonable because the vendors that would be charged such fees profit by re-transmitting the Exchange's market data to their customers. These fees would be charged only once per month to each vendor account that redistributes any ToM and cToM data feeds, regardless of the number of customers to which that vendor redistributes the data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are reasonable.

Equitable Allocation

Overall. The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes the proposed fees for the ToM and cToM data feeds are allocated fairly and equitably among the various categories of users of the feeds, and any differences among categories of users are justified and appropriate.

The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the ToM and cToM data feeds. Any subscriber or vendor that chooses to subscribe to the ToM and cToM data feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or more ToM and cToM data feeds is based on objective differences in usage of ToM and cToM data feeds among different Members, which are still ultimately in the control of any particular Member. The Exchange believes the proposed pricing of the ToM and cToM data feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed and the value of that information to market participants.

Internal Distribution Fees. The Exchange believes the proposed monthly fees for Internal Distribution of the ToM and cToM data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds for internal distribution, regardless of what type of business they operate.

External Distribution Fees. The Exchange believes the proposed monthly fees for External Distribution of the ToM and cToM data feeds are equitably allocated and not unfairly discriminatory because they would be charged on an equal basis to all data recipients that receive the ToM and cToM data feeds that choose to redistribute the feeds externally, regardless of what business they operate. The Exchange also believes that the proposed monthly fees for External Distribution are equitably allocated when compared to lower proposed fees for Internal Distribution because data recipients that are externally distributing ToM and cToM data feeds are able to monetize such distribution and spread such costs amongst multiple third party data recipients, whereas the Internal Distribution fee is applicable to use by a single data recipient (and its affiliates).

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess Internal Distributors fees that are less than the fees assessed for External Distributors for subscriptions to the ToM and cToM data feeds because Internal Distributors have limited, restricted usage rights to the market data, as compared to External Distributors, which have more expansive usage rights. All Members and non-Members that decide to receive any market data feed of the Exchange (or its affiliates, MIAX Pearl and MIAX

[60] *See supra* notes 33, 35, and 38.

Emerald), must first execute, among other things, the MIAX Exchange Group Exchange Data Agreement (the ''Exchange Data Agreement'').[61] Pursuant to the Exchange Data Agreement, Internal Distributors are restricted to the ''internal use'' of any market data they receive. This means that Internal Distributors may only distribute the Exchange's market data to the recipient's officers and employees and its affiliates.[62] External Distributors may distribute the Exchange's market data to persons who are not officers, employees or affiliates of the External Distributor,[63] and may charge their own fees for the redistribution of such market data. External Distributors may monetize their receipt of the ToM and cToM data feeds by charging their customers fees for receipt of the Exchange's cToM data. Internal Distributors do not have the same ability to monetize the Exchange's ToM and cToM data feeds. Accordingly, the Exchange believes it is fair, reasonable and not unfairly discriminatory to assess External Distributors a higher fee for the Exchange's ToM and cToM data feeds as External Distributors have greater usage rights to commercialize such market data and can adjust their own fee structures if necessary.

The Exchange also utilizes more resources to support External Distributors versus Internal Distributors, as External Distributors have reporting and monitoring obligations that Internal Distributors do not have, thus requiring additional time and effort of Exchange staff. For example, External Distributors have monthly reporting requirements under the Exchange's Market Data Policies.[64] Exchange staff must then, in turn, process and review information reported by External Distributors to ensure the External Distributors are redistributing cToM data in compliance with the Exchange's Market Data Agreement and Policies.

The Exchange believes the proposed cToM fees are equitable and not unfairly discriminatory because the fee level results in a reasonable and equitable allocation of fees amongst subscribers for similar services, depending on whether the subscriber is an Internal or External Distributor. Moreover, the decision as to whether or not to purchase market data is entirely optional to all market participants. Potential purchasers are not required to purchase the market data, and the Exchange is not required to make the market data available. Purchasers may request the data at any time or may decline to purchase such data. The allocation of fees among users is fair and reasonable because, if market participants decide not to subscribe to the data feed, firms can discontinue their use of the cToM data.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the ToM and cToM data feeds are equitably allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[65] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of the data feed by each market participant based on whether the market participant internally or externally distributes the Exchange data, which are still ultimately in the control of any particular Member, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of data consumed by various market participants and their usage thereof.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other exchanges that is not necessary or appropriate. In particular, market participants are not forced to subscribe to either data feed, as described above. Additionally, other exchanges have similar market data fees with comparable rates in place for their participants.[66] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing exchanges are free to adopt comparable fee structures subject to the Commission's rule filing process. Allowing the Exchange, or any new market entrant, to waive fees (as the Exchange did for cToM) for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act,[67] and Rule 19b–4(f)(2)[68] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2024–13 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–MIAX–2024–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

[61] *See* Exchange Data Agreement, *available at https://www.miaxglobal.com/markets/us-options/all-options/market-data-vendor-agreements.*

[62] *See id.*

[63] *See id.*

[64] *See* Section 6 of the Exchange's Market Data Policies, *available at https://www.miaxglobal.com/sites/default/files/page-files/MIAX_Exchange_Group_Market_Data_Policies_07202021.pdf.*

[65] 15 U.S.C. 78f(b)(8).

[66] *See supra* notes 33, 35, and 38.

[67] 15 U.S.C. 78s(b)(3)(A)(ii).

[68] 17 CFR 240.19b–4(f)(2).

post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2024–13 and should be submitted on or before April 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05835 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99739; File No. SR–CboeBZX–2024–021]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 14, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2024, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective March 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees in connection with orders routed away to various exchanges. The Fees Schedule currently lists fee codes and their corresponding transaction fees for certain Customer orders routed to other options exchanges. Currently, under the Fee Codes and Associated Fees section of the Fee Schedule, fee code RP is appended to routed Customer orders to NYSE American (''AMEX''), BOX Options Exchange (''BOX''), Nasdaq BX Options (''BX''), Cboe Exchange, Inc. (''Cboe''), Cboe EDGX Exchange, Inc. (''EDGX''), MIAX Options Exchange (''MIAX'') or Nasdaq PHLX LLC (''PHLX'') (excluding orders in SPY options) and assesses a charge of $0.25 per contract; fee code RQ is appended to routed Customer orders in Penny Program classes to NYSE Arca, Inc (''ARCA''), Cboe C2 Exchange, Inc. (''C2''), Nasdaq ISE (''ISE''), ISE Gemini, LLC (''GMNI''), ISE Mercury, LLC (''MERC''), MIAX Emerald Exchange (''EMLD''), MIAX Pearl Exchange (''PERL''), Nasdaq Options Market LLC (''NOM''), MEMX LLC (''MEMX''), or PHLX (for orders in SPY options) and assesses a charge of $0.85 per contract; and fee code RR is appended to routed Customer orders in Non-Penny classes to ARCA, C2, ISE, GMNI, MERC, EMLD, PERL, NOM or MEMX and assesses a charge of $1.25.

The Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.,* clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, ''Routing Costs''). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs and are not significantly higher or lower in any area. The Exchange notes that at least one other options exchange currently assesses routing fees in a similar manner as the Exchange's

[69] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (February 26, 2024), available at *https://markets.cboe.com/us/options/market_statistics/*.

current approach to assessing approximate routing fees.[4]

The Exchange proposes to amend fee code RP to exclude applicable Customer orders routed to Nasdaq BX Options (*i.e.,* BX) and to amend fee codes RQ and RR to add applicable Customer orders routed to BX. The charge assessed per contract for each fee code remain the same under the proposed rule change.

The proposed changes result in an assessment of fees that, given fees of an away options exchange, is more in line with the Exchange's current approach to routing fees, that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange's Routing Costs).[5] The Exchange notes that routing through the Exchange is optional and that Members will continue to be able to choose where to route applicable Customer orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,[9] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed rule change to amend fee codes RP, RQ, and RR to account for BX's current assessment of fees for Customer orders is reasonable because it is reasonably designed to assess routing fees in line with the Exchange's current approach to routing fees. That is, the proposed rule change is intended to include Customer orders in Penny Program and Non-Penny classes routed to BX in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as Routing Costs to the Exchange.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange notes that at least one other options exchange currently approximates routing fees in a similar manner as the Exchange's current approach.[10]

Finally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' Customer orders in Penny Program and Non-Penny classes routed to BX will automatically yield fee codes RQ or RR, respectively, and uniformly be assessed the corresponding fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change to amend fee codes RP, RQ, and RR will impose any burden on intramarket competition. All Members' Customer orders routing to BX and currently yielding fee code RP will, as proposed, yield fee code RQ or RR (depending on whether the order is in Penny Program or Non-Penny classes, respectively) and will automatically and uniformly be assessed the current fees already in place for such routed orders, as applicable.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that other options exchange approximate routing costs in a similar manner as the Exchange's current approach.[11] Also, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.[12] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [13] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[14] Accordingly, the

[4] *See, e.g.,* MIAX Options Exchange Fee Schedule, Section 1(c), ''Fees for Customer Orders Routed to Another Options Exchange.''

[5] *See* BX Options 7 (Pricing Schedule), Section 2.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(4).

[10] *See supra* note 2[sic].

[11] *Id.*

[12] *See supra* note 1[sic].

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release

Continued

Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2024–021 on the subject line.

Paper Comments

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

All submissions should refer to file number SR–CboeBZX–2024–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2024–021 and should be submitted on or before April 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–05837 Filed 3–19–24; 8:45 am]

BILLING CODE 8011–01–P

No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995, requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 20, 2024.

ADDRESSES: Email all comments to: Teresa Lopez, Office of Financial Program Operations, Small Business Administration, at *teresa.lopez@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Adrienne Grierson, Deputy Director Office of Financial Program Operations, 202–205–6573, *adrienne.grierson@sba.gov* or Curtis B. Rich, Agency Clearance Officer, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA Form 1149, Lenders Transcript of Account is completed by Lenders when requesting SBA to purchase the guaranty portion of a loan. At that time, Lenders are required to supply the Agency with a certified transcript of the loan account. SBA Form 1149 is a uniform and convenient means for lenders to report and certify loan accounts to purchase by SBA. The Agency uses the information to determine date of loan default and whether Lender disbursed and serviced the loan according to Loan Guaranty agreement.

SBA has determined that the current information does not adequately meet its needs at the time of guaranty purchase review since the form does not collect enough details about the type of loan payments. Accordingly, SBA changed the column titled ''DEFERMENT'' to ''TYPE OF PAYMENT.''

SBA also plans to revise and clarify the instructions for the Form 1149 to ensure the lenders will be aware of the information to be reported. Lastly, the Form 1149 may undergo additional formatting changes to make it easier to address mandatory Federal government 508 accessibility compliance.

This non-substantive change will likely not have a significant impact on the burden. SBA is requesting a 3-year renewal.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including using automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

Title: Lenders Transcript of Account.
Form Numbers: SBA Form 1149.
OMB Control Number: 3245–0132.
Description of Respondents: SBA Lenders.
Estimated Number of Respondents: 15,000.

Frequency of Response per Respondent: 1.

Total Estimated Annual Responses: 15,000.

Total Estimated Annual Hour Burden: 2 hours per respondent, for a total of 30,000 hours.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–05841 Filed 3–19–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 5) (2024–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Surface Transportation Board has adopted the second quarter 2024 Rail Cost Adjustment Factor and cost index filed by the Association of American Railroads.

DATES: *Applicability Date:* April 1, 2024.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245–0245.

SUPPLEMENTARY INFORMATION: The rail cost adjustment factor (RCAF) is an index formulated to represent changes in railroad costs incurred by the nation's largest railroads over a specified period of time. Under 49 U.S.C. 10708, the Surface Transportation Board (Board) is required to publish the RCAF on at least a quarterly basis. Each quarter, the Association of American Railroads computes three types of RCAF figures and submits those figures to the Board for approval. The Board has reviewed the submission and adopts the RCAF figures for the second quarter of 2024. The second quarter 2024 RCAF (Unadjusted) is 0.986. The second quarter 2024 RCAF (Adjusted) is 0.387. The second quarter 2024 RCAF–5 is 0.369. Additional information is contained in the Board's decision, which is available at *www.stb.gov.*

Decided: March 15, 2024.

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

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2024–05907 Filed 3–19–24; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at the March 14, 2024 Meeting

AGENCY: Susquehanna River Basin Commission

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on March 14, 2024, in Harrisburg, Pennsylvania, the Commission approved the applications of certain water resources projects and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: March 14, 2024.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238–0423, ext. 1312, fax: (717) 238–2436; email: *joyler@srbc.gov*. Regular mail inquiries may be sent to the above address. See also the Commission website at *www.srbc.gov*.

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above, these actions were also taken: (1) approved one grant agreement; (2) adopted General Permit GP–03; (3) approved an authorization to release a proposed rulemaking regarding agency procurement for public comment, and (4) actions on 25 regulatory program projects.

Project Applications Approved

1. *Project Sponsor and Facility:* ADLIB Resources, Inc. (Meshoppen Creek), Springville Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20190301).

2. *Project Sponsor and Facility:* Beech Resources, LLC (Lycoming Creek), Lycoming Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd (peak day).

3. *Project Sponsor and Facility:* Cherokee Pharmaceuticals, LLC (Susquehanna River), Riverside Borough, Northumberland County, Pa. Modification to extend the approval terms of the consumptive use and surface water withdrawal approvals (Docket Nos. 20090310 and 20090311) while the facility begins to decommission operations through 2028, and a phased reduction in the surface water withdrawal from 34.392 mgd to 5.100 mgd (peak day) and consumptive use from 0.999 mgd to 0.200 mgd (peak day).

4. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Susquehanna River), Braintrim Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 3.000 mgd (peak day) (Docket No. 20190303).

5. *Project Sponsor and Facility:* Chesapeake Appalachia, L.L.C. (Susquehanna River), Wysox Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 2.001 mgd (peak day) for a total withdrawal of up to 3.000 mgd (peak day) (Docket No. 20220603).

6. *Project Sponsor and Facility:* Conestoga Country Club, Manor Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.281 mgd (30-day average) from Well 1 (Docket No. 20080617).

7. *Project Sponsor:* Dauphin County General Authority. Project Facility: Highlands Golf Course, Swatara Township, Dauphin County, Pa. Application for renewal of consumptive use of up to 0.249 mgd (30-day average) (Docket No. 19940104).

8. *Project Sponsor:* East Hempfield Township. Project Facility: Four Seasons Golf Club, East Hempfield Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawal of up to 0.199 mgd (30-day average) from Well C and consumptive use of up to 0.304 mgd (peak day) (Docket No. 19970504).

9. *Project Sponsor:* Golf Enterprises, Inc. Project Facility: Valley Green Golf Course, Newberry Township, York County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 20021019).

10. *Project Sponsor:* Greater Hazleton Community-Area New Development Organization, Inc. Project Facility: CAN DO, Inc.—Corporate Center, Butler Township, Luzerne County, Pa. Application for groundwater withdrawal of up to 0.288 mgd (30-day average) from Well 2.

11. *Project Sponsor and Facility:* Greylock Production, LLC (Genesee Forks), Hector Township, Potter County, Pa. Application for surface water withdrawal of up to 1.440 mgd (peak day).

12. *Project Sponsor and Facility:* Greylock Production, LLC (Pine Creek), Ulysses Township, Potter County, Pa. Application for surface water withdrawal of up to 2.592 mgd (peak day).

13. *Project Sponsor and Facility:* Hegins-Hubley Authority, Hegins Township, Schuylkill County, Pa.

Application for renewal of groundwater withdrawal of up to 0.110 mgd (30-day average) from Well 5 (Docket No. 19981204).

14. *Project Sponsor and Facility:* Keystone Potato Products, LLC, Frailey Township, Schuylkill County, Pa. Applications for groundwater withdrawal of up to 0.140 mgd (30-day average) from Well 2 and consumptive use of up to 0.140 mgd (30-day average).

15. *Project Sponsor:* New Enterprise Stone & Lime Co., Inc. Project Facility: Laflin Quarry, Plains Township, Luzerne County, Pa. Modification to increase consumptive use by an additional 0.240 mgd (30-day average) for a total consumptive use of up to 0.280 mgd (30-day average) (Docket No. 20230613).

16. *Project Sponsor and Facility:* New Holland Borough Authority, Earl Township, Lancaster County, Pa. Application for groundwater withdrawal of up to 0.391 mgd (30-day average) from Well 1.

17. *Project Sponsor:* Post Consumer Brands, LLC. Project Facility: Bloomsburg Plant, South Centre Township, Columbia County, Pa. Applications for renewal of groundwater withdrawal of up to 0.530 mgd (30-day average) from Well 6 and consumptive use of up to 0.800 mgd (peak day) (Docket No. 19910709).

18. *Project Sponsor and Facility:* PPG Operations LLC (West Branch Susquehanna River), Goshen Township, Clearfield County, Pa. Modification to review withdrawal and approval for use of AMD-impacted water under Commission Policy No. 2021–04 (Docket No. 20210605).

19. *Project Sponsor:* Rich Valley Golf, Inc. Project Facility: Rich Valley Golf Course (Conodoguinet Creek), Silver Spring Township, Cumberland County, Pa. Applications for renewal of surface water withdrawal of up to 0.325 mgd (peak day) and consumptive use of up to 0.325 mgd (30-day average) (Docket No. 19990306).

20. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Cowanesque River), Westfield Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.375 mgd (peak day) (Docket No. 20190311).

21. *Project Sponsor:* Shadow Ranch Resort, Inc. Project Facility: Shadowbrook Resort (Tunkhannock Creek), Tunkhannock Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20190307).

22. *Project Sponsor and Facility:* Sugar Hollow Water Services LLC (Martins Creek), Hop Bottom Borough, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.360 mgd (peak day) (Docket No. 20190310).

23. *Project Sponsor and Facility:* SWN Production Company, LLC (Martins Creek), Brooklyn Township, Susquehanna County, Pa. Application for renewal of surface water withdrawal of up to 0.997 mgd (peak day) (Docket No. 20190312).

Projects Tabled

1. *Project Sponsor and Facility:* East Cocalico Township Authority, East Cocalico Township, Lancaster County, Pa. Application for renewal of groundwater withdrawal of up to 0.115 mgd (30-day average) from Well 2A (Docket No. 19990901).

2. *Project Sponsor and Facility:* Newport Borough Water Authority, Oliver Township, Perry County, Pa. Application for early renewal of groundwater withdrawal at an increased rate of up to 0.096 mgd (30-day average) from Well 1 (Docket No. 20140908).

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: March 15, 2024.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2024–05897 Filed 3–19–24; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2024–0869]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the FAA invites public comments about our intention to request Office of Management and Budget (OMB) approval to renew an information collection. The reporting and recordkeeping requirements of this collection are related to FAA rules governing the operation of aircraft (other than moored balloons, kites, rockets, unmanned free balloons, and small unmanned aircraft) within the United States. These reporting and recordkeeping requirements are necessary for the FAA to assure compliance with these provisions.

DATES: Written comments should be submitted by May 20, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: John H. Attebury, AFS–830, 800 Independence Ave. SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John H. Attebury by email at: *john.h.attebury@faa.gov;* phone: (281) 929–7078.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules.

Form Numbers: None.

Type of Review: Renewal.

Background: The reporting and recordkeeping requirements of 14 CFR part 91, General Operating and Flight Rules, are authorized by part A of subtitle VII of the revised title 49 of the United States Code. Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets, unmanned free balloons and small unmanned aircraft) within the United States. The reporting and recordkeeping requirements prescribed by various sections of part 91 are necessary for FAA to assure compliance with these provisions. The information collected becomes a part of FAA's official records and is used only by the FAA for certification, compliance and enforcement, and when accidents, incidents, reports of noncompliance, safety programs, or other circumstances require reference to records. Without this information, the FAA would be unable to control and maintain the consistently high level of civil aviation safety we enjoy.

Respondents: Approximately 21,200 airmen, state or local governments, and businesses.

Frequency: On occasion.

Estimated Average Burden per Response: 0.5 hours.

Estimated Total Annual Burden: 282,129 hours.

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

D.C. Morris,

Aviation Safety Analyst, Flight Standards Service, General Aviation and Commercial Division.

[FR Doc. 2024–05806 Filed 3–19–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability for Proposed Voluntary Agreement at Lake Mead National Recreation Area

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice of availability

SUMMARY: The FAA, in cooperation with the National Park Service (NPS), has initiated development of a voluntary agreement pursuant to the National Parks Air Tour Management Act of 2000 (the Act) and its implementing regulations. The Act allows the FAA and NPS to enter into voluntary agreements with commercial air tour operators. A voluntary agreement manages commercial air tour operations over a national park by establishing conditions for the conduct of the commercial air tour operations. Implementation of a voluntary agreement helps protect park resources and the visitor experience without compromising aviation safety or the air traffic control system. This notice announces the public availability of the proposed voluntary agreement for Lake Mead National Recreation Area.

DATES: Comments are due by 10:59 p.m. PDT April 19, 2024.

ADDRESSES: Comments will be received on the NPS Planning, Environment and Public Comment System (PEPC) website. The PEPC website for the Park is: *https://parkplanning.nps.gov/LakeMeadAirToursVA.*

FOR FURTHER INFORMATION CONTACT: Sandra Fox, *sandra.y.fox@faa.gov;* (202) 267–0928.

SUPPLEMENTARY INFORMATION: The FAA is issuing this notice pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181 (*https://www.govinfo.gov/link/plaw/106/public/181?link-type=html*)) and its implementing regulations contained in title 14, Code of Federal Regulations, part 136, subpart B, National Parks Air Tour Management. The Act requires that commercial air tour operators conducting or intending to conduct commercial air tours over a unit of the National Park system apply to the FAA for operating authority before engaging in that activity. The Act further requires the FAA and the NPS to establish an air tour management plan (ATMP) for each National Park System unit for which one or more commercial air tour applications have been submitted unless that unit is exempt from this requirement. As an alternative to an ATMP, the FAA and the NPS may enter into a voluntary agreement with a commercial air tour operator who has applied to conduct commercial air tour operations over a national park including an operator that has interim operating authority for the park or a new entrant commercial air tour operator. Voluntary agreements must address the management issues necessary to protect the resources and visitor use of the park without compromising aviation safety or the air traffic control system. A voluntary agreement may also include conditions for the conduct of air tour operations and provisions to ensure the stability of and compliance with the voluntary agreement. Each voluntary agreement reflects the provisions and conditions appropriate for the national park to which the agreement applies.

Individual voluntary agreements will be established with each operator for the Park. Part 135 operators who have been granted interim operating authority for the Parks are included in this voluntary agreement and operators who have applied for authority to conduct tours of the Park are also considered.

Written comments on the proposed voluntary agreement can be submitted via PEPC. Comments will not be accepted by fax, email, or any other way than as specified above. All written comments become part of the official record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Issued in Washington, DC, on March 15, 2024.

Sandra Fox,

Environmental Protection Specialist, Office of Environment and Energy.

[FR Doc. 2024–05879 Filed 3–19–24; 8:45 am]

BILLING CODE 4910–13–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 updates to the identifying information of one or more persons currently included on the SDN List.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable 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 Compliance, 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 March 14, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Individual:

1. GONCALVES DO CARMO, Diego Macedo (Latin: GONÇALVES DO CARMO, Diego Macedo) (a.k.a. ''Brahma''), Penitenciaria Federal de Porto Velho, Porto Velho, Brazil; DOB 18 Jun 1984; POB Brazil; nationality Brazil; Gender Male; Tax ID No. 327.953.228–03 (Brazil) (individual) [ILLICIT–DRUGS–EO14059] (Linked To: PRIMEIRO COMANDO DA CAPITAL).

Designated pursuant to section 1(b)(iii) 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 being owned, controlled, or directed by, or having acted or purported to act for or on behalf of, directly or indirectly, Primeiro Comando Da Capital, a person sanctioned pursuant to E.O. 14059.

B. On March 14, 2024, OFAC updated the entries on the SDN List for the following persons, whose property and interests in property subject to U.S. jurisdiction continue to be blocked.

1. AERO EXPRESS INTERCONTINENTAL S.A. DE C.V. (a.k.a. AEISA; a.k.a. INTEREXPRESS), Oriente 158 No. 390-E, Colonia Moctezuma, Segunda Seccion, Delegacion Venustiano Carranza, Mexico City, Distrito Federal, Mexico; Avenida Ruben Dario, Albrook Comercial Park, Deposito No. 20, Bella Vista, Distrito de Panama, Panama; R.F.C. AIN-000713-GR7 (Mexico) [SDNTK].

-to-

AERO EXPRESS INTERCONTINENTAL S.A. DE C.V. (a.k.a. "AEISA"; a.k.a. "INTEREXPRESS"), Oriente 158 No. 390-E, Colonia Moctezuma, Segunda Seccion, Delegacion Venustiano Carranza, Mexico City, Distrito Federal, Mexico; Avenida Ruben Dario, Albrook Comercial Park, Deposito No. 20, Bella Vista, Distrito de Panama, Panama; R.F.C. AIN-000713-GR7 (Mexico) [SDNTK].

2. CHING, Teo Boon (a.k.a. CHING, Dato Sri Teo Boon), No. 65 Jalan Ledang, Taman Johor Tampoi, Johor Bahru, Johor 81200, Malaysia; DOB 24 Nov 1964; nationality Malaysia; Gender Male; National ID No. 641124015977 (Malaysia) (individual) [TCO] (Linked To: TEO BOON CHING WILDLIFE TRAFFICKING TRANSNATIONAL CRIMINAL ORGANIZATION).

-to-

CHING, Teo Boon (a.k.a. "Dato Sri"), No. 65 Jalan Ledang, Taman Johor Tampoi, Johor Bahru, Johor 81200, Malaysia; DOB 24 Nov 1964; nationality Malaysia; Gender Male; National ID No. 641124015977 (Malaysia) (individual) [TCO] (Linked To: TEO BOON CHING WILDLIFE TRAFFICKING TRANSNATIONAL CRIMINAL ORGANIZATION).

3. WANG, Guoying (a.k.a. WANG, Guo Ying); DOB 19 Mar 1950; citizen China; Passport G41966371 (China); Chinese Commercial Code 3769 0948 5931 (individual) [SDNTK] (Linked To: CEC LIMITED).

-to-

WANG, Guoying (Chinese Simplified: 王国英) (a.k.a. WANG, Guo Ying), China; DOB 19 Mar 1950; nationality China; citizen China; Gender Female; Passport G41966371 (China); Chinese Commercial Code 3769 0948 5391 (individual) [SDNTK] (Linked To: CEC LIMITED).

Dated: March 14, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–05908 Filed 3–19–24; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

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 updating one person's entry on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property

and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: 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 Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 14, 2024, OFAC determined that the following person shall have their property and interests in property subject to U.S. jurisdiction blocked pursuant to E.O. 14024. Therefore, the person's entry in the SDN List is updated as identified below.

Individual

—From—

1. STEPANOV, Artem Nikolaevich (Cyrillic: СТЕПАНОВ, Артём Николаевич), Moscow, Russia; DOB 31 Mar 1980; POB Russia; nationality Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; Tax ID No. 504403080602 (Russia) (individual) [UKRAINE-EO13661] [CYBER2] [ELECTION-EO13848] (Linked To: OOO YUNIDZHET).

—To—

1. STEPANOV, STEPANOV, Artem Nikolaevich (Cyrillic: СТЕПАНОВ, Артём Николаевич) (a.k.a. STEPANOV, Artem Nikolayevich), Rabochaya Street 10-72, Solnechnogorsk, Moscow Oblast 141503, Russia; Rabochaya Street, House 10, Apartment 72, Solnechnogorsk, Solnechnogorsk District, Moscow Region, Russia; DOB 31 Mar 1980; POB Solnechnogorsk, Moscow, Russia; nationality Russia; citizen Russia; Gender Male; Secondary sanctions risk: Ukraine-/Russia-Related Sanctions Regulations, 31 CFR 589.201 and/or 589.209; alt. Secondary sanctions risk: this person is designated for operating or having operated in a sector of the Russian Federation economy determined to support Russia's military-industrial base pursuant to section 11 of Executive Order 14024, as amended by Executive Order 14114.; National ID No. 4613340436 (Russia); Tax ID No. 504403080602 (Russia) (individual) [UKRAINE-EO13661] [CYBER2] [ELECTION-EO13848] [RUSSIA-EO14024] (Linked To: OOO YUNIDZHET).

   Designated pursuant to section 1(a)(i) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249, 3 CFR, 2021 Comp., p. 542 (Apr. 15, 2021) (E.O. 14024) for operating or having operated in the aerospace sector of the Russian Federation economy.

Dated: March 14, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–05764 Filed 3–19–24; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 89 Wednesday,
No. 55 March 20, 2024

Part II

Environmental Protection Agency

40 CFR Parts 124, 260, 264, et al.
Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 260, 264, 265, 270, and 271

[EPA–HQ–OLEM–2021–0397; FRL–8592–01–OLEM]

RIN 2050–AH24

Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to revise regulations that allow for the open burning and detonation (OB/OD) of waste explosives. This allowance or ''variance'' to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives for the safe treatment of waste explosives. However, recent findings from the National Academy of Sciences, Engineering, and Medicine (NASEM) and the EPA have identified safe alternatives which are potentially applicable to treat some energetic/explosive waste streams. Because there may be safe alternatives available and in use today that capture and treat emissions prior to release, regulations would be revised to describe specified procedures for the existing requirements to evaluate and implement alternative treatment technologies. These proposed revisions would reduce OB/OD of waste explosives and increase control of air emissions through improved implementation of existing requirements that facilities must evaluate and use safe and available alternative technologies in lieu of OB/OD.

DATES: Comments must be received on or before May 20, 2024. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 19, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0397, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this document, contact Sasha Lucas-Gerhard (email address: *gerhard.sasha@epa.gov,* phone number: (202) 566–0346) or Paul Diss (email address: *diss.paul@epa.gov,* phone number: (202) 566–0321), in the Program Implementation and Information Division, Office of Resource Conservation and Recovery.

SUPPLEMENTARY INFORMATION:

Table of Contents

The information presented in this preamble is organized as follows:

I. General Information

A. Does this action apply to me?

This proposed rule potentially affects owners and operators of facilities that use OB/OD to treat waste explosives. This includes facilities that currently treat waste explosives in a miscellaneous unit permitted under 40 CFR part 264, subpart X; facilities that treat waste explosives under 40 CFR 265.382 (interim status); and other entities that use or would use OB/OD to treat waste explosives, for example, as part of emergency responses conducted under an emergency permit, or as part of cleanup actions.

To determine whether your entity is affected by this action, you should carefully examine the changes to the regulatory text. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is proposing revisions to regulations under the Resource Conservation and Recovery Act (RCRA) related to use of OB/OD to treat waste explosives. This includes proposed changes to clarify how facilities would assess whether safe alternatives are available in lieu of OB/OD. In addition, for instances where OB/OD remains the only treatment method for waste explosives, the Agency is proposing minimum technical standards for OB/OD units. The Agency is also proposing a framework for permitting mobile treatment units (MTUs, proposed definition in § 264.10), which could be used as an alternative to OB/OD. EPA finds that these proposed changes would increase protection of human health and the environment by reducing the amount of waste explosives currently being open burned and open detonated and, where OB/OD remains the only available treatment method, by strengthening protections for OB/OD activities.

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

These regulations are proposed principally under the authority of section 3004(n), and supported by authorities under sections 2002, 3004 generally, 3005, and 3006 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This statute is commonly referred to as ''RCRA.''

D. What are the overall economic impacts of this action?

EPA estimated the costs and benefits of the proposed rule in a Regulatory Impact Analysis, which is available in the docket for this action. Overall, EPA estimates that the proposed rule would result in quantifiable annual costs of approximately $6.3 million to $28.0 million (annualized at a discount rate of

seven percent). The proposed rulemaking's requirements and costs apply to all owners/operators conducting or seeking to conduct OB/OD of waste explosives under RCRA. EPA requests comment on the cost estimates and analysis of this proposed rulemaking. Details of this analysis and requests for comment are presented in the Regulatory Impact Analysis for the Revisions to Standards for the Open Burning/Open Detonation of Explosive Waste Materials Proposed Rule, available in the docket.

E. Summary of the Proposed Rule

EPA is proposing revisions to the RCRA regulations to clarify and add specificity to existing requirements for owners/operators of OB/OD units, including how and when to apply and implement the requirements in the permitting process. It also proposes new procedures for the permitting of mobile treatment units for waste explosives and new technical standards for OB/OD units.

Specifically, EPA is proposing to create new Subparts for OB/OD units in Parts 264 (applicable to permitted facilities) and 265 (applicable to interim status facilities). The new Subparts would contain requirements that would apply to all owners/operators conducting or seeking to conduct OB/OD of waste explosives, including activities conducted as part of RCRA cleanup and closure. EPA is also proposing limited requirements for OB/OD emergency permits. EPA is also proposing an exemption from the alternative technology evaluation and implementation regulations for the *de minimis* treatment of waste explosives by OB/OD.

This rulemaking proposes new provisions that would specify how and when owners/operators and permit authorities are to evaluate alternative treatment technologies for OB/OD, including specific information that would be required for facilities to demonstrate whether safe modes of treatment are available for specific waste streams. This rule also proposes new and revised regulatory provisions on timelines for implementing alternative technologies, permitting for alternative technologies, waste analysis/characterization, wastes prohibited/restricted from OB/OD, technical standards for OB/OD units, delay of closure applicability to OB/OD units, clarifications to emergency provisions, and procedures for permitting MTUs. The components of this proposal may be finalized, or not, independently of each other. In addition, EPA intends that the provisions of the rule be severable. In the event that any individual provision or part of the rule is invalidated, EPA intends that this would not render the entire rule invalid, and that any individual provisions that can continue to operate will be left in place.

II. Detailed Discussion of the Proposed Rulemaking

Background

A. Introduction to Open Burning and Open Detonation of Waste Explosives and This Rulemaking

What is open burning and open detonation?

Open burning (OB), as currently defined in § 260.10, means the combustion of any material without the following characteristics:

1. Control of combustion air to maintain adequate temperature for efficient combustion,

2. Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

3. Control of emission of the gaseous combustion products.

Detonation, as currently defined in § 265.382, is an ''explosion in which chemical transformation passes through the material faster than the speed of sound.'' Because the only term defined in part 260 is ''open burning,'' which is related to but different from ''open detonation,'' EPA is proposing to add the terms ''detonation,'' ''open detonation,'' and ''open burning/open detonation unit'' to the definitions in § 260.10. The proposed definition for ''open detonation'' is ''the detonation of any material without: (1) Containment in an enclosed device and; (2) control of the emission products, causing any unreacted material to be dispersed into the environment. OD refers to both detonation that is not covered and detonation that is covered by soil (buried detonation)''; and the proposed definition for ''open burning/open detonation unit'' is ''any unit used in the OB or OD treatment of waste explosives. These units include but are not limited to detonation pit, burn pile, burn cage, and burn pan units. The permitted unit boundary includes the associated kickout area within the facility, where dispersed metal fragments, unreacted explosives contaminants, and other waste items are deposited onto the land.'' In addition, EPA proposes to revise the definition of ''open burning'' in § 260.10 to reference the proposed definition of detonation and to remove the word ''gaseous'' from ''control of emission of the ''gaseous combustion products.'' This proposed change is because combustion byproducts may also be in the solid phase.

What is an OB/OD unit?

An OB/OD unit is a unit used for the treatment of waste explosives by OB/OD. These units are regulated under RCRA and can include, but are not limited to, detonation pits, burn pits, trenches, piles, burn pans, tubes, and cages. OB/OD units are not enclosed units but are open such that the treatment byproducts are released directly into the environment.[1]

What are waste explosives?

Waste explosives are solid wastes that are hazardous and characteristic for reactivity (D003) as defined under § 261.23(a)(6) through (8): It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement. It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure. It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2, or 1.3 explosive as defined in 49 CFR 173.50 and 173.53. Example explosives include but are not limited to propellants from guns, airbag inflators,[2]

[1] For the purpose of compliance with the Land Disposal Restriction (LDR) treatment standards, EPA determined that OB/OD was treatment, not disposal. Land disposal means placement into or on the land. However, EPA clarified that OB/OD constitutes land disposal where residuals [on the land] from the OB/OD operation remain a hazardous waste. Memorandum from Sylvia Lowrance, Director of Office of Solid Waste to Robert Duprey, EPA Region 8, Director Hazardous Waste Management Division, May 18, 1988, RO 13184. [*Note:* Please note that this memo pre-dates the ''Third Third'' (June 1, 1990) and Sept 1994 Final Rules, which established LDR requirements for the ''explosives subcategory'' and the requirement to treat D003 explosives prior to land disposal for ''underlying hazardous constituents'' as defined in § 268.2, respectively.

[2] While fully-assembled airbag modules contain ignitable propellant, EPA has said that used airbag modules that can safely undergo electronic deployment prior to recovery of metal are considered scrap metal and such deployment does not require a RCRA treatment permit (*Regulatory Status of Automotive Airbag Inflators and Fully Assembled Airbag Modules,* Barnes Johnson, Director, Office of Resource Conservation and Recovery, July 19, 2018, *https://www.epa.gov/hw/regulatory-status-automotive-airbag-inflators-and-fully-assembled-airbag-modules*). Therefore, electronic deployment of these airbag modules for metal recovery would not be subject to the requirements of this rulemaking. However, airbag propellent itself (*e.g.,* off-spec or excess propellant), used airbag inflators, and used airbag modules that *cannot* safely undergo electronic deployment (such as recalled Takata airbags) are not eligible for the scrap metal exemption and are regulated as hazardous waste. Treatment of these wastes is subject to the requirements of the rule (as would treatment of any airbag modules that are not electronically deployed) if such treatment involves OB/OD.

and rockets (''propellants''), fireworks and flares (''pyrotechnics''), and military and non-military munitions (''munitions'') and become wastes when discarded as defined in §§ 261.2 and 266.202. Military munitions include bombs, warheads, grenades, mines, missiles, and ammunition (see § 260.10 for additional types of explosives defined as military munitions). Waste explosives also include explosives-contaminated debris such as towels, liners, containers, gloves, socks, personal protective clothing, pipes, and soils that meet the § 261.23(a)(6) through (8) explosives definitions quoted above.

Contaminants That May Be Released During OB/OD

Waste explosives, when open burned or open detonated, have the potential to release to the environment heavy metals, perchlorate, particulate matter, per- and polyfluoroalkyl substances (PFAS), polychlorinated biphenyls (PCBs), dioxins/furans, explosive compounds, and other toxic contaminants.[3] EPA has documented specific contaminants that exceed action levels in environmental media at OB/OD units that have undergone RCRA closure. These contaminants include explosives (RDX, HMX, TNT, DNT, perchlorate, nitroglycerine), heavy metals (aluminum, arsenic, barium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, selenium, silver, thallium, zinc), and other contaminants (PCBs, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, bis(2-ethylhexyl)phthalate, chrysene, dioxins/furans, dinitrobenzene (DNB), dibromoethane (EDB), endosulfan, ethylbenzene, fluoranthene, indeno(1,2,3-cd)pyrene, naphthalene, nitrates, nitrobenzene, 1,3,5-trinitrobenzene (TNB), xylenes).[4] [5] Additionally, many of these hazardous chemicals may exist as mixtures, and have the potential to be released concurrently.

Potential Environmental Impacts and Health Effects of Contaminants Released During OB/OD

Incomplete treatment of waste explosives during OB/OD operations can result in the release of waste residuals including explosive kickout (*i.e.,* the dispersal of metal fragments, unreacted explosive contaminants, and other waste items, onto the land) that are hazardous waste and/or explosive waste or contain hazardous constituents and contaminants which may pose a threat to human health and the environment, especially if not removed in a timely manner. As an example, OB/OD of energetic compounds, including obsolete munitions, pieces of ordnance and propellants, in military ranges in China resulted in soil deposition of various energetic compounds.[6] Although OB/OD processes may vary in other countries, as well as by facilities within the United States, the types of environmental damages from OB/OD operations in other countries are illustrative of the types of environmental damages from OB/OD operations in the United States. Therefore, EPA believes this is relevant to this discussion. Substances released during OB/OD also have the potential to migrate into and contaminate the air and deposit onto soil, surface water, groundwater, and subsurface physical structures.[7] Human exposure to contaminants of potential concern released during OB/OD may include but is not limited to inhalation of contaminated air, ingestion of contaminated food and water, and dermal absorption of contaminants. Exposure to these contaminants can cause adverse health effects in humans and animals.[8]

Background of Regulatory Requirements

Due to the potential hazards to human health and the environment EPA prohibited the OB, including OD, of hazardous waste in 1980 at interim status facilities with one exception—EPA allowed OB/OD for waste explosives ''which cannot safely be disposed of through other modes of treatment'' (45 FR 33217, May 19, 1980; § 265.382).[9] During that time open burning and open detonation were the only technologies available to treat munitions, waste explosives and bulk propellants; therefore, EPA acknowledged the need for the variance to allow open burning and open detonation of those wastes. This exception, or variance, from the prohibition on OB/OD was not intended to be indefinite. At the time, EPA also committed to monitoring development of new technologies.[10] Interim status facilities refers to facilities that have not yet received a permit to operate but are allowed to continue operations by implementing the standards of part 265.

After establishing interim status standards for thermal treatment in part 265, subpart P, EPA finalized permitting standards in 1987 for hazardous waste management units that were not already covered in the regulations, including OB/OD (part 264, subpart X).[11] In the subpart X rule, EPA listed OB/OD of explosive waste as an example unit covered under subpart X, referring to units ''as defined in § 265.382'' and used the § 265.382 definition of waste explosives to describe what OB/OD operations could and could not be permitted under subpart X.[12]

The subpart X regulations further direct that permits for such ''miscellaneous units'' must ''contain such terms and provisions as are necessary to protect human health and the environment'' (§ 264.601), and permitting authorities generally incorporate applicable provisions from the existing EPA regulations. EPA stated in the preamble to the 1987 rule that ''[w]hen upgrading existing units or permitting new units, the applicable portions of part 265, subpart P standards (*e.g.,* minimum safe distances) *will be*

[3] *https://www.epa.gov/fedfac/emerging-contaminants-and-federal-facility-contaminants-concern.*

[4] Alternatives for the Demilitarization of Conventional Munitions, NASEM, January 2019. *https://www.nap.edu/catalog/25140/alternatives-for-the-demilitarization-of-conventional-munitions.*

[5] OB/OD Closure Case Studies, EPA, 2023, available in the docket for this rulemaking. Information about specific chemicals, including information on health and environmental impacts, can be found on EPA's CompTox Chemicals Dashboard *https://comptox.epa.gov/dashboard/.*

[6] Zhang, Huijun, et al. Contamination characteristics of energetic compounds in soils of two different types of military demolition range in China, Environmental Pollution, Volume 295, 2022, *https://www.sciencedirect.com/science/article/pii/S0269749121022363.*

[7] Information about specific chemicals, including information on health and environmental impacts, can be found on EPA's CompTox Chemicals Dashboard *https://comptox.epa.gov/dashboard/.*

[8] A description of potential environmental impacts and health effects from the contaminants that are released during OB/OD is included in the background document ''Background on Potential Environmental Impacts and Health Effects of Contaminants released during OB/OD.''

[9] As finalized in 1980, § 265.382 reads ''[o]pen burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of treatment. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with the following table and in a manner that does not threaten human health and the environment.''

[10] Final Background Document, 40 CFR part 265, subpart P Interim Status Standards for Hazardous Waste Facilities for Thermal Treatment Processes Other Than Incineration and for Open Burning. U.S. EPA, Office of Solid Waste, April 1980; p. 52. ''The Agency will be monitoring the progress of the on-going development of safe alternatives and may propose additional regulations at a later time.''

[11] 52 FR 46964, December 10, 1987.

[12] 52 FR 46952, December 10, 1987.

incorporated during issuance of subpart X permits'' (emphasis added).[13] Thus, EPA has long interpreted subpart X to require incorporating the provisions of § 265.382 when permitting OB/OD activities.

RCRA section 3005(c)(1) directs EPA to issue a permit ''upon a determination by the Administrator (or a State, if applicable), of compliance by a facility'' with the standards promulgated by EPA applicable to owners/operators of hazardous waste treatment, storage, and disposal facilities (TSDFs). This means that to obtain a permit, an interim status facility would need to demonstrate compliance with § 265.382 before issuance of the permit. The facility must demonstrate that the waste ''cannot safely be disposed of through other modes of treatment,'' and, if there is no safe mode of treatment other than OB/OD, the facility must conduct OB/OD ''in a manner that does not threaten human health or the environment.''

Moreover, given the record concerning the release of contaminants, byproducts, and wastes associated with OB/OD, EPA considers that the incorporation of the qualified prohibition in § 265.382 (*i.e.,* an assessment and implementation of alternatives) as a minimum requirement for permitting is necessary to ensure that permitted units are more protective and ''operated . . . in a manner that will ensure protection of human health and the environment'' (§ 264.601). RCRA section 3005(c) also directs the Administrator (or State), prior to issuing a permit, to ''consider improvements in the state of control and measurement technology'' in reviewing an application for a permit renewal. (42 U.S.C. 6925(c)(1), (3)). Accordingly, EPA expects that permits are and will be only issued for OB/OD units treating waste explosives as defined in § 261.23(a)(6) through (8) and § 265.382, and that such permits will incorporate the prohibition on OB/OD except for waste explosives ''which cannot safely be disposed of through other modes of treatment,'' considering the most recent information on available alternative technologies. EPA notes that, during the evaluation and implementation periods for an alternative technology, owners/operators may continue use of OB/OD to treat the subject wastes. Please also see section ''Alternative Technology and Continuity of Operations'' for use of OB/OD when an implemented alternative technology is not available.

Also relevant are the provisions in the statute and regulations which provide authority for agency-initiated permit modifications. Under these provisions, Regional, State, and territorial RCRA programs may consider whether cause exists to initiate a modification of existing permits not currently up for renewal. RCRA section 3005(c)(3) stipulates the Administrator (or authorized State) can review and modify a permit at any time during its term. In accordance with this direction, § 270.41(a)(2) authorizes Regional, State, and territorial permitting authorities to modify or revoke and reissue a permit based on ''information [that] was not available at the time of permit issuance . . . and would have justified the application of different permit conditions at the time of issuance.'' The two 2019 reports (discussed in this preamble) can be considered as this type of information.

Overview of OB/OD and Development of Alternative Technologies

Since 1980, approximately two thirds of all RCRA interim status/permitted OB/OD units have ceased operating.[14] However, as of April 2023, there are 67 operating RCRA OB/OD facilities. Permit agencies have issued permits to 63 of these facilities as RCRA hazardous waste treatment units under part 264, subpart X. Four facilities are still awaiting initial permit decisions and continue to operate under interim status.[15] The list of operating RCRA OB/OD facilities is included in the RIA of the proposed rule. This list also adds 2 corrective action facilities currently using OB/OD or that have plans to use OB/OD for treatment of recovered explosives and munitions items.

Given the open design of OB/OD units and their potential to release treatment byproducts directly into the environment, and associated documented contamination discussed above, OB/OD, consistent with existing regulatory requirements as further communicated in guidance issued by EPA in June 2022,[16] can only be used where there are no other safe modes of treatment available.[17] OB/OD units treating waste explosives are currently permitted under part 264, subpart X. Under the subpart X environmental performance standards, ''permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit'' (§ 264.601).

When EPA promulgated the 1980 exception to the prohibition to OB/OD for waste explosives, EPA did so because there were no alternative treatment technologies that could safely treat most waste explosives at the time. In the subsequent decades, the Department of Defense (DoD) has researched, developed, tested, and evaluated (RDT&E) alternative technologies, leading to successful implementation of several different alternative technologies.[18] RDT&E efforts, in addition to continuous improvements in alternative technologies, have made such technologies increasingly available. As technology has advanced over time, expectations for demonstrating whether there are no safe and available alternatives have commensurately grown over time.

For facilities, including both Federal and private, that have implemented alternative technologies, a key step in the process is determining which of their explosive waste streams can be treated safely by an available alternative

[13] In addition, shortly after publication of the subpart X final permitting standards, EPA confirmed that ''[a]ll thermal treatment is subject to part 265, subpart P; if this was not the case, the standards would not be the same. . . .'' Memorandum from Marcia E. Williams, Director of Office of Solid Waste to Robert F. Greaves, EPA Region 3 Acting Chief Waste Management Branch, December 15, 1987, RO 11310.

[14] Munitions Demilitarization/Disposal and Environmental Subgroups of the Joint Ordnance Commanders Group (JOCG) report on the Optimization of Department of Defense Open Burning/Open Detonation Units. The report includes determinations of the criticality of each OB/OD unit, a comparative benefit analysis on the OB/OD units with an intent to remain open, and factors for their considerations to determine whether their maintained OB/OD units are required. This document is available in the docket for the proposed rule.

[15] The four OB/OD facilities operating under interim status are: (1) U.S. Army Picatinny Arsenal (New Jersey), (2) Naval Support Facility Indian Head Strauss Avenue (Maryland), (3) Naval Support Facility Indian Head Stump Neck Annex (Maryland), and (4) Los Alamos National Laboratory (New Mexico).

[16] EPA memorandum from the Director of ORCR to the Regional LCRD Division Directors on ''Open Burning and Open Detonation (OB/OD) of Waste Explosives Under the Resource Conservation and Recovery Act (RCRA)'' *https://rcrapublic.epa.gov/files/14946.pdf.*

[17] For more discussion on safe modes of treatment see Section II. D. Alternative Technology Evaluation and Implementation.

[18] As described in EPA's 2019 report, many alternative technologies were first conceptualized, demonstrated, tested, and implemented by DoD (Alternative Treatment Technologies to Open Burning and Open Detonation of Energetic Hazardous Wastes, US EPA, December 2019 *https://www.epa.gov/sites/production/files/2019-12/documents/final_obod_alttechreport_for_publication_dec2019_508_v2.pdf.*) EPA also recognizes that private companies have also researched, demonstrated, and tested, and either implemented their alternatives at their facilities or made their alternatives available for purchase.

technology. This step entails, among other considerations, an in-depth evaluation of the waste explosives compared to the capabilities of the available alternative technologies. EPA recognizes that the practice of evaluating and implementing alternative technologies has been taking place over many years despite a lack of specific details in the regulations for how to implement these requirements.

The process of evaluating and implementing alternative technologies may require significant investment in resources and time, depending on the site-specific requirements. An alternative technology evaluation can vary widely in terms of costs based on the number of explosive waste streams that a facility must evaluate, as each must be evaluated against a range of available technologies. Similarly, alternative technology costs, including design, construction, operation, and maintenance, can be significant, and can vary widely depending upon the treatment needs and would be influenced by the complexity of the required technology and whether a combination of technologies is needed to treat a particular waste stream or waste streams. Costs also vary depending on whether a facility needs to design, construct, operate, and maintain its own alternative technology on-site or whether it can transport waste explosives off-site for treatment operated either commercially or by the facility's own enterprise. The use of mobile treatment units presents, for some waste streams, an opportunity for facilities to manage costs in choosing among safe alternative technologies. EPA notes that this proposed rule would establish new requirements to improve implementation of existing requirements established in 1980. Thus, the estimated costs of this proposal include the costs of the new requirements but do not include costs for the existing requirements to evaluate and implement safe alternative technologies, since they were already part of the regulatory framework.

Timing of the process beginning with technology evaluation through technology implementation can also vary considerably. Timing considerations include requesting and securing funding, solicitation of vendors and award of contracts, permitting, construction, and start-up and testing. Federal facilities' funding requests must align with the three-to-five-year budgetary cycle, which means funds may not be available immediately. Additionally, more complex alternative technologies involving high-cost infrastructure may involve longer Congressional budgeting and appropriations processes. Conversely, EPA is aware of alternative technologies that have been implemented in relatively short timeframes of one to three years, for example in response actions addressed under CERCLA, and at private facilities.

As noted, alternative treatment technologies have been developed and implemented over the past several decades. In 2019, EPA [19] and the NASEM (see footnote 4) published separate reports describing many alternative technologies now available to safely treat explosive waste instead of using OB/OD. Both reports indicated that there appear to be safe available alternative technologies for many waste streams that are currently being open burned. With regard to waste streams that are currently open detonated, there are considerably fewer waste streams that can be treated by alternative technologies due to limited explosion containment capabilities (*e.g.,* some munitions are too large, either in size or net explosive weight (NEW) and cannot be sized-reduced to be safely treated in a chamber or reinforced rotary kiln). Use of safe alternative technologies in general represents a greater level of control and more complete treatment, and therefore better protection of human health and the environment; in addition, capturing and controlling emissions and releases to the environment is more protective compared to treatment open to the environment. Further, since these technologies prevent or greatly reduce the release of hazardous contaminants to the environment, they reduce the chances of exposures, improve the ability to clean close, and avoid the need for post-closure care. More information about closure of OB/OD facilities is available in EPA's OB/OD Closure Case Studies (see footnote 5).

Some energetic and munitions treatment with alternative technologies may be a multi-step process, depending on the starting material and its configuration. Munitions and energetics can be divided into four general categories: thick-case munitions, thin-case munitions, bulk explosives or propellants, and explosive-contaminated materials. The multi-step process may include case opening, energetic material removal, energetic material destruction, and decontamination. Technologies developed for the case-opening step include reverse assembly, fluid jet cutting, cryofracturing, femtosecond laser cutting or laser machining, and band sawing. For the energetic material removal step, some technologies that have been developed are autoclave meltout, induction heating meltout, washout, dry ice blasting, and ultrasonic separation or sonication. Technologies developed for the energetic material destruction step include closed detonation (controlled detonation chamber (CDC), static detonation chamber (SDC), detonation of ammunition in a vacuum integrated chamber (DAVINCH™), thermal destruction (contained burn, rotary kiln, Decineration™, and rotary furnace), and chemical destruction (alkaline hydrolysis, general atomics neutralization/alkaline hydrolysis, industrial supercritical water oxidation, MuniRem®, Actodemil®). The decontamination step technologies include thermal decontamination (hot gas or steam decontamination, flashing furnace, Decineration™, car bottom furnace) and chemical decontamination (MuniRem®, Actodemil®).[20] For Department of Defense (DoD) facilities, the DoD Explosives Safety Board (DDESB) approves, from an explosives safety standpoint, technologies applying for use within DoD.[21] Although these determinations are very site-specific, in identifying potential alternative technologies it may be helpful to review lists [22] of technologies approved from a safety standpoint by the DDESB (see footnote 20, pg. 11).

Public Engagement on Development of the Proposed Rulemaking

In developing this proposed rulemaking, EPA held two rounds of early engagement in March 2022 and December 2022 with States, territories, Tribes, environmental and community

[19] Alternative Treatment Technologies to Open Burning and Open Detonation of Energetic Hazardous Wastes, US EPA, December 2019 *https://www.epa.gov/sites/production/files/2019-12/documents/final_obod_alttechreport_for_publication_dec2019_508_v2.pdf.* ''There is a wide range of available alternative treatment technologies that can be, and have been used successfully, in place of OB/OD.''

[20] Referral to commercial products or services, and/or links to non-EPA sites does not imply official EPA endorsement of or responsibility for the opinions, ideas, data, or products presented at those locations, or guarantee the validity of the information provided.

[21] DDESB is the DoD organization created in 1928 by Congress to develop, implement, and oversee explosives safety regulations through the DoD Explosives Safety Program for all DoD munitions and munitions-related operations. The DDESB's mission is to protect people, the environment, and infrastructure by preventing accidents involving DoD ammunition and explosives (*i.e.,* military munitions).

[22] EPA, December 2019, p. 30. The 2015 list of eight DDESB-approved technologies was confirmed as current by Mr. M. Luke Robertson (DDESB) in an email to EMS dated July 26, 2017.

groups, and owners/operators of operating OB/OD units (including Federal agencies such as DoD, Department of Energy (DOE), and the National Aeronautics and Space Administration) as well as other members of the public to solicit input on how to amend the hazardous waste regulations with respect to OB/OD. In general, States and territories were very supportive of a proposed rulemaking but concerned about implementation challenges. Owners and operators of OB/OD facilities, including Federal agencies, stressed that safety is paramount when evaluating alternatives and emphasized the importance of retaining the ability to use OB/OD for waste explosives that have no safe alternative. Environmental and community groups want EPA to ban OB/OD completely with no exceptions such as for emergencies. These groups are concerned with exposure to contaminants from OB/OD through inhalation of plumes of smoke migrating into their communities and ingestion of contamination deposited onto soil and leached into groundwater used for irrigation and drinking water. Communities are also concerned with the noise and vibration from OB/OD events. Summaries of these meetings are available in the docket for this proposed rule.[23]

B. Scope of Applicability

EPA is proposing to create new subparts for OB/OD units in parts 264 (applicable to permitted facilities) and 265 (applicable to interim status facilities). The new subparts would contain requirements that would apply to all owners/operators conducting or seeking to conduct OB/OD of waste explosives, except for those conducting explosives or munitions emergency responses. Applicability would encompass owners/operators of OB/OD units used for RCRA cleanup, closure, post-closure, or corrective action and any persons or entities that conduct or seek to conduct OB/OD of waste explosives. EPA estimates that, as of April 2023, there are 67 TSDFs with operating OB/OD units including four operating under interim status, and 2 corrective action facilities[24] that would be subject to these proposed requirements.

Emergency Provisions

Additionally, EPA is proposing to include clarifying text and new regulatory reporting requirements in the subpart Y standards: Emergency Provisions at §§ 264.715 and 265.715 and to revise the existing emergency permit regulations at § 270.61.

These clarifications and additions balance the need to ensure that explosives or munitions emergency responses continue to proceed as expeditiously as practicable by maintaining current exemptions while addressing the potential deleterious human health and/or environmental impacts of OB/OD conducted under temporary emergency permits by requiring that safe alternatives be evaluated and implemented, when practicable. In pre-proposal public engagement, some regulated entities raised concerns that the existing requirement to conduct alternative technology evaluations and implement alternatives when safe alternatives are identified, may result in delays to emergency responses. EPA believes this proposal will address that concern by utilizing the existing exemption from substantive RCRA requirements, including the need to obtain a permit, which by extension, exempts explosives or munitions emergency responses from the requirement to evaluate alternatives. At the same time, the proposal would require submission of specified information after the emergency response is complete. These proposed provisions and their rationale are discussed in more detail in Section II. K. Explosives or Munitions Emergency Provisions.

Sanitization Under Atomic Energy Act (AEA)

In the 1997 final Military Munitions Rule (MMR), EPA codified a definition for ''military munitions'' which excluded nuclear weapons, nuclear devices, and non-nuclear components that are managed under DOE's nuclear weapons program, that have not undergone sanitization.[25] Sanitization is an operation, required under the AEA, that irreversibly modifies or destroys a component or part of a component of a nuclear weapons system, device, trainer, or test assembly. It is EPA's understanding that DOE occasionally utilizes open burning to sanitize nuclear and non-nuclear components and parts that either contain explosive residues or are explosive materials themselves. Consistent with the MMR and the supporting legislative history discussed therein, EPA does not consider sanitization operations that utilize open burning to be within the scope of applicability for this proposed rule. However, EPA encourages DOE, when evaluating alternative technologies for its RCRA regulated explosive waste streams, to also consider if an alternative technology could be used for sanitization operations.

Relationship to CERCLA

During pre-proposal public engagement, some participants also raised concerns that cleanups conducted under the CERCLA may be impeded by any applicable requirements to evaluate and implement alternatives to OB/OD. These participants sought an explicit exemption for CERCLA cleanups. These proposed regulations under RCRA do not grant such an exemption. CERCLA section 121(d) requires that on-site remedial actions attain or waive Federal environmental ARARs, or more stringent State environmental ARARs, upon completion of the remedial action. Substantive RCRA provisions pertaining to waste explosives have been evaluated as CERCLA ARARs on a site-specific basis since their promulgation in 1980.

De Minimis Exemption From Alternative Technology Evaluation

EPA is proposing an exemption for generators generating up to 15,000 lbs NEW or less of waste explosives from the requirement to conduct a comprehensive alternative technology evaluation provided they make a *de minimis* demonstration.

The proposed *de minimis* exemption regulations would be located at § 264.704(e) for permitted facilities and § 265.704(e) for interim status facilities. The proposed *de minimis* exemption from the requirement to evaluate and implement alternative technologies would require the owner/operator to make three unique demonstrations to the satisfaction of the Director (discussed in this preamble). An owner/operator that satisfactorily made such demonstrations would be exempt from the requirement to conduct an evaluation of alternatives to OB/OD as would otherwise be required under the proposed § 264.707 or § 265.707 regulations. Accordingly, the owner/operator would be exempt from the requirement to implement an alternative technology with the exception of any safe available offsite alternative

[23] Responses to the Environmental Protection Agency Revisions to the Standards for Open Burning/Open Detonation of Waste Explosives Discussion Topics for Virtual Meetings. Summaries from all engagement meetings are available in the docket for this rulemaking.

[24] The two corrective action facilities may or may not be subject to the final requirements depending upon when the activities are completed; they are included in the proposed rule because they currently use OB/OD only for corrective action.

[25] Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties. See 62 FR 6624–25, February 12, 1997.

technology treatment options, safe treatment by an existing onsite alternative technology unit, or safe and available treatment by an MTU. The exemption would be limited to only waste explosives generated on site and as proposed to be defined in § 260.10. Thus, the exemption would not exempt additional waste streams from the long-standing prohibition of OB/OD of hazardous wastes that did not meet the definition of waste explosives. As a result of the exemption being limited to waste explosives generated on site, it would also not create an incentive to ship small quantities of waste explosives to different facilities in order to qualify for the exemption. EPA is proposing this *de minimis* exemption for quantities of OB/OD that contribute only trivial contamination or potential for exposure.

Under the proposed terms of the *de minimis* exemption, the owners/operators would have to make three demonstrations, the first of which includes four components, to the satisfaction of the Director. The three demonstrations that would be required are: (1) A demonstration that the proposed *de minimis* treatment by OB/OD would contribute negligible contamination and potential for exposure; (2) a demonstration that treatment by an MTU, treatment off-site by an alternative technology, and treatment by an existing on-site alternative technology, if applicable, are not safe and available; and (3) a demonstration that the facility does not have any unresolved compliance or enforcement actions and does not have a history of significant noncompliance. This section first discusses the first demonstration and its related components being proposed for this exemption, before discussing the two remaining proposed demonstrations.

The first demonstration that would be required, is a demonstration that the proposed de minimis treatment by OB/OD would contribute negligible environmental contamination and potential for exposure. This demonstration is essential because it is well established that a *de minimis* exemption is only appropriate in situations where the regulated activity represents only a ''trivial'' or de minimis deviation from the prescribed standard. *See, e.g., Wisconsin Dept of Revenue* v. *William Wrigley Jr Co,* 505 US 215, 231–232 (1992); *Republic of Argentina* v. *Weltover, Inc.,* 504 US 607, 618 (1992); *Hudson* v. *McMillian,* 503 US 1, 8–9 (1992); *Ingraham* v. *Wright,* 430 US 651, 674 (1977); *Abbott Laboratories* v. *Portland Retail Druggists Assn., Inc.,* 425 US 1, 18 (1976); *Industrial Assn. of San Francisco* v. *United States,* 268 US 64, 84 (1925). Whether a particular activity is a *de minimis* deviation from a prescribed standard is determined with reference to the purpose of the standard. *Wisconsin Dept. of Revenue, supra* at 232. Under RCRA, where the relevant standard is the protection of human health and the environment, this means that the activity in question (here the limited continued OB/OD) would need to produce immaterial or negligible contamination or potential for exposure to qualify as ''de minimis.'' See 42 U.S.C. 6924.

Whether an OB/OD activity could make this first demonstration under the proposed *de minimis* exemption would depend on a variety of site-specific factors. The proposed regulations provide four components that would need to be considered as part of this first demonstration. The first component of this first demonstration specified in the proposed regulations is the quantity of waste explosives proposed to be treated annually by OB/OD under this *de minimis* exemption. EPA is sensitive to the environmental and public health risks associated with even small quantities treated by OB/OD.

At this time, EPA has not determined the exact quantity limit that would present an immaterial contamination potential across all locations and wastes. Rather, EPA is proposing a maximum possible quantity of waste explosives that might qualify for a *de minimis* exemption which would also be the maximum amount of waste explosives the facility could generate. EPA is proposing a framework by which facilities generating under 15,000 lbs NEW of waste explosives annually would be able to apply for an exemption by making a demonstration to the Director's satisfaction that the OB/OD of that waste would result in negligible contamination and potential for exposure. Specifically, the proposed regulation would limit the exemption to generators generating up to 15,000 lbs NEW annually and specify that under no circumstances will the Director approve a *de minimis* exemption for waste explosives treatment by OB/OD that exceeds 15,000 lbs NEW annually. Of course, at any given facility, once facility-specific information was considered (*e.g.,* waste types, location), the amount treatable by OB/OD under a *de minimis* provision may be significantly lower, or even zero. If the other facility-specific information suggested OB/OD of the proposed quantity of waste presented a material threat of pollution or potential for exposure, a *de minimis* exemption could not be approved at that facility.

EPA considered the quantities of wastes for which facilities are permitted to OB/OD to inform the specification of a maximum potential quantity limit as part of this process. For comparison, some facilities are permitted to OB/OD 1,000 tons NEW of waste explosives annually. Additionally, EPA notes that the facilities in its closure study that produced significant pollution and have had trouble closing the units due to the contamination, all treated significantly greater quantities of waste by OB/OD annually.

While EPA is proposing an annual maximum quantity of waste explosives that could potentially qualify under a *de minimis* exemption in terms of NEW, other quantity considerations would need to be considered as part of the demonstration, where relevant. For example, gross/total weight would be relevant in some scenarios. In particular, where the explosives or munitions cannot be separated from their packaging for treatment, it would make sense to consider the total weight, as the packaging would also be OB/OD'd and have its own associated contamination potential.

The second component of the first demonstration is the waste stream(s) to be treated and their known or anticipated toxicity and byproducts. This component is important to consider due to the varying byproduct contaminants associated with the various wastes, the degree to which they are bioaccumulative or persistent in the environment, and their potential to migrate. For example, personal protective equipment (PPE) contaminated with explosives that meets the definition of waste explosive is an example of a waste stream for which a *de minimis* exemption would be particularly hard to justify. (Explosives-contaminated PPE and other material that does not itself meet the definition of waste explosive would not fall under the qualified exception for OB/OD.) [26] PPE is one of many combustible materials that can be contaminated with explosives. These combustible materials when open burned generate smoke plumes and large amounts of particulate matter. EPA does not, as a general matter, view these types of wastes as suitable for a *de minimis* exemption due to the potential threat to human health and the

[26] For more discussion on wastes contaminated by explosives see the discussion titled ''Clarification of Wastes Contaminated by Explosives'' in Section II. F. Permitting of Alternative Technologies.

environment associated with the plumes.

Similar to PPE, other combustible materials, construction/building debris, and noncombustible material contaminated with explosive materials are also poorly suited for OB, which would make a *de minimis* demonstration particularly difficult for these wastes. These wastes potentially generate large amounts of particulate matter, toxic contaminants, and smoke plumes when burned due to the nature of the waste matrix (paper, plastic, cotton, leather, other types of cloth, mops, pallets, wood, dirt, plastic, concrete, masonry, metal, etc). (As discussed under section F. of this preamble titled, Clarification of Wastes Contaminated with Explosives, treatment by OB/OD of these wastes would generally not be allowed due to availability of safe alternatives.) OB of chlorinated plastics and chlorinated materials can release dioxins and furans. As such, these types of waste streams would generally not be appropriate to OB through a *de minimis* exemption due to the potential for releases to the air of particulate matter and toxic contaminants and/or smoke plumes that may convey off-site and increase risk to receptors.

On the other hand, there are certain waste streams that may be more appropriate candidates for a *de minimis* exemption. One such waste stream is research, development, testing & evaluation (RDT&E) waste. RDT&E wastes tend to be highly variable and are often produced in small quantities. As a practical matter, they are often highly sensitive and difficult to fully characterize, which frequently leads to OB/OD being selected as a treatment method. Given their small quantities, the difficulty associated with characterization, questionable stability, and the limited potential for off-site transportation of pollution, at least when treated via OD, they may be suitable for a *de minimis* exclusion.

The third component of the first demonstration is the location of the OB/OD treatment and its potential to impact nearby receptors, resources, and sensitive environments. The location information would allow for consideration of exposure routes and potential receptors. If, for example, a facility was located close to population centers or near sensitive community resources (*e.g.,* schools, hospitals) the potential for exposure to contaminants from OB/OD would be higher and the *de minimis* demonstration significantly more difficult to make. Similarly, proximity to sensitive or vital environmental receptors such as aquifers or other drinking water sources or within the 100-year floodplain, would heighten the threat posed by OB/OD and would make a *de minimis* demonstration more difficult—but not impossible—to substantiate.

The fourth and final component that EPA is proposing must be considered as part of the first *de minimis* demonstration is permit conditions and/or other controls or protective measures that are in place and that would inform the potential for contamination onsite and offsite. EPA expects this would be an important criterion because permit conditions, or other controls and protective measures, can reduce the potential for pollution. For example, permit conditions limiting OB/OD treatment to only times with favorable atmospheric conditions would inform whether or not limited OB/OD under a *de minimis* exemption may be acceptable. Another example would be the extent to which the combustion temperature during the open burning would be controlled (*e.g.,* external fuel sources) and optimized for cleaner burning, thus potentially resulting in fewer byproducts. EPA thus believes it is logical to require the owner/operator to consider aspects of how the proposed OB/OD would occur as part of any *de minimis* demonstration.

As noted above, the proposed *de minimis* exemption requires three demonstrations. The first demonstration includes four components and was discussed above. The second required demonstration the owner/operator would need to make in order to treat *de minimis* quantities of waste explosives by OB/OD would entail evaluating a limited suite of alternative technologies. The owner/operator would need to demonstrate that the waste explosives cannot be safely treated by an MTU or that an MTU is not available for the waste, that transportation off-site for treatment by an alternative technology is not safe or available, and, if applicable, that any existing available on-site alternative technology is unsafe for the waste in question. EPA believes it is important to consider this limited suite of alternative technology options as they, generally, could be implemented readily without a major investment of implementation resources. This stands in contrast to the resources that would be required to permit and build an onsite alternative technology.

The third required demonstration the owner/operator would need to make in order to treat *de minimis* quantities of waste explosives by OB/OD would relate to the owner/operator's compliance track record. Specifically, EPA is proposing to require a demonstration that the OB/OD facility does not have any unresolved compliance or enforcement actions and does not have a history of significant noncompliance. EPA believes such a demonstration would be important, as a track record of compliance is often indicative of a well-managed facility that, if the track record is maintained, would present a lower risk of contributing pollution. Additionally, as discussed further in this preamble, one component of the first demonstration is a consideration of permit conditions or other controls in place that may inform the potential for contamination onsite and offsite. In order for those permits conditions and other controls to be credibly considered as pollution reducing, the facility would need to have a demonstrated track record of complying with applicable permit conditions and regulations.

During implementation, the Director would review the *de minimis* demonstrations and would grant the exemption if the demonstrations have been made to the Director's satisfaction. The Director would deny the request for this *de minimis* exemption when the demonstrations required by the regulations cannot be satisfactorily met. In such a case, the facility would be required to submit an alternative technology evaluation. In instances where the *de minimis* exemption was granted, the OB/OD unit used to treat *de minimis* quantities would still need to meet all of the proposed and existing standards applicable to OB/OD units including the RCRA permitting and closure requirements.

EPA is proposing that the *de minimis* demonstrations would need to be made on the same schedule as the owner/operator would have submitted alternative technology evaluations for the subject wastes under § 264.707(c) and (d) for permitted facilities or § 265.707(c) and (d) for interim status facilities. (See Section E. Timing for Rule Compliance for more information on the proposed timelines for alternative technology evaluation submissions.) EPA proposes to link the timelines for submitting *de minimis* demonstrations to the timelines for submitting alternative technology evaluations for multiple reasons. First, this approach similarly spreads out the burden of reviewing *de minimis* demonstrations at in the same way the proposed rule would spread out the burden of reviewing alternative technology evaluations. Second, this approach should be the most efficient for the owner/operator as they would, for the waste stream(s) in question, only

need to submit either an alternative technology evaluation or a *de minimis* demonstration at each submission deadline.

Moreover, the five-year frequency proposed for alternative technology reevaluations is a sensible frequency for *de minimis* demonstrations. For one, one of the proposed *de minimis* demonstrations is similarly predicated on evaluating the evolution of alternative technologies and, as such, would logically have a similar frequency (*e.g.,* the demonstration regarding the safety and availability of treatment by an MTU). This frequency should also allow for timely consideration of changes that may impact a *de minimis* evaluation (*e.g.,* population growth in the vicinity of the OB/OD unit).

In practice, the proposed rule would require owners/operators of permitted facilities seeking a *de minimis* exemption to submit an initial set of demonstrations along with the application for the next permit renewal or Class 2 or 3 permit modification associated with an OB/OD unit. For new facilities or new OB/OD units that are proposed to treat waste explosives, the owner/operator seeking a *de minimis* exemption would submit the demonstrations as part of the permit application for the new OB/OD unit. For interim status facilities seeking to use the *de minimis* exemption, the demonstrations would need to be submitted within one year of the effective date of the rule. For both permitted and interim status facilities, the *de minimis* demonstrations would need to be made every five years after the initial demonstrations were made in order to remain eligible for the exemption.

EPA is also proposing that if, at any time, the continued treatment of waste explosives by OB/OD under the *de minimis* exemption would present a threat to human health and the environment, the owner/operator must notify the Director within five days. EPA is proposing this requirement in order to ensure the *de minimis* exemption does not result in greater than negligible contamination or potential for exposure or otherwise present a threat to human health and the environment. Additionally, to further this goal, EPA is proposing that the Director would be able to, based on reasonable belief that the continued treatment of waste explosives by OB/OD under the exemption would present a threat to human health and the environment, request additional information from the owner/operator to determine if the OB/OD activities still meet the *de minimis* criteria. If a determination is made under either of those scenarios that the continued treatment of waste explosives by OB/OD under the *de minimis* exemption would present a threat to human health and the environment, the exemption would be withdrawn and the owner/operator would be required to submit to the Director an alternative technology evaluation for the subject waste streams in accordance with proposed criteria for alternative technology evaluations.

EPA requests comment on several aspects of the proposed *de minimis* exemption, including the appropriateness of the components of the demonstration. EPA solicits comment on whether additional demonstrations or additional components of the first demonstration should be included in *de minimis exemption* and how those additions should be applied. In particular, EPA requests comment and supporting data and information on whether 15,000 lbs NEW annually is an appropriate maximum limit that could potentially qualify under a *de minimis* exemption. Relatedly, EPA requests comment and data and information on what other quantity levels may be appropriate under a *de minimis* exemption. For example, EPA requests comment on the following questions. Could the quantities that define very small quantity generators [27] be an acceptable benchmark for *de minimis?* Should EPA provide an exemption at a smaller annual limit (*e.g.,* up to 5,000 pounds NEW annually) without any demonstration beyond quantity, and require a more robust demonstration (*e.g.,* considering location, waste type, etc.) for a larger category (*e.g.,* 5,000–15,000 NEW annually)? Should EPA specify in regulation different maximum waste quantity criteria for different waste streams? For example, should EPA specify a unique total weight maximum quantity for explosives or munitions that cannot be separated from their packaging for treatment? If so, what might be an appropriate maximum potential quantity for such wastes? Should frequency of treatment by OB/OD be a consideration? Should any wastes or should certain waste streams be excluded from consideration for the *de minimis* exemption? Alternatively, is there no amount or type of waste that should be exempt from consideration of alternative technologies, and thus should EPA not finalize a *de minimis* exemption? Should the exemption be limited to only OD instead of OB? Should the exemption be limited to only military munitions or a specific waste stream such as rocket motors? To RDT&E wastes? Should EPA consider requirements for public notification and/or community engagement in situations where the *de minimis* exemption is exercised? If so, should these be limited to only interim status facilities given that the permitting process already includes such measures?

[27] Very small quantity generator is a generator who generates less than or equal to the following amounts in a calendar month: (1) 100 kilograms (220 lbs) of non-acute hazardous waste; and (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e); and (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e).

C. Waste Analysis and Characterization

Introduction and Description

Under § 262.11, a person who generates a solid waste must make an accurate hazardous waste determination at the point of generation. Under § 270.14(b)(2), Contents of part B; General requirements, an application for a treatment, storage, or disposal (TSD) permit must contain a waste analysis plan and chemical and physical analyses of the hazardous waste, debris, and material to be handled at the facility. These analyses must contain all the information necessary to treat, store, or dispose of waste properly in accordance with part 264. Additionally, prior to any TSD activities at RCRA facilities, owners/operators ''must obtain a detailed chemical and physical analysis of a representative sample of the wastes'' and develop a waste analysis plan under § 264.13. Accurate waste analyses facilitate proper handling of RCRA wastes, thereby minimizing the release of contaminants, byproducts, and wastes associated with OB/OD and ensuring protection of human health and the environment. Waste analysis is also crucial for waste explosives in determining whether the wastes are in fact explosive and whether there is a safe and available alternative treatment that can be used in lieu of OB/OD.

Waste streams currently treated by OB/OD are varied and potentially dangerous to handle, making accurate waste testing more challenging than for many other hazardous wastes due to safety concerns. Importantly, waste analysis for operating OB/OD units currently varies in detail and quality. Thus, EPA is proposing requirements specific to waste explosives which would clarify how waste analyses must be conducted to determine whether a safe alternative treatment is available for

that explosive waste and, if not, whether the waste is eligible for treatment by OB/OD.

Proposed Revisions and Supporting Rationale

EPA proposes adding § 264.706 Waste Analysis under the new proposed subpart Y for OB/OD units and § 265.706 Waste Analysis for interim status OB/OD units. Owner and operators would have to comply with both the proposed §§ 264.706 and 265.706 requirements in addition to the existing general waste analysis requirements under § 264.13.

Under the proposed § 264.706 requirements, an owner/operator would be required to conduct a detailed and complete waste analysis for each individual explosive waste stream. In addition, the owner/operator would be required to review and update the waste analysis whenever there is a change in the waste generated and at the time of permit application or renewal. This is consistent with existing waste analysis regulations; however, § 264.706 would additionally provide definitions, clarifications, and requirements specific to waste explosives. EPA would clarify that individual waste streams must be analyzed for each individual product or potentially explosive material; it would not be adequate to analyze wastes based on large groups of wastes, such as ''propellants,'' ''small arms,'' or ''fuzes.'' For example, all small caliber rounds may be grouped for the purposes of final treatment, but they may not be considered the same when conducting waste analyses. Each type of round, identified by manufacturing or product specifications, would be analyzed separately. Explosives or propellants would be separately identified by their individual chemical formulations, including inert binders and materials. Variations of propellant due to degradation and ageing would not have to be analyzed separately unless such degradation leads to significantly different handling procedures and chemical properties. Some waste streams consisting of debris or material contaminated with explosives may be combined for the purposes of the waste analysis, provided they are of similar type of material and contamination. For example, explosive-contaminated gloves and shoe booties may be considered the same waste stream if they are both contaminated to the same extent and with the same explosive. However, these materials would not be combined with significantly different materials, such as building and construction materials, for waste analysis purposes even if contaminated with the same explosive. For example, personal protective equipment should not be combined with concrete debris and lumber even if both are significantly contaminated with the same waste explosive.

Under § 264.706(a), EPA proposes that wastes may only be considered for treatment by OB/OD if the waste is found to be waste explosives. EPA proposes the definition of waste explosives in § 260.10 as ''hazardous wastes that exhibit the reactivity characteristic (D003) and are capable of detonation or explosive chemical reaction as defined in § 261.23(a)(6) through (8) and include propellants, explosives, pyrotechnics, munitions, military munitions as defined in § 260.10, and unexploded ordnance.'' Further analysis described in § 264.706 is in addition to the standard requirements currently in the regulations. The tests described in this section are secondary to the determination if a waste is a waste explosive; however, the tests here may be a part of that determination. The primary purposes of the tests, descriptions, or properties that would be required in this section are to determine (1) if an alternative technology is available and (2) what specific permit or treatment conditions are needed for OB/OD or alternative technology.

In § 264.706(b), EPA is proposing that waste analysis would include, for each unique waste stream, a physical description, chemical constituent analysis, and chemical properties analysis, unless the information is already known from process or generator knowledge as described in this section.[28] Within each set of waste streams described, owners/operators might be required to conduct multiple waste analyses for the same type of munition or explosive. If the explosive is ageing, degrading, or otherwise off specification and this causes a difference in how the explosive must be handled and treated, then a new analysis would be done for each group of explosives, and they would be considered separate waste streams. For example, an owner/operator that is managing a model of rocket motors would separate a group of the same model rocket motors if some of them are found to be significantly older or degraded and the age or degradation is the reason for different handling or treatment procedures.

Physical description is most important for munitions, explosives, fireworks, fuzes, and other designed materials that are not bulk explosive or propellants. The physical description would include the design, dimensions, mass, main component features, and the casing thickness. All these considerations are important in determining if there is an alternative technology that could be used in lieu of OB/OD. Physical description of the bulk explosives, including propellants, would include the phase, color, mass, density, and any other physical characteristics determined relevant by the permitting authority. Physical description for explosive-contaminated debris or material wastes would include a description of the items and base materials that are contaminated, in addition to the source and type of contamination.

Under the proposed requirements, a complete chemical analysis and breakdown would be required to determine the chemical constituents and the percent composition of each chemical in the waste stream. A Safety Data Sheet (SDS), if available, for each component chemical would be required as part of the analysis. Wastes containing multiple materials or components would have their chemical constituent analysis described separately for each material. As an example, rockets, munitions, fireworks, and other wastes would have their chemical constituent analysis for its propellant, energetic materials, casings, and metals listed separately. Explosive-contaminated hazardous debris and material wastes would not need a chemical analysis on the contaminated base materials (*e.g.,* gloves), but would need a chemical constituent analysis on the contaminant of concern, provided the materials do not contain any wastes prohibited from OB/OD under § 264.708(b)(11). The NEW for each waste stream would be included as a part of the chemical constituent analysis for each individual waste stream.

In § 264.706(b)(4), owners/operators would be required to analyze the chemical properties of the chemical constituents which are described above. The analysis would include measures of insensitivity (for impact, friction, and electrostatic discharge (ESD)), flash point, pH, and free liquid determination. Figure of insensitivity is the measure of the probability of a material to initiate or detonate in response to quantities of external stimuli. Impact insensitivity is most commonly done with a drop-weight

[28] There are thousands of items in the DoD inventory, and any individual site will have far fewer items than that. Larger, more complex sites may have a couple hundred items that must be analyzed. Depending on the analysis, these items may be combined for treatment purposes.

tower, friction insensitivity has several tests including the Alleghany Ballistic Laboratory (ABL) and Bundesanstalt für Materialforschung und -prüfung (BAM) friction tests, and ESD insensitivity is measured with varying energies delivered via capacitors.[29] The permitting authority may require alternative tests or analyses if the determination is made that particular tests are unsafe or unnecessary.

EPA assumes that much of the information required for its proposed waste analysis requirements is already likely known to owners/operators. EPA is proposing that process knowledge and generator knowledge are acceptable in lieu of a detailed and complete waste analysis for a given material as long as it would meet the requirements of § 264.706(d). Process knowledge would include known reactions when materials and reagents mix. For example, the nitration of toluene to form TNT would be a form of well-established chemistry and the presence of TNT in a material may be determined from knowledge of the generating process. Many chemicals found in an explosives waste stream would already have many of the chemical properties described above known. It would not be necessary to determine the impact sensitivity of TNT given that this is well-established in the scientific literature. Owners/operators may find such published chemical data from in a chemical manufacturer's SDS that may be used instead of site generated testing data.

All details of the waste analysis, including supporting information such as known chemical properties of the materials or components thereof, would be required to be submitted to the permitting authority. EPA proposes that owners/operators submit these data electronically to ease submission. EPA acknowledges that there may be unknown information with respect to certain explosives wastes and that it may not be practicable to safely conduct testing to provide data on all relevant chemical properties. EPA is proposing § 264.706(e) to require owners/operators make reasonable efforts to gather the data required in the proposed waste analysis regulations. Should there be any safety concerns with acquiring the data, the permitting authority may allow some sections to be submitted as incomplete if they would not compromise the evaluation of alternative technologies or development of protective permit conditions described in sections G and H.

EPA also acknowledges there is some waste analysis information that may be of a sensitive or classified nature and notes that such information could be withheld from public disclosure and would not need to be referenced in the permit. The owner/operator would need to work with the permitting authority to determine how the data sharing and access can occur, including acknowledging that the minimum regulatory staff require access to the data and that the regulators may apply for and obtain adequate security clearance, if needed. The permitting authority is responsible for furnishing staff that can go through the security clearance process and obtaining and maintaining adequate security clearance.

Summary and Request for Comment

EPA is requesting comment on its proposed requirements for waste analysis applicable to explosive wastes in § 264.706. EPA is also requesting comment regarding how best to balance protection of sensitive or classified information with the duty to provide for meaningful public involvement through the public notice and comment process.

D. Alternative Technology Evaluation and Implementation

Introduction and Description

As discussed in Section II.A. Background, this rulemaking proposes, among other changes and additions, to revise the existing regulation that established an exception to the prohibition on the OB of hazardous waste but that allows for the OB/OD of waste explosives when there are no safe modes of treatment available. The revisions are needed to provide clarity for the required actions, which are to conduct an evaluation or reevaluation of alternative technologies to OB/OD and to implement identified technologies; as well as to provide a process for demonstrating eligibility, through an alternative technology evaluation, for the exception to the prohibition and the associated timing for doing so.

The existing regulation at § 265.382 banned OB, including OD, of hazardous waste with one exception—OB/OD was allowed for the treatment of waste explosives ''which cannot safely be disposed of through other modes of treatment.'' This means that a facility utilizing OB/OD must demonstrate that there are no other safe and available alternatives for disposing of its waste explosives. Regulatory language referring to a demonstration was included in the 1978 rule that proposed a prohibition on the OB of hazardous waste.[30] However, when the regulatory language was finalized in 1980 at § 265.382, this demonstration language was not finalized because it was concluded that open burning of hazardous waste cannot be conducted in manner that is protective of human health and the environment and thus, there was no longer a need. It is unclear, however, why the demonstration language was not included in the final regulation with respect to OB/OD but, such a demonstration remains implicit so that eligibility for the use of OB/OD can be proven and a permit can be issued for treatment of waste explosives via OB/OD.

Further confounding implementation of alternative technologies for facilities operating under subpart X permits or ''OB/OD permits,'' there is no mention of the prohibition of OB of hazardous wastes nor the exception for waste explosives in the subpart X regulations at § 264.600. However, EPA did address its expectations for permitting OB/OD units in the 1987 final rule for subpart X (see footnote 13). These expectations and supporting statutory references are restated in EPA's June 7, 2022, policy memorandum entitled *Open Burning and Open Detonation (OB/OD) of Waste Explosives Under the Resource Conservation and Recovery Act (RCRA).* To summarize from the memorandum, EPA expects that subpart X permits would only be issued for OB/OD units treating waste explosives as defined in § 265.382, and that such permits would incorporate the prohibition on OB/OD except for waste explosives which cannot safely be disposed of through other modes of treatment (see footnote 17).

Proposed Revisions and Supporting Rationale

EPA proposes to clarify the existing regulations to remove any ambiguity in implementing the requirement to demonstrate eligibility for continued use of OB/OD in light of the availability of safe alternative technologies. EPA proposes to revise the regulatory text at § 265.382, and include new regulatory text in new subpart Y, §§ 264.704 through 264.715 and §§ 265.704 through

[29] The drop-weight tower involves dropping a 1 kg mass repeatedly to determine the height which produces initiation 50% of the time. ABL and BAM tests use specialized sample plates and moving wheels to determine the initiation point in response to friction stimulus.

[30] Open burning of hazardous waste was originally proposed to be prohibited unless the owner/operator ''can demonstrate that alternative treatment and disposal methods . . . have been evaluated and determined to be technically or economically infeasible or that the transport, treatment, and disposal of such waste poses a greater risk to human health or the environment than open burning.'' 43 FR 59000, December 18, 1978.

265.715, to explicitly state that OB/OD facilities must demonstrate, through an evaluation or reevaluation of available alternative treatment technologies, which, if any, of their waste streams have no available safe alternative treatment and, thus, can continue to qualify for the exception to the prohibition on OB/OD for waste explosives. In addition, this proposed rule provides the criteria for evaluating alternative technologies and the required content for documenting that evaluation, as well as the timeframes for conducting alternative technology evaluations and implementing identified alternatives. EPA notes that, during the evaluation and implementation periods for an alternative technology, owners/operators may continue use of OB/OD to treat the subject wastes.

There are several reasons, discussed in this preamble, that may contribute to a misperception that unless EPA updated its regulations to state that safe alternatives are available, the requirement to demonstrate eligibility for OB/OD could not be implemented. It is not EPA's position that additional regulations must be proposed that explicitly state that new evaluations or reevaluations must be conducted to assess safe alternatives that are now available, because the expectation has been and remains that when technologies become available, they would be implemented. Nevertheless, owner/operator uncertainty regarding the requirements of the existing regulation has contributed to inconsistent application of the regulation and as a result fewer alternative technologies are being utilized than could be at this time. One of the goals of this proposed rule is to increase the use of alternative treatment technologies to the maximum extent possible by clarifying the existing regulation and providing a process and timeframes for demonstrating whether OB/OD facilities can continue to qualify for OB/OD.

Need for Clarification

Despite the uncertainty associated with the existing regulation that OB/OD facilities must demonstrate eligibility for OB/OD, EPA recognizes that there are facilities and regulatory authorities that have been implementing the existing regulations as written. As of April 2023, 24 facilities out of 67 operating facilities have conducted an evaluation of available alternative treatment technologies and of those, 13 have identified an alternative while 11 have concluded there are no safe alternatives available. On the other hand, 41 facilities have not conducted any evaluation and two facilities are not known to have conducted an evaluation to demonstrate eligibility. Not included in this count are the facilities that have operated or are operating alternative treatment technologies. There may be several reasons why implementation of the requirements has been inconsistent, ranging from omission of explicit demonstration language, leading to differing views on applicability; absence of a process for conducting the demonstration; or insufficient communication by EPA on the development and use of available alternatives over the past few decades leading to a ''business as usual'' approach to OB/OD.

Availability of Alternative Treatment Technology Information

As referred to above, insufficient communication regarding availability of alternative technologies may be a reason why there has not been consistent implementation. If information is available but has not been previously compiled and published in a document for reference, novel technologies can be daunting to implement regardless of requirements. In recognition of this, EPA set out to collect and publish information that could assist OB/OD facilities in evaluating potential alternative technologies and that would be helpful to permitting authorities in facilitating facilities' transition to alternative technologies. EPA published a report in December 2019, *Alternative Technologies to Open Burning and Open Detonation of Energetic Hazardous Wastes,* (see footnote 20) that describes available alternative treatment technologies and identifies the extent to which individual technologies have been developed. It also identifies those that have been implemented at various locations because they are mature, maintainable, reliable, and have been demonstrated to be effective and safe for a variety of explosive waste streams. The report provides the formative steps for evaluating the efficacy and the pros and cons of the technologies for particular applications but does not attempt to analyze the technologies according to the many specific types of waste explosives each is capable of treating. Much of this specific information, however, is available in the NASEM January 2019 report on alternatives, *Alternatives for the Demilitarization of Conventional Munitions.* (January 2019). In the NASEM report, the committee performed an analysis of the stable munitions in DoD's demilitarization stockpile that are treated by OB/OD or static fire,[31] grouped the items by category, and listed the items that can be treated by an existing alternative technology. The goal of the analysis was to provide examples of possible alternative technologies for each category (see footnote 4, pgs. 81–83).

Another resource on alternative technologies that has become available since the publication of EPA's and NASEM's reports is the International Ammunition Technical Guidelines (IATG) for *Demilitarization, Destruction and Logistic Disposal of Conventional Ammunition* published in March 2021 by the United Nations Office for Disarmament Affairs.[32] This report provides a description of available alternatives and their treatment capabilities, a brief mention of cost considerations for alternative technologies, use of mobile alternative treatment technologies, and negative environmental impacts of OB/OD.

The IATG document notes that technology exists to destroy most ammunition types. However, while the technologies exist, the report does note that implementation is primarily a logistics issue due to the inherent hazards and risks associated with processing operations and large tonnages and quantities of individual items, among other site-specific considerations (see footnote 36, pgs. vi and 7). This is consistent with NASEM's finding that, with few exceptions, it appears that it is technically possible to apply existing alternative technologies to demilitarize the majority of the DODICs [DoD Identification Code] in the demilitarization stockpile inventory. The exceptions referred to are the munitions identified as unstable and potentially shock sensitive. A caveat that should be mentioned is that NASEM was unable to fully investigate whether or not existing alternative technologies are appropriate for every DODIC currently being disposed of by OB/OD, because that would require an in-depth technical and engineering analysis of the construction, fuzing, and functioning of each specific munition (see footnote 4, pg. 80). EPA discusses later in this section that alternative technology evaluations are site-specific such that each waste stream at a facility

[31] Static fire is a form of open burning that is most often used for treatment of propellant in rocket motors. The rocket motors are placed either horizontally or vertically (nose down) and secured in a stand and an electrical charge initiates the burn. (See footnote 4, pg. 31.)

[32] United Nations Office for Disarmament Affairs (UNODA), IATG 10.10:2021, 3rd Edition. *https://data.unsaferguard.org/iatg/en/IATG-10.10-Demilitarization-destruction-logistic-disposal-IATG-V.3.pdf.*

must be evaluated for available alternatives.

Also of interest, the IATG document discusses MTUs as a potentially effective option. As new MTUs become available, and as more entities seek their use, they become more practical; and with the capability to rent their services, they become more accessible (see footnote 36, pg. 10 and 13). EPA recognizes that in the U.S., MTUs could provide an effective solution for facilities using OB/OD infrequently, that have smaller quantities of waste explosives requiring disposal, that have a need to supplement an existing alternative technology, or any combination of these situations. In the U.S. there are explosives treatment MTUs (which are in most cases owned by private companies) that are not widely used due to the time-consuming and resource intensive efforts to obtain a RCRA permit for a limited duration and for every location it is used. EPA is proposing a new streamlined RCRA permitting approach to facilitate the use of MTUs by removing some of the regulatory burden associated with issuing RCRA permits for these units (see Section II.L. Mobile Treatment Units for Waste Explosives). MTUs may be subject to permitting or regulation under other laws as well (*e.g.,* Clean Air Act).

Environmental Impacts of OB/OD

Although not discussed at length, the IATG document notes in several places the potential negative environmental impacts associated with OB/OD. The EPA and NASEM reports also note potential negative environmental impacts due to the release of treatment byproducts directly into the environment. There are several potential routes of release from OB/OD, including air emissions and ''kickout,'' that are challenging to sample, monitor and quantify. Many studies have attempted to characterize air emissions from OB/OD; such characterization is fundamentally difficult to do because neither OB nor OD have confined emissions that can be readily monitored or sampled, unlike an incinerator from which stack emissions can be monitored and sampled. OB/OD can also produce residues and ''kickout,'' which is the dispersal of metal fragments, unreacted explosive contaminants, and other waste items, onto the land; these releases are also difficult to measure. These challenges impart uncertainty regarding quantities and types of contaminants that are released into the air, soil, groundwater, and surface water bodies from OB/OD of waste explosives. This uncertainty raises concerns about negative impacts to human health and the environment from wastes that have the potential to release heavy metals, perchlorate, particulate matter, PFAS, dioxins/furans, explosive compounds, and other toxic and hazardous contaminants. (See also Section II.A Background above.)

Studies have sampled air emissions within an inflatable hemispherical detonation chamber known as a ''bang box,'' and by using aerostat fliers or balloons and airplanes outfitted with sampling equipment, or samplers affixed to poles, in an attempt to capture and analyze emissions from open burns. More recently, studies have utilized unmanned aerial systems (UASs) or ''drones'' to collect air emission data from both OB and OD. These data are considered more representative than data obtained from prior methods due to the ability to move the drone into the plume and maintain position within the plume. Based on a reasonable assumption that the plume is homogeneous, and a known mass and composition of the waste explosive being tested, the total emissions can be estimated. However, despite the advances in measuring emissions and the improved methods for calculating total emissions, questions regarding the representativeness of the data remain because more data are needed that replicate the quantities and chemical composition of waste explosives that are routinely treated at OB/OD facilities before definitive conclusions can be made.[33] [34] Ideally, future studies would include both air sampling and soil/surface sampling so that a more complete mass balance can be achieved by accounting for all treatment byproducts, similar to the two studies discussed in the next section.

EPA is aware of two studies that sampled air emissions and ground surface deposition from OD events. One study utilized a UAS to measure energetic residues from five separate uncovered detonations, using a block of Composition C4 explosive [35] for each detonation, that took place on snow-covered ice.[36] Snow was chosen to improve the accuracy and quality of the surface measurements. It not only provides a visual on the location and extent of residue deposition, but it also eliminates interference encountered when detonations are conducted on or under the soil, which causes soil to become entrained with the residues from the blast. The detonation reactions were very efficient, averaging 99.9993%, which means that very little explosive residue was generated (*i.e.,* only 0.0007% of the C4 was unreacted). Of the total energetic residue that was generated and measured via air and surface sampling, it was found that less than 7% was in the air emissions, while nearly 93% was deposited on the snow. EPA notes that this finding, in which only a negligible percentage of explosive was unreacted, are not unexpected because solid chemical explosives like C4, when not combined with other materials, combust efficiently and produce much less residue than when combined with other explosives or munitions. A significant difference between this study and typical waste treatment activities is that waste explosives and munitions treated during OD events contain more than just the explosive donor charge (*e.g.,* C4). The wastes can include metal casings and other items that do not undergo complete combustion and produce residues; metals are not combusted at all and depending upon the wastes treated, the dispersed metal fragments often contain unreacted explosives.

EPA has identified only one other study that has collected emissions from OD. This study, which precedes the study discussed above, was conducted using an aerostat flyer and was comprehensive in that it was the first to sample emissions from OB, static fire, and OD and collect a limited number of soil samples to ascertain whether metals and energetics collected in the plume emissions were from the existing soil content or to the munitions.[37] The study resulted in successful sampling campaigns and remains the first and only one to take measurements under conditions representative of routine open air detonations and burning of munitions. The results from detonation of Comp B compare well with the more recent sampling conducted during detonations of C4 noted above such that

[33] ''Field determination of multipollutant, open area combustion source emission factors with a hexacopter unmanned aerial vehicle.'' J. Aurell, et al. Atmospheric Environment, 2017. *https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NRMRL&dirEntryId=339722.*

[34] ''Characterization of Air Emissions from Open Burning at the Radford Army Ammunition Plant.'' J. Aurell, Brian Gullet, August 23, 2017.

[35] C4 is an explosive comprised of RDX, HMX, and plasticizer and is often used to initiate treatment of waste explosives and referred to as the donor charge.

[36] ''Improving post-detonation energetics residues estimations for the Life Cycle Environmental Assessment process for munitions.'' Walsh M., et al. November 15, 2017. *https://www.sciencedirect.com/science/article/pii/S0045653517318490.*

[37] ''Aerostat-based sampling of emissions from open burning and open detonation of military ordnance.'' J. Aurell, et al. Journal of Hazardous Materials, 2015. *https://19january2017snapshot.epa.gov/sites/production/files/2015-03/documents/9546011.pdf.*

a very small fraction was found in air emissions. The limited data from detonation of munitions found that the amount of the metal transferred to the air was between 0.3% and 22% with the majority of data indicating about 1% or less. However, this indicates that a significantly large portion of the metal emissions are deposited on the ground, accounting for the remaining balance in the range of 78% to 99.7%.

Both studies, while informative regarding the constituents that are released into the air from OD events, indicate that the balance of emissions from OD events are deposited on the ground surface. The findings from these studies correlate with EPA's findings that deposition from repeated OD events can cause extensive soil and groundwater contamination when the deposition products remain on the ground surface (see footnote 5 and subsequent paragraphs).

As discussed, it is challenging to obtain air emission data from OB/OD events, particularly for events that would be representative of routine treatment, that could provide a quantitative estimate of potential human health and environmental impacts. Every study that has been referenced in this section has a common thread, which is that there are limited data points and that results should be verified through additional sampling. However, there is soil and groundwater data collected from OB/OD unit areas (*i.e.,* per monitoring and reporting requirements of § 264.601), that does provide a quantitative measure that can be used to estimate potential impacts to human health and the environment. In addition, EPA initiated a study of nine OB/OD facilities that have undergone, or are undergoing closure, to examine the assessment and cleanup procedures used to achieve closure at each of the nine sites (see footnote 5). Assessment procedures characterize the site by identifying the areas of contamination and the contaminants found in each environmental medium including soil, groundwater, surface water, and sediment. Cleanup procedures are the techniques and technologies used to conduct the cleanup. The goal of the study was to determine the extent to which the cleanup procedures implemented at each site have achieved clean closure [38] (*i.e.,* closure by removal or decontamination) and are protective of human health and the environment.

Drawing on information and data provided for the site assessment procedures, EPA documented the contaminants that exceed action levels in environmental media at closed OB/OD units.[39] These contaminants include explosives (RDX, HMX, TNT, DNT, perchlorate, nitroglycerine), heavy metals (aluminum, arsenic, barium, cadmium, chromium, cobalt, copper, lead, manganese, mercury, selenium, silver, thallium, zinc), and other contaminants (PCBs, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, bis(2-ethylhexyl)phthalate, chrysene, dioxins/furans, DNB, EDB, endosulfan, ethylbenzene, fluoranthene, indeno(1,2,3-cd)pyrene, naphthalene, nitrates, nitrobenzene, TNB, xylenes). In summary, sites that open detonated waste explosives exceeded action levels more often than sites that only open burned. In cases where both OB and OD led to an exceedance, the maximum concentration of the contaminant associated with OD was most often greater than the concentration resulting from OB (see footnote 5). Overall, this study, which can be found in the docket for this rulemaking, demonstrates that dispersal of OB/OD treatment residues into the environment contributes to soil and groundwater contaminant concentrations that exceed risk threshold levels.

In closing, it should be noted that enclosed thermal technologies such as incineration have been more thoroughly evaluated than OB/OD, due to the above-noted challenges with evaluation of OB/OD emissions and potential release of contaminants, byproducts, and wastes; and it has been determined that combustion controls and air pollution controls are needed to ensure protective operation of these technologies (see §§ 264.340, 266.100, 270.62, 270.66, 63.1200). Due to its open nature, it is not possible to apply such controls to OB/OD. Thus, these uncontrolled emissions from OB/OD are a clear cause for concern.

Alternative Treatment Technology Evaluation Criteria and Content

In March of 2022, EPA held a series of early engagement meetings to solicit feedback on revising and amending several regulatory requirements related to OB/OD. One of four topics that EPA presented for feedback was an explicit requirement to evaluate alternative treatment technologies and implement identified alternatives, as well as criteria that should be considered when evaluating alternative technologies. Across the individual participant groups, there were no objections to inclusion of an explicit regulatory requirement. Regarding the criteria, EPA received a variety of suggestions, but a common thread was that safety is the most important criterion. In addition to safety, suggested criteria are maturity, environmental protectiveness, demonstrated effectiveness, cost, overall lifecycle emissions and exposure, volume and characteristics of waste streams, commercial availability, reliability, and maintainability. One commenter grouped individual criteria under the umbrella of ''viability,'' such that technologies must be consistently reliable, maintainable, and not have high operational costs (see footnote 23).

EPA believes that certain criteria should be mandatory while others should not but could be utilized to make a business decision—for example, to select the best technology or technologies for the individual facility's needs. The criteria that EPA proposes to be mandatory for every technology evaluation are unchanged from the original criteria finalized in 1980 at § 265.382, which are that technologies must be safe and must be available. As explained in more detail in this section, a safe technology accounts for potential risk of explosion when handling and treating waste explosives as well as potential risk to human health and the environment from treatment of munition constituents, byproducts, and wastes associated with OB/OD. EPA recognizes there are long-term risks and immediate risks when managing waste explosives. Any acute risks from explosion due to increased handling and storage associated with alternate technologies must be evaluated by an explosives safety expert as part of the ''safe'' technology determination. Available means that a technology can be used, rented, leased, purchased, or custom designed and constructed from a qualified vendor or qualified entity

[38] ''Clean closure'' in this notice refers to closure by removal or decontamination. During closure, facility owners/operators must comply with the closure performance standard at § 264.111 or § 265.111. According to §§ 264.111 and 265.111, closure must be completed in a manner that: (a) minimizes that need for further maintenance; (b) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated run-off, or hazardous waste decomposition products to ground or surface waters or to the atmosphere; and, (c) complies with the unit-specific closure requirements of part 264 or 265. Generally, two types of closure are allowed—closure by removal or decontamination and closure with waste in place. Because OB/OD is considered treatment rather than disposal, OB/OD facilities are required to conduct closure by removal or decontamination.

[39] Each site determined remediation standards based on the expected future use of the site, thus the action levels reported for each facility may vary in their representation (*e.g.,* residential specific screening levels, residential and industrial Maximum Contaminant Levels, preliminary remediation goals, etc.).

and has been determined through a technical evaluation, such as a demonstration at full-scale, to consistently perform the functions necessary to be effective. These factors are based upon EPA's mandate under RCRA to protect human health and the environment, and in consideration of the hazards associated with the handling, storage, transportation, and treatment of waste explosives. A requirement to implement an alternative technology cannot be met if one is not safe and available.

Criteria that EPA does not believe should be included as mandatory criteria for evaluating whether technologies can be used are tied to the cost of implementing and operating alternative technologies. These cost-related criteria should not remove a technology from consideration. Ultimately, these criteria relate to a business's determination of a technology's suitability for its waste streams.

Cost is a criterion given considerable weight by regulated entities when choosing between available treatment and disposal options that meet their needs and environmental compliance requirements. However, EPA does not believe it should be a mandatory criterion for screening out potential alternative technologies. The relevant standard under RCRA section 3004 requires that treatment technologies protect human health and the environment. Therefore, regulated entities must identify and implement technologies that meet this standard. While EPA recognizes regulated entities will likely consider cost and other practical factors in such screening, there is no need for EPA to identify these considerations as mandatory criteria, nor would it be appropriate for EPA to do so, because the regulated entity must ultimately demonstrate that the approach selected meets the protectiveness standard. Therefore, EPA has not included cost as a criterion that could be used to screen out potential alternative technologies.

EPA restated in the 1987 final rule that OB of nonexplosive waste could not be conducted in a manner that was protective of human health and the environment, saying the Agency ''made this finding in 1980 in promulgating the general ban on OB of nonexplosive hazardous waste (§ 265.382) and has no new information to suggest this conclusion should be revised. The Agency, therefore, intends to deny any permit applications it receives under subpart X for such activities.'' (See footnote 13.)

Alternative Technology Criteria and Evaluation Contents Requirements

The following sections present the technology criteria that EPA proposes to require for evaluating potential alternative treatment technologies, and the content believed to be necessary to allow for regulatory authorities to determine that the evaluation conducted by the facility, or on behalf of the facility, is complete and the conclusions provide adequate rationale. All information would be compiled in a report for submission to the regulatory authority for review and approval. The proposed regulations are located at §§ 264.707 and 265.707.

Alternative Technology Criteria

For the alternative technology criteria, EPA is specifying the proposed criteria according to the existing requirements: safe and available. The only revision is that EPA is now providing clarity by describing how these terms are to be applied when evaluating alternative technologies. Safe means that a technology must be designed, constructed, and operated in a manner that is safe for the wastes to be treated and that appropriate procedures and technologies are used to ensure safe handling and treatment and appropriate safeguards for worker safety as determined by explosives specialists. Safe can also refer to ''protection'' of human health and the environment when considering a technology's treatment byproducts; however, protectiveness in this sense would be evaluated during the permitting process when the appropriate standards are developed. EPA discusses, in Section II. F. Permitting of Alternative Technologies, how the ability to monitor operations and treatment byproducts and the capability to treat toxic byproducts are critical factors to assure protectiveness. Available means that a technology can be used, rented, leased, purchased, or custom designed and constructed from a qualified vendor or any entity and has been determined through a technical evaluation to consistently perform the functions necessary to be effective. Published sources such as EPA's and NASEM's reports may also be consulted to help inform whether certain technologies could be applied.

Safe

EPA recognizes that any technology under consideration for use must be safe for the wastes to be treated. Safety has been an existing standard since 1980, serving as one of the criteria for allowing an exception for waste explosives to be treated by OB/OD. In this rulemaking, EPA is clarifying that safety remains an important criterion, but is providing additional context in terms of alternative technologies that are now available. Given that any decision regarding whether a technology is safe to use is based on the degree of risk the entity using the technology is willing to accept, EPA is clarifying that safety is a mandatory criterion and proposes safety to mean that a technology must be designed, constructed, and operated in a manner that is safe for the wastes to be treated and that appropriate procedures and technologies are used to ensure safe handling and treatment and appropriate safeguards for worker safety as determined by explosives specialists. See proposed safety criterion at §§ 264.707(b)(1)(i) and 265.707(b)(1)(i).

Safety is cited by regulated entities as an important criterion and the number one criterion by the DDESB for acceptability of an alternative treatment technology. DoD's goal is to expose the minimum number of people, to the minimum amount of explosives for the minimum period of time (see footnote 23). Both OB/OD and alternative technologies require explosives handling: transport to storage, placement in storage, removal from storage and loading for transport, transport to treatment site, and unloading and placement at the site. Additional handling may be required for alternative technologies, including any needed pre-treatment activities such as disassembly or size reduction (*e.g.,* to reduce the physical size and NEW). Although most alternative technologies and pre-treatment technologies increase handling, highly automated processes may reduce safety risks to workers when compared to OB/OD (see footnote 4, pg. 25). Automated processes are designed according to specific waste types, and thus are more likely to be utilized by facilities that have large quantities of similar waste types that would not require frequent re-tooling and re-programming to switch from one waste type to another. There are also instances when additional handling is performed in preparation for OB/OD, for example, when projectiles contain submunitions. The submunitions are removed from the projectile casing by disassembly before treatment to prevent untreated submunitions from being dispersed into the environment. Thus, in some instances OB/OD may involve the same amount of explosive risk through handling as compared with an alternative technology.

A first step in evaluating alternative technologies is determining which wastes are amenable to treatment by an

alternative technology. For waste explosives that are documented to be unstable and/or potentially shock sensitive and have been determined to be unsafe by an explosives specialist,[40] there may be no other choice but to treat these wastes by OB/OD. The NASEM report acknowledges in several instances that OB/OD may be the only safe option for munitions that may detonate or deflagrate when disturbed. Thus, handling and transportation of these munitions should be minimized to reduce exposure of workers to the explosive hazard (see footnote 4, pg. 79). However, the NASEM report also indicated that only two munitions that were in the demilitarization stockpile or ''B5A account'' at that time had been identified to the committee by the Office of the Product Director for Demilitarization (PD Demil) as not suitable for alternative contained demilitarization due to instability. According to PD Demil, the 105 mm rocket-assisted projectile (quantity of 240 tons) and 8 in. rocket-assisted projectile (quantity of 744 tons) were potentially shock sensitive due to depletion of stabilizers in the rocket propellant (see footnote 4, pg. 78). To put this into perspective, of the total 430,987 tons of munitions in the total demilitarization stockpile as of September 30, 2017, 984 tons, or approximately 4%, could not be treated by an alternative technology due to instability. This inventory will fluctuate over time, but it is helpful to understand approximately how much waste may continue to require treatment by OB/OD. EPA does anticipate that, as more alternative technology evaluations are conducted at individual facilities as a result of this rulemaking, the number of wastes identified as unstable will increase as munitions waste streams are evaluated specifically to determine suitability for an alternative technology.

EPA notes that facilities engaged in RDT&E produce explosive waste streams that vary widely and may be difficult to characterize due to changes in stability resulting from testing and evaluation. The testing and evaluation phases subject the explosive containing items to physical and thermal stressors to ascertain their stability and performance. These activities damage the items and increase the sensitivity which in turn, increases the handling risks. Therefore, many of these wastes are not amenable to pre-treatment technologies (*e.g.,* cutting, disassembly) which may be required when the NEW must be reduced to be treated in an alternative technology. In addition, some RDT&E explosive waste streams consist of novel chemical formulations and physical features that are intended to change the fundamental chemical and physical characteristics of the energetic material, which imparts uncertainty regarding how they will behave when treated in the confined conditions of an alternative technology. This also means that formulations with the same chemical composition may have different physical properties and may warrant different treatment technologies. However, this does not mean that RDT&E wastes cannot be treated using alternative technologies, nor does it mean that none of these wastes can be pre-treated using other methods, but the likelihood is reduced in comparison to the explosives contained in certain munitions or bulk explosives and propellants.

According to alternative technology reviews submitted by two facilities that generate RDT&E waste, all of these wastes are currently treated by OB or OD, despite identification of potential alternatives. One facility stated that approximately 50% of its waste could be treated in a closed detonation unit. (Note: pre-treatment technologies were not evaluated so it is assumed that none are required or could not be used due to safety concerns and so 50% represents waste that can be directly place in a closed detonation unit).[41] Another facility stated that 54% of the waste could be treated by a closed detonation unit.[42] Both facilities provided reasons why an alternative technology would not be implemented, but the shared conclusion was that no one technology or combination of technologies could completely replace OB/OD, or that none stand out as a clear and attractive alternative to OB/OD. Based on EPA's proposed criteria, this is not an acceptable reason for not implementing identified alternatives. EPA's proposed criteria only requires that a technology be safe and available for the waste streams requiring treatment. Thus, if an alternative technology is identified for any of the facility's waste streams, then it must be implemented for those waste streams. EPA expects that in many cases, a facility would need to implement more than one technology.

The potential for injury or loss of life or loss of equipment is always present when handling, storing, transporting, and treating waste explosives. In some respects, use of alternative technologies may result in no change in the potential for an accident when the wastes are stable, and the treatment processes are fully automated. In other respects, use of alternative technologies increases the potential for an accident, but it may continue to be within acceptable safety risk parameters, or it could increase beyond acceptable safety risk parameters. EPA believes that most stable waste explosives awaiting treatment have available and safe alternatives but realizes that there are exceptions when the stability is questionable or when munitions cannot be safely size-reduced. EPA also recognizes that the explosives specialists evaluate the safety related to the handling and treating waste explosives. That does not imply however, that if EPA or a regulatory authority questions a safety decision at any point in the evaluation process or final report, that the decision is being challenged. Rather, the information is needed to better understand and to build a record for the regulatory authority's decision.

Available

Similar to the safety criterion, this is an existing requirement that serves as the second criterion for allowing an exception for waste explosives to be treated by OB/OD. EPA is clarifying that availability remains an important criterion for determining when an alternative technology must be used and is also providing more context for what it means to be available in recognition that there are different stages of development with some technologies that have been proven and successfully used.

EPA is proposing that a technology be considered available if it can be used on-site or off-site, rented, leased, or purchased from, or custom designed and constructed by a qualified vendor or a qualified entity and has been determined through a technical evaluation to consistently perform the functions necessary to be effective. The term ''qualified'' refers to national security protocols which may prohibit Federal agencies from conducting business with certain foreign vendors or entities. The term ''technical evaluation'' refers to any process or entity that evaluates the maturity of a technology and its likelihood to successfully meet operational needs.

[40] Items can become unstable and potentially shock sensitive as the result of the depletion of stabilizers in the explosives or propellants caused by excessive age or the environment in which it was contained. In addition, items that are damaged can have unpredictable stability.

[41] *Evaluation of Alternative Technologies to Open Burning and Open Detonation of Energetic Wastes by the Naval Surface Warfare Center, Dahlgren Division.* Appendix 2–5, Supplementary Information for OB/OD Alternative Treatment Methods.

[42] *Updated OB/OD Alternatives at NAWS China Lake 2022,* Goodman, B.T, Ph.D.; April 6, 2022.

This can be an evaluation process that is established, formal or informal, or evaluation processes developed and conducted by consultants and prospective vendors. See proposed available criterion at §§ 264.707(b)(1)(ii) and 265.707(b)(1)(ii).

An example of an established, formal process developed and used by several Federal agencies is the Technical Readiness Assessment (TRA) process. It was developed to reduce technical risk and uncertainty associated with new proposed or modified technologies to ensure that they have been demonstrated to work as intended (technology readiness) before committing to construction expenses.[43] The TRA process includes a scale for measuring the maturity of a technology, referred to as technology readiness levels (TRLs). The TRL describes the maturity of a given technology relative to its development cycle, and assigns a corresponding number from 1 to 9, where 1 indicates that scientific research has begun to be translated into applied research and development, and 9 indicates the actual system has operated over the full range of expected mission conditions (see footnote 54, pgs. 9–10, and 20).

EPA anticipates that Federal agencies evaluating alternative technologies may use the established TRA process in determining whether the availability criterion is met. As discussed later in the alternative technology required content section, when technologies are evaluated, each individual waste stream would need to be evaluated against potential alternative technologies to determine if a technology, or a combination of technologies, is safe and available. Thus, for purposes of the alternative technology evaluation, the screening process would assign a TRL based on the maturity of the technology for a particular waste stream. This TRL would indicate whether a technology would be considered for further evaluation. It is important to note that the same technology can be assigned different TRLs depending on the waste stream to be treated. For example, a static detonation chamber can be assigned a TRL 9 for 50% of the facility's waste streams, but may be assigned a lower TRL for the remaining waste streams because it has not been used previously to treat those wastes at a fully operational level. EPA does not believe it is appropriate to eliminate a technology from consideration if it does not meet the TRL needed to be able to treat all of the facility's waste streams. Neither is EPA endorsing any particular level under the TRA framework as the one that determines the availability of a technology for purposes of the required technology evaluation in this proposed regulation. Rather, EPA is simply raising awareness and acknowledging that Federal agencies (and others) may find the TRA process useful in evaluating technology availability and in making the availability demonstration required under the proposed regulation.

Other processes or options that can be used to evaluate the availability of a technology and its likelihood to successfully meet operational needs are to conduct a treatability study or to apply for a Research, Development, and Demonstration (RD&D) permit; see § 261.4 (e) and (f) and § 270.65, respectively. The intent of treatability studies and RD&D permits is to promote the development of treatment technologies. Thus, if an owner/operator chooses to conduct either, the results of the study or RD&D activities would inform whether the alternative technology can effectively treat the waste streams tested. Treatability studies and RD&D permits are discussed in more detail under the Analysis of Alternative Technologies According to Individual Waste Streams section.

As a final note on availability, published sources such as EPA's and NASEM's reports may also be consulted to assist with identification of alternative technologies that could be potentially applied. These reports have documented available alternative technologies that have been successfully demonstrated and applied to full scale demilitarization operations, as well as those that are under development or those that have not been successful for stated reasons.

Alternative Technology Evaluation Contents

With respect to the required content to be included in the evaluation of technologies, EPA notes that, to date, 24 facilities have conducted reviews and submitted alternative technology evaluations which vary in depth of review, organization, and content. This is not unexpected because there are no national guidelines for conducting a review. Therefore, EPA proposes to standardize the alternative technology evaluation process by specifying the information to be included in the evaluation in the following sections. EPA believes that this information is necessary to guide facilities so that a complete review is conducted and to allow for the regulatory authority reviewing the evaluation to understand and determine whether the conclusions presented by the facility are acceptable.

Description of Facility Operations

EPA recognizes that facilities managing and treating waste explosives vary in complexity of operations depending upon their mission. To aid in understanding the waste streams requiring treatment, EPA proposes that the alternative treatment technology evaluation describe the facility's operations in terms of how the wastes are generated. To do so, the owner/operator would include what the facility's primary purpose is: manufacturing, demilitarization, RDT&E, or other (describe), and the processes that generate explosive wastes. Also, the description would include if there are any alternative treatment technologies in use and identify the waste streams that are treated with the technology/technologies.

Characterization of Wastes

As discussed earlier in section II.C, waste characterization and analyses are key to beginning the identification and evaluation of alternatives. The regulations require that a hazardous waste determination be made at the point of generation for each solid waste stream (§ 262.11(a)). One component of this determination is to establish if the waste exhibits the characteristic of reactivity (D003) according to § 261.23(a)(6) through (8) and if it is capable of detonation or explosive chemical reaction. Only wastes determined to be D003 per § 261.23(a)(6) through (8) and are capable of detonation or explosive chemical reaction can be eligible for OB/OD when it is concluded that there are no safe alternative treatments available. Thus, EPA believes that detailed information is necessary to demonstrate that each waste stream is D003 per § 261.23(a)(6) through (8) and is capable of detonation or explosive chemical reaction, and to enable an evaluation of alternative technologies. In addition, an equally important purpose of waste characterization and analyses is to support development of permit conditions necessary for protective management of the waste. For example, waste characterization information is necessary for understanding waste compatibility which is then factored into permit conditions that ensure proper storage and handling procedures are implemented.

As discussed above in Section II. C. Waste Characterization, EPA notes that wastes (*e.g.,* PPE, building materials, metal) that are contaminated or

[43] Technology Readiness Assessment Guide. U.S. Department of Energy, DOE G 413.3–4A, pg. 2, *http://www.directives.doe.gov.*

potentially contaminated by explosives must be characterized as well. The fact that these wastes are contaminated or potentially contaminated with explosives, could be sufficient evidence that the waste is a waste explosive. Should the owner/operator prefer not to test the wastes for reactivity, they may conservatively designate the wastes as a D003 explosive and evaluate potential alternative technologies for treating it. However, if the owner/operator is proposing OB/OD as the treatment method for waste that is contaminated or potentially contaminated with explosives, they would need to provide detailed information to support the D003 designation and its capability to detonate in the alternative technology evaluation.

To ensure that sufficient waste characterization information is provided, EPA believes that the following detail is necessary. Information about the waste configuration (*e.g.,* bulk energetics/propellants, small/medium/large-cased), type (*e.g.,* bombs, projectiles, grenades, cartridge actuated devices (CADs)/propellant actuated devices (PADs), fuzes, detonators, propellants, powders), size, quantity, and its NEW is necessary to evaluate available alternatives for each explosive waste stream. EPA believes that simply grouping similar waste configurations together, for example as propellants, explosives, pyrotechnics, is far too generalized. Providing additional detail by identifying the physical form of an explosive as thin-cased also does not describe the waste sufficiently to understand why an alternative can or cannot be used for that particular waste stream. Therefore, EPA proposes that the owner/operator must identify and describe each explosive waste stream using waste characterization and analysis information according to proposed § 264.706. This includes identification of both physical and chemical aspects of the wastes, as well as the donor charges (*i.e.,* the explosive used to initiate the treatment of the waste explosives).

Physical aspects should be grouped as bulk energetics or propellants, small-cased munitions (thin-cased), medium-cased munitions (thin- or thick-cased), large-cased munitions (thin- or thick-cased), or potentially explosive-contaminated materials; and further subcategorized to identify the items under each category. The following are the physical subcategories that EPA proposes, along with descriptions and examples of their contents.

- *Bulk energetics and propellants* include unconfined energetic materials.
- *Small-cased munitions* contain 0.5 pound or less of energetic material in each item. This category includes CADs, PADs, exploding bolts, fuzes, small projectiles, bullets, bomblets, booster pellets, detonators, ignitors, leads, thermal batteries, and numerous other small items. Casings for these items are thin.
- *Medium-cased munitions* contain between 0.5 and 100 pounds of energetic materials in each item. This category includes bomblets, warheads, rocket motors, medium projectiles, propellant charges tor projectiles, grenades, mines, flares, sectioned munitions, all-up missiles, and numerous other types of items. The casings for these items may be thin or thick.
- *Large-cased munitions* contain 100 pounds or more of energetic material in each item. This category includes bombs, rocket motors, warheads, large projectiles, sectioned munitions, and all-up missiles. The casings for these items may be thin or thick.
- *Potentially explosive-contaminated materials* include energetic-contaminated wastes, such as cotton rags, gloves, and post-test debris; and energetic contaminated containers such as wood crates, cardboard boxes, velostat bags, and cellulose drums (see footnote 45, pgs. 2–3).

Chemical aspects should be characterized according to the constituents contained in the item. For example, composite rocket motor contains ammonium perchlorate, aluminum, polyurethane, and nitroguanidine (NQ).

For each physical grouping of items, each item in that group would be listed, along with the quantity, the pounds NEW of each item, the total pounds NEW per year for each item requiring treatment,[44] its chemical content, and current method of treatment. For example, under large-cased munitions, one entry may be: 25 ammonium perchlorate rocket motors, 60 lbs NEW propellant per motor, 1,500 lbs NEW per year, contains ammonium perchlorate, aluminum, polyurethane, and NQ, and is treated by OB.

With respect to facilities whose primary function is RDT&E activities, EPA recognizes that these facilities may generate numerous different materials and unique explosive formulations that may be continuously changing and vary slightly from the material previously assessed for the existing alternative technology evaluation. EPA would not expect that each changed item, unless it varies significantly from the initially evaluated item such that it would require a permit modification to add it as a new waste, would need to be evaluated and instead could be grouped according to the similar, previous items or materials. Also, some of these facilities generate small amounts of waste explosive and conduct treatment infrequently. As discussed in Section B. Scope of Applicability, they would be likely to qualify for a de minimis exemption, for example, when the treatment method is OD.

[44] Pounds per year may be reported for the most recent year available, or when a waste stream fluctuates widely from year to year, it may be reported as an average over a maximum of five years.

Initial Screening of Available Alternative Technologies

Based on the waste characterization, the next step in the process would be to identify and categorize alternative technologies that are available and potential candidates for the facility's waste streams. EPA proposes that the owner/operator screen the technologies for applicability to each explosive waste stream. For those technologies that do not pass the initial screening based on the mandatory criteria (*i.e.,* safe and available), EPA also proposes that the basis be provided to aid in the understanding when, for example, the technology is listed in a published source as available for the waste stream, but the owner/operator has determined it is not. The basis could include a discussion of the TRL, as discussed above, that may be helpful.

Analysis of Alternative Technologies According to Individual Waste Streams

After the initial screening, EPA proposes that owners/operators identify alternative technologies that could be used for individual waste streams because they have been determined to be safe and available and to provide more information about the technologies that passed the initial screening. Where applicable, this would include any pretreatment technologies that are required for the primary treatment technology (*e.g.,* band saw required for size/NEW reduction before treatment in detonation chamber). For these technologies, it should be indicated what percentage of the facility's waste streams can be treated by the technology and the waste streams identified according to their physical characteristics: bulk energetics and propellants, small-cased munitions, medium-cased munitions, large-cased munitions, and potentially explosive-contaminated materials. For an example facility, EPA suggests that the analysis would look like this: 80% of all waste streams could be treated via detonation

chamber and wastes to be treated in a detonation chamber include energetics and propellants that comprise small- and medium-cased munitions; or, 60% of all wastes could be treated by a burn chamber and wastes to be treated via burn chamber include bulk energetics and propellants and comprise small-cased munitions, and explosive-contaminated materials.

In addition to the TRA process described under the availability criterion, and as mentioned earlier, treatability studies and RD&D permits offer owners/operators additional options for determining and confirming which technology or technologies can treat their waste streams before committing to implementation.[45] Much like the TRA process, treatability studies and RD&D permits may be appealing options, for example, when a new waste stream has unique characteristics that impart uncertainty regarding the capability of a proven technology (*e.g.,* a confined burn chamber treating similar waste types at another facility) to treat it effectively and safely; or, if there is an emerging technology that has been successfully demonstrated at the pilot scale and appears to be promising for the waste stream in question.

The treatability study provisions in § 261.4(e) through (f) are designed to promote the development of treatment technologies through reduction of the regulatory requirements that would otherwise apply to the storage, manifesting, and treatment of hazardous waste conducted by TSD facilities. The treatability study exemption is a conditional exemption separated into two parts: an analytical sample exemption to determine hazardous characteristics and a treatability exemption to determine the suitability of a treatment process. The former applies to collection and transportation of samples while the latter applies to the testing and treatment of samples. For samples undergoing treatability studies (*i.e.,* the latter), the conditional exemption allows for the testing or treatment of samples without a RCRA permit or prior EPA approval, and the transportation to and from the laboratory or testing facility is not required to be manifested. (Note, however, that authorized States can be more stringent than the Federal requirements and thus, may require manifesting or other RCRA requirements outside of the conditions for exemption.) Also, MTUs can qualify for the treatability study exemption. To qualify for the exemption, the applicable conditions under § 261.4(e) and (f) concerning collection, labeling and transportation, sample quantities and time limits, sample and treatment residue disposition at conclusion of the study, recordkeeping, and notifications, must be met.

If an owner/operator plans to conduct a treatability study or is in the process of conducting one, EPA proposes that submittal of a description of the study and the timing for initiating and completing the study be required, given that the study may impact the timing or outcome of the alternative technology evaluation. For owners/operators who have conducted treatability studies, EPA proposes that documentation of completed treatability studies be required under this section of the alternative technology evaluation. Treatability study results would provide additional rationale in support of the owner/operator's technology selection or elimination and communicate intentions and anticipated schedule.

With regard to RD&D permits under § 270.65, they are also designed to promote development of treatment technologies through reduction of the regulatory requirements. Although a permit must be obtained, certain RCRA requirements may, consistent with protection of human health and the environment, be modified or waived so that permits can be issued expeditiously. An advantage of an RD&D permit over treatability studies is that the permit can provide more flexibility in terms of the quantity of wastes that may be received for testing and the length of time needed to initiate and complete testing.

Similar to treatability studies, if an owner/operator will apply for an RD&D permit or is conducting testing under one, EPA proposes that the information that will accompany the permit application be submitted, or a copy of the permit application or permit be submitted for this step of the alternative technology evaluation, and any conclusions reached if the activities have been completed. Again, by submitting the information, permit, or conclusions, this can provide rationale in support of the owner/operator's technology selection or elimination and communicate intentions and anticipated schedule.

Treatability studies and RD&D permits are options that can be utilized separately or in conjunction with the TRA process. It would be a choice based on the owner/operator's circumstances and the state of development of a technology under consideration. For example, a treatability study may be preferable when the technology that will undergo testing and evaluation is not located at a RCRA permitted facility or the site where the study will be done does not generate the wastes needed for testing and evaluation. An RD&D permit may be preferred when a technology's development is still in early stages and more time is needed to develop and test the technology. The TRA process, treatability studies, and RD&D permits can serve the same broad purpose—to determine the effectiveness of an alternative technology—but differ in the sense that treatability studies and RD&D permits are likely to be used to further develop a technology versus the TRA process that is more likely to be used, in the context of this rulemaking, for evaluating an existing technology that has already been proven to work at a fully operational level for specific applications.

Identification of Selected Alternative Technology or Technologies

Based on the information provided in the prior section, EPA proposes that the owner/operator would clearly indicate the technology or combination of technologies that is/are selected.

Potential for Off-Site Treatment Using Alternative Technologies and Use of MTUs

In addition to identification and selection of alternative treatment technologies for implementation, EPA proposes that owners/operators also evaluate alternative treatment options that do not involve implementation of permanent on-site units, namely, shipment of wastes off-site to a facility using alternative technologies, and MTUs that could be brought on-site temporarily. (See Section II. L. Mobile Treatment Units for Waste Explosives for more information on MTUs.) For this evaluation, EPA proposes that if neither off-site shipment nor use of an MTU on-site would be possible, the rationale to support the determination must be provided.

In cases where a determination is made that the waste cannot be shipped off-site, EPA proposes that the rationale consist of documentation that either the waste is a forbidden explosive per 49 CFR 173.54, DoD or DOE explosives safety specialists have determined that the waste cannot be shipped according to the DOD Explosives Hazard Classification Procedures (§ 173.56(b)), or that a Department of Transportation

[45] The definition of a treatability study is one in which hazardous waste is subjected to a treatment process to determine: (1) whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volume of residuals from a particular treatment process. See § 260.10.

(DOT) competent authority approval (*i.e.,* EX number) [46] or a special permit [47] has been requested and denied. Documentation would need to consist of the denial correspondence and the tracking number assigned to the request for the competent authority approval or special permit.[48] For decisions concerning MTUs, the rationale would be based on the same criteria as any other alternative technology: if it is safe and available. EPA believes it equally important to consider off-site shipment and use of MTUs as potential alternative solutions. Any waste streams that remain after a thorough evaluation of all possible alternative technology options would then likely be eligible for OB/OD.

Identification of Individual Waste Streams Requiring OB/OD

For any remaining waste streams that have been determined to require treatment by OB/OD, EPA proposes that the owner/operator identify each explosive waste stream for which OB/OD is the only safe and available treatment method and provide supporting rationale. EPA also proposes that the amount of NEW of each individual waste stream(s), what it is (*i.e.,* per the characterization information), and whether it must be treated by OB or by OD be provided as well as a description of the characteristics which the determination is based upon in terms of the risk posed. For example, a cracked rocket motor has exposed propellant that has contributed to degradation of the stabilizer. As a result, the stability is questionable and therefore, it would not be safe to size reduce for an available alternative technology. EPA believes this detailed information is necessary to understand and substantiate a request to use OB/OD for the identified waste streams.

Optional Secondary Alternative Technology Criteria

EPA has proposed the mandatory criteria for evaluating whether an alternative technology can be used in place of OB/OD; however, an owner/operator may also include a discussion of any secondary criteria that it finds helpful in selecting between identified available alternative technologies for implementation. Such criteria might include, for example, utility demands required to operate alternative technologies, costs, and throughput capacity. Again, such additional criteria cannot be used to dismiss a technology that has been identified as safe and available for a particular waste stream.

Submittal and Approval of Alternative Technology Evaluation

EPA proposes that alternative technology evaluations be submitted to the regulatory authority for review and approval. The evaluation must be completed according to the required criteria and content. It must clearly indicate whether a technology or combination of technologies has been selected and which waste streams would be treated by each selected technology. For wastes that the owner/operator proposes to treat by OB/OD because they have determined that there is not a safe and available alternative technology, a detailed rationale according to the required criteria and content must also be included. If an alternative technology or technologies has/have been selected for implementation, the facility need not wait for agency approval of the alternative technology evaluation prior to beginning the process of implementing the technologies (*i.e.,* submitting funding requests, pursuing safety approvals, and submitting a permit application or modification to include the alternative technology or technologies).[49]

For permitting authorities reviewing alternative technology evaluations, the approval would not necessarily be conditioned on the results, but rather on the completeness of the evaluation—that is, whether the evaluation provides the required content and rationale. The content and rationale are key to illustrating how and why a determination is made by explosives specialists that OB/OD is the only safe and available treatment method for a particular waste stream. As noted earlier, EPA recognizes that explosives specialists are the authority on explosives safety. Equally important to recognize is that regulatory authorities are accountable to the public for their decisions and thus, if additional clarification is requested by the regulatory authority, it should not be viewed as a challenge to the specialists' decisions but rather as information needed to better understand and to build a record for the regulatory authority's decision.

Alternative Technologies and Continuity of Operations

As indicated previously, EPA recognizes there will continue to be a need for OB/OD when there are no safe and available alternative technologies for specific waste streams. There may also be other situations when OB/OD may be needed, on a temporary basis, even though an alternative technology has been implemented, so that treatment operations may continue and critical needs can be met. Such situations can arise from unanticipated and prolonged maintenance and repair of an alternative technology, catastrophic failure of an alternative technology, and emergency situations impacting national security such as wartime activities that generate excess waste explosives requiring treatment. During these situations, the quantity of waste explosives awaiting treatment could increase beyond facilities' permitted storage capacity, or more critically, the timeframe for safely storing and handling the waste explosives could be exceeded such that the wastes become unstable and significantly increase the risk of explosion while in storage or during handling. Another potential negative outcome is if an explosives manufacturing facility's alternative technology is down for prolonged repairs, production could also be impacted if the wastes associated with the manufacturing process cannot be treated. Customers dependent on explosive ingredients and materials could be impacted in such a way that national security needs could not be met.

To avoid these situations, OB/OD could be used on a temporary basis to treat the waste explosives that ordinarily would be processed and treated through the alternative technology or to treat excess waste explosives generated during a national emergency. There are existing regulatory

[46] Competent authority approvals are written and issued by DOT (and include assignment of an ''EX Number'' for the approved explosive material). Persons can be authorized or certified by the DOT to evaluate, examine, and test explosives and recommend a shipping description, division, and compatibility group, and submit to DOT for approval; however, all approvals must be issued by DOT and do not expire. For more information on competent authority and approvals, see 49 CFR 105.5 and 173.56(b). For information on organizations approved to examine and make recommendations on new explosives, see: *https://www.phmsa.dot.gov/hazmat/energetic-materials-approvals/explosive-test-labs.*

[47] Special permits (DOT–SP) authorize a variance from a hazardous materials regulation (HMR). Special permits may be issued provided the person is performing a regulated function in a way that achieves a safety level at least equal to the safety level required by regulations or is consistent with the public interest and regulations, if a required safety level does not exist (49 U.S.C. 5117). Special permits are issued by DOT only and are valid for two years and may be renewed.

[48] A rejection issued due to an incomplete application (*i.e.,* missing information in the request letter, laboratory recommendation, chemical composition) is not adequate evidence that a waste explosive cannot be shipped offsite. Approval status can be tracked at: *https://www.phmsa.dot.gov/approvals-and-permits/hazmat/approvals-search.*

[49] EPA notes that the RCRA regulations require that a permit modification must be requested and approved prior to construction of a new unit.

mechanisms under RCRA that can be utilized to provide continuity of treatment operations in these situations. For facilities that have permitted OB/OD units, a temporary authorization could be issued under § 270.42(e) to increase the permitted treatment capacity and/or frequency of treatment or to allow for a waste that is only permitted for treatment in the (inoperable) alternative technology, to be treated by OB/OD during the temporary authorization period. The temporary authorization procedure was developed to allow owners/operators of permitted TSD facilities to conduct activities to respond promptly to changing conditions and improve the management of hazardous wastes. For more time sensitive needs, short duration needs, or when there is no longer permitted OB/OD capacity at a facility using alternative technologies, emergency permits could be issued under § 270.61 as another option.

For other situations that pertain to routine inspections and maintenance, EPA expects that the associated periods of downtime would have been planned for and managed so that OB/OD would only be allowed for unanticipated delays that prevent return of the system to its operational status, and only after other available options are considered. Thus, in the technology evaluation phase when accounting for needed treatment throughput, facilities could consider the option of implementing redundant systems—installing three static detonation chambers instead of two, for example—that would provide needed capacity during periods of downtime. Other options to consider include use of MTUs, shipment to another facility using alternative technologies, or adding storage capacity.

EPA emphasizes that safe and available alternative technologies that have been implemented must always be used in place of OB/OD. However, EPA is also cognizant that situations arise that could adversely impact continuity of operations, and in turn, significantly increase safety risks or threaten national security. To address these situations, options have been presented that can be pursued to ensure that the needed treatment can take place.

Summary and Request for Comment

The purpose of the above section is to propose revisions to the existing regulation for OB/OD to provide clarity and to include a process for achieving successful implementation. This is in recognition that there is currently inconsistency in implementation of the existing regulation. By providing clarity, a process, and information resources on available alternative technologies, a higher level of consistency can be achieved, which EPA expects to result in increased use of alternative technologies and reduction of OB/OD. EPA does not believe a complete ban on OB or OD is possible given that there are waste explosives that cannot be treated by an alternative technology due to the instability and potential shock sensitivity of those wastes, as discussed in the NASEM report (see footnote 4, p. 78), or the unique properties of certain waste explosives that result in unpredictable reactions, as discussed in the context of RDT&E wastes. At this time, EPA is proposing revisions to clarify eligibility for use of OB/OD for waste explosives and has presented the criteria and content to be required when evaluating alternative technologies. EPA's view is that if a facility utilizes the criteria and provides the required content and supporting rationale, the regulatory authority reviewing the evaluation should be able to determine its completeness and understand the owner/operator's conclusions. Therefore, EPA requests comment on the regulatory language in new §§ 264.707 (a) and (b) and 265.707 (a) and (b) as summarized below. The regulatory language is intended to make clear that if the applicant is proposing to use OB/OD to treat waste explosives, there must be a demonstration of eligibility.

Equally necessary is the process for demonstrating eligibility through an evaluation of technologies. EPA requests comment on the criteria presented in this section. These criteria include the requirement that the technology be safe and available. These criteria are the basis for demonstrating that owners/operators may or may not qualify for OB/OD. Comments should center on the adequacy of the proposed criteria and rationale requirements, keeping in mind that the regulatory standard has been that OB/OD may only be used when waste explosives cannot be *safely* disposed of through *other* modes of treatment.

Also, EPA requests comment on the adequacy and organization of the required content for the evaluation. This includes description of facility operations, characterization of wastes, initial screening of potential alternative technologies, identification of alternative technologies according to individual waste streams, identification of selected alternative technology or technologies, potential for off-site treatment using alternative technologies and use of MTUs, identification of individual waste streams requiring OB/OD, submittal and approval of the alternative technology evaluation, and continuity of operations. In addition, as noted, RDT&E wastes can present additional challenges for waste characterization and selection of potential alternative treatment technologies due to the variety of different materials and novel formulations produced during the research phase, and due to increased materials sensitivity from testing and evaluations phases and changes to the physical and chemical properties. EPA seeks comment on whether there is an approach that would be better suited for RDT&E facilities when identifying and describing individual explosive waste streams.

E. Timing For Rule Compliance

Introduction and Description

At present, facilities that conduct OB or OD of waste explosives are required to demonstrate and periodically redemonstrate that no safe alternatives are available for their waste streams by conducting an evaluation of alternative treatment technologies. Owners and operators must also employ safe alternatives to the OB/OD of waste explosives when available. However, the timing and frequencies of these demonstrations are not defined by the existing regulations. Nor do the existing regulations specify required timelines for the implementation of safe alternatives. As such, there is uncertainty around the timing for conducting alternative technology evaluations and implementing safe alternative technologies. Therefore, EPA is proposing requirements for the timing of initial evaluations and reevaluations, and for the implementation of safe available alternative technologies identified. EPA believes the proposed requirements will help manage the workload of State and regional implementers, reduce uncertainty related to implementing the regulations, allow for advanced planning by the regulated community, and foster consistency in implementation.

Proposed Revisions and Supporting Rationale

To aid in implementation of the existing regulation and especially as it applies to permitted units, EPA is proposing new regulations at §§ 264.707 and 265.707 that would specify when alternative technology evaluations are required, and the time allowed for implementation of alternative technologies.

Timing of Initial Alternative Technology Evaluations and Reevaluations

EPA is proposing regulatory text at § 264.707(c) and (d) related to the timing of initial alternative technology evaluations and subsequent reevaluations. In the following paragraphs, EPA discusses the proposed timing for permitted and interim status OB/OD facilities and units, as well as potential new facilities or OB/OD units. For permitted facilities with OB/OD units, EPA is proposing a requirement at § 264.707(c) that, at the next permit renewal or Class 2 or 3 permit modification associated with an OB/OD unit, the RCRA permit application include an alternative technology evaluation as discussed in Section II.D Alternative Technology Evaluation and Implementation. The owner/operator of an existing OB/OD unit would be required to conduct the initial evaluation, or reevaluation, and submit it as part of the permit application submission. For new facilities or new OB/OD units that are proposed to treat waste explosives, the owner/operator would be required to prepare an alternative technology evaluation and submit it as part of the permit application for a new OB/OD unit.

EPA favors an approach tied to permitting actions as, nationally, permits are staggered, and this would assist both regulated entities and permitting authorities in balancing the work and administrative burden of preparing and reviewing the alternative technology evaluations over time. Similarly, linking the timing of the evaluations to the permitting milestones will allow the regulated entities (many of which are owned or operated by Federal agencies) more time to secure funding and resources to conduct the evaluations.

One drawback of this approach is that, depending on the permitting timelines, it could be up to ten years before a permitted facility managing waste explosives becomes subject to the new requirements specifying how to conduct alternative technology evaluations; although EPA ultimately considers this would be rare since permit modifications often occur several times over the course of a ten-year permit term. In addition, this downside can be mitigated by the use of permit modifications initiated by the permitting agency under § 270.41. (See discussion of permit modifications in the Background of Regulatory Requirements component of Section II.A. Introduction to Open Burning and Open Detonation of Waste Explosives and this Rulemaking.) At facilities where the continued use of OB/OD may present a risk to human health and the environment, including situations where there may be an overburdened or disadvantaged community, the Director can consider whether cause exists to initiate a modification of the permits to incorporate the regulatory requirement to evaluate alternative treatment technologies. EPA believes that an agency-initiated modification may also be appropriate when facilities have conducted an alternative technology evaluation previously, but the evaluation did not provide complete information necessary for the permitting agency reviewing the evaluation to understand and determine whether the conclusions presented by the facility are acceptable. See § 270.41(a)(2). In addition, should EPA finalize this proposal, agency-initiated modifications may also be appropriate to incorporate the new promulgated standards. See § 270.41(a)(3).

EPA is proposing at § 264.707(c)(2) that permitted facilities that have conducted an alternative technology evaluation within the three-year window prior to the final rule's effective date, be able to use that evaluation in lieu of conducting another alternative technology evaluation as part of the permitting process, provided the evaluation meets the criteria as described in this proposal. Namely, the alternative technology evaluation would need to have thoroughly assessed all waste streams managed by the facility and meet or exceed the requirements for an alternative technology evaluation described in this proposal. EPA is including this provision to avoid requiring a new alternative technology evaluation immediately after a complete and thorough one was prepared and accepted by the regulatory authority. EPA anticipates this will provide additional flexibility and be perceived as a benefit by the regulated community. Additionally, EPA acknowledges that regulated entities are required now under the existing regulations to conduct and submit alternative technology evaluations and thus this provision would assist entities in compliance during the transition period of these regulatory changes.

For interim status facilities or a permitted facility with interim status OB/OD units, EPA is proposing requirements at § 265.707(c)(1) that the owner/operator conduct an alternative technology evaluation within one year of the effective date of the regulations. EPA is proposing a one-year deadline for conducting the alternative technology evaluation to address the small number of interim status facilities as rapidly as possible. There are currently only four interim status facilities treating waste explosives by OB/OD. These facilities are operating without the protections and controls that a permit provides. In addition, because these facilities do not have a RCRA permit for their OB/OD units, they also do not have a standard timeframe for permit renewal or the potential for permit modification that would trigger an evaluation or reevaluation of alternative technologies, such as for the RCRA permitted OB/OD facilities. As such, EPA believes it is appropriate and practicable to require an evaluation within one year of the effective date of the rule for interim status facilities.

EPA is proposing at § 265.707(c)(2) that interim status facilities that have conducted an alternative technology evaluation within the three-year window prior to the final rule's effective date enacting the requirements, to be able to use that evaluation in lieu of conducting another initial alternative technology evaluation. As a result, the owner/operator would not need to conduct an alternative technology evaluation until the reevaluation (*i.e.,* five years after the evaluation used in lieu of the initial evaluation). In order to do so, the evaluation would be required to meet certain criteria as described in this proposal. Namely, the alternative technology evaluation would need to have assessed all waste streams managed by the facility and meet or exceed the requirements for an alternative technology evaluation described in this proposal. EPA is including this provision to avoid requiring a new alternative technology evaluation immediately after a complete and thorough one was prepared and accepted by the regulatory authority. EPA anticipates this will provide additional flexibility and be perceived as a benefit by the regulated community. Additionally, EPA acknowledges that regulated entities are required now under the existing regulations to conduct and submit alternative technology evaluations and thus this provision would assist entities in compliance during the transition period of these regulatory changes.

Regarding reevaluations, EPA is proposing for permitted facility and interim status facilities at §§ 264.707(d) and 265.707(d), respectively, that the owner/operator would be required to conduct reevaluations at the frequency of at least every five years thereafter. EPA requests comment on whether a more frequent alternative technology reevaluation timeline would be appropriate. EPA also requests comment

on whether an annual certification that no new information is present and would warrant an off-cycle reevaluation for alternative technologies would be appropriate.

One factor suggesting a reevaluation every five years may be sufficient is that, as noted above, under existing permitting authorities the Director can consider whether cause exists to initiate a modification of the permits to incorporate the regulatory requirement to evaluate alternative treatment technologies. One of the causes for such a modification identified in § 270.41 is receipt of new information by the Director that was not available at the time of permit issuance. As such, were the Director to become aware of new information that would justify requiring a reevaluation sooner, the Director has an avenue to modify the permit to require one. Examples of such information that EPA expects may lead the Director to initiate such a modification would include: (1) The Director becomes aware that there is existing technology being used to treat similar waste streams at another facility; or (2) the availability of demonstration and test data for an alternative technology that indicates it may be safe and available for one or more of the facility's waste streams. If the availability of this type of information led to an off-cycle reevaluation being prepared, it is EPA's expectation that the reevaluation would be focused on the information or changes cited by the regulatory authority as cause for the permit modification.

Of course, this permitting authority puts the onus on the Director. As such, EPA believes it makes sense to still consider and request comment upon other approaches. Specifically, as noted above, EPA requests comment on whether a more frequent alternative technology reevaluation timeline would be appropriate. EPA also requests comment on whether an annual certification that no new information is present and would warrant an off-cycle reevaluation for alternative technologies would be appropriate.

Time Allowed for Implementation of Alternative Technologies

EPA is proposing a requirement that owners/operators that identify safe and available alternatives to OB/OD must prepare and submit an implementation schedule pertaining to the alternative(s). To effectuate this, EPA is proposing regulatory language for permitted facilities at § 264.707(e) Implementation of alternative technologies, and analogous requirements for interim status facilities at § 265.707(e).

The implementation schedule would be due within 180 days of the completion of an alternative technology evaluation and a determination that a safe alternative technology is available. The implementation schedule would need to be approved by the permitting authority and include the significant interim milestones. For permitted facilities, EPA is proposing at § 264.707(e)(2) that the implementation schedule be incorporated by reference into the facility's RCRA permit. EPA expects this would occur as part of the permit action that triggered the requirement to conduct the alternative technology evaluation.

In order for the implementation schedule to remain current and adapt to new developments at the facility, EPA is also proposing that the implementation schedule may be amended as necessary. This provision would also appear at § 264.707(e)(3) for permitted facilities and § 265.707(e)(2) for interim status facilities. For permitted facilities, EPA is proposing that changes to the implementation schedule would be effectuated by a Class 1 permit modification with prior Agency approval. The owner/operator would be required to comply with the schedule of implementation for the alternative technology. This would allow for modification of the implementation schedule in instances such as delays due to factors outside the control of the owner/operator.

EPA is proposing that the implementation schedule include, at a minimum, applicable deadlines related to vendor procurement, permit application submissions associated with the alternative technology, construction start and end dates, testing of the alternative technology, and a deadline for beginning operations of the alternative technology. In specifying the milestones for inclusion in the enforceable schedule, EPA sought to provide some broad requirements for major milestones but to leave flexibility for additional detail to be worked out, as appropriate, on a case specific basis. EPA expects that permitting authorities and facility owners/operators will be in the best position to determine what additional milestones, if any, are appropriate at a given facility for a given alternative technology.

For existing facilities with operating OB/OD units, EPA would allow continued OB/OD while the facility works toward implementation of an alternative technology. In the interim, the permit writer should continue to work with the owner/operator to minimize waste generation and reduce wastes being open burned/open detonated. Actions may include:

- Reducing the amount of material being contaminated with explosives, *e.g.,* through segregation or diversion of wastes which would include accurate waste determinations/tests to confirm wastes are characteristic for reactivity (D003) under and have the potential to detonate.
- Storing wastes, when it is safe to do so and pursuant to RCRA regulations or temporary authorizations, until the alternative technology is in operation and while alternative technologies are down for maintenance. This may require building and authorizing additional safe storage capacity.
- When safe to do so, shipping wastes off-site to another treatment facility to be managed by an alternative technology.
- Treating wastes, via non-thermal methods (*e.g.,* soaking, chemical treatment), as allowed by regulation. In general, generators of hazardous waste can conduct non-thermal treatment on-site in enclosed tanks or containers without a RCRA permit.
- Reducing the permitted amount/volume of waste that can be treated in the OB/OD unit until the alternative technology is in operation.

The proposed approach allows flexibility in the timing for implementation of the alternative technology by not establishing a regulatory compliance date, but rather, requiring an implementation schedule with enforceable milestones. The primary benefit of this approach is the flexibility it allows regulatory authorities to tailor implementation schedules to facility-specific circumstances. As a practical matter, EPA believes flexibility is important to accommodate facility-specific funding and budget allocation timelines, and vendor availability and contracting lead times which may vary by waste stream and geography. For example, many of the regulated facilities are government facilities which may need to utilize multi-year budget cycles to secure funding for alternative technologies. Additionally, the waste streams differ widely as does the complexity of the alternative technology available to treat the waste streams. For example, a small neutralization technology may be faster and easier to procure and permit than a large detonation chamber or confined burn chamber.

One drawback of the proposed approach is that, absent a regulatory deadline for implementing alternative technologies, the timeframe in which an alternative technology would be implemented may be prolonged.

However, the proposal would require that the implementation schedules must be approved by the permitting authority and would also be enforceable. As such, EPA expects compliance with the implementation schedules without unreasonable delays. An additional downside of the proposed approach would be the implementation burden associated with developing implementation schedules on a facility-by-facility basis. However, considering that alternative technology evaluations would not be performed at the same time if the proposed approach is finalized, implementation schedules also would not be due at the same time, thus balancing the permitting agency's workload over time.

Alternative Technology Implementation Deadline by Regulation

A second option EPA considered, but is not proposing, was the establishment of a compliance date or dates in the regulations for both the submission of an implementation schedule with interim milestones and a compliance date for implementation of alternative technology. Under this option, EPA would establish a regulatory deadline (*e.g.,* 60 days from the identification of an alternative technology) for submission of an implementation schedule that contained interim milestones such as vendor procurement, which is the same as the proposed option. However, under an alternative option, EPA would also establish a deadline for completing implementation of the alternative technology (*e.g.,* four years from the identification of a safe alternative technology). The option would also provide an avenue for the regulatory authority to provide extensions to owners/operators in instances where implementation of alternative technology by the established regulatory deadline would not be possible.

This option has appeal primarily because it has the potential to result in a more standardized transition away from OB/OD to alternative technologies. Rather than negotiating individual timelines for implementation on a facility-specific basis, this alternative option would clearly communicate an expected and consistent alternative technology operational date which could result in a more deadline-driven path toward implementation of alternative technologies. For example, the deadline established in regulation could provide Federal facilities an advanced opportunity to initiate budget requests and make other arrangements to meet that deadline. EPA notes however, that owners/operators should already be planning for alternative technology implementation because the existing regulations already require implementation of safe alternatives to OB/OD.

One major downside of the option, however, is that it would fail to account for the variation in waste streams and complexity and number of alternative technologies (*i.e.,* one facility may have several heterogenous wastes streams requiring treatment by multiple alternatives while another facility may have more limited homogeneous waste streams that may be handled by one alternative) which may not be conducive to a nationwide deadline imposed by regulation. As discussed above, EPA expects that funding approval, vendor procurement, permitting and construction timelines may vary across facilities' selected technologies and complexity of their waste streams. Additionally, the deadline by rule approach in this option would also potentially be disruptive to State and EPA permitting authorities' workload and priorities. Due to these limitations, EPA is not proposing this option but is requesting comment on this option. If public comment is supportive of this option, EPA may elect to adopt the approach in the final rule.

Alternative Technology Implementation Deadline by Regulation With Option for Modification

A third option EPA considered is to establish a nationwide regulatory deadline for implementing safe available alternative technologies but with an avenue for that deadline to be modified were it determined not to be feasible. In such an option, the regulations would establish a deadline for implementing an alternative technology (*e.g.,* five years from the identification of a safe alternative technology) but allow a process for the owner/operator to demonstrate that such a deadline was not feasible for the given technology at their facility. If the owner/operator were able to demonstrate to the satisfaction of the Director that the timeline established by regulations was not achievable, then the owner/operator and the Director would negotiate an enforceable implementation schedule much as described in the proposed option.

This option has the advantage of allowing an offramp in situations where the nationwide deadline is not feasible and thus addresses one major concern with the nationwide deadline by regulation option. One potential disadvantage with this approach would be that preparing and evaluating demonstrations would entail some level of burden. If many facilities made such demonstrations, this option may result in the majority of facilities developing facility-specific schedules and, in effect, not offering much of a predictability or expediency advantage over the proposed approach. At this point, EPA cannot predict how many facilities would seek to make such demonstrations and the resulting determination. Given this uncertainty, EPA is not proposing this option but is requesting comment. If public comment is supportive of this option, EPA may adopt the approach in the final rule.

Alternative Technology Implementation Deadline by Regulation for Priority Facilities

A fourth option EPA considered is to establish a regulatory deadline only for priority facilities while the rest of the universe would develop facility-specific implementation schedules. Priority facility identification would be based on location data (*e.g.,* proximity to sensitive receptors where ongoing use of OB/OD presents higher potential of exposure to emissions, overburdened communities experiencing cumulative environmental or health stressors, areas vulnerable to impacts of climate change) or other factors making the facility of high interest (*e.g.,* a facility treating high quantities of waste explosives by OB/OD). This option would represent a hybrid of the two options discussed above. In this option, the regulations would provide flexibility for most facilities and less flexibility to priority facilities, *e.g.,* near sensitive receptors.

EPA expects that environmental justice (EJ) analyses, information from facilities' permits, and public comment information would be utilized to determine priority facilities. The primary benefit would be that these sensitive sites would be addressed in certain, near-term time horizons. One downside of this option is that the prioritization process itself, during implementation, would require resources and time. Additionally, because of the lack of flexibility for priority facilities entailed in this option, this approach would also fail to account for the variation in waste streams and alternative technologies necessary at these facilities. As discussed above, EPA believes that variation may argue for facility-specific implementation timelines. Additionally, the deadline by rule approach in this option would also potentially be disruptive to State and EPA permitting authorities' workload and priorities. Again, EPA is not proposing this option but is requesting comment given the benefits and the disadvantages. For example, EPA seeks

criteria suitable for nationwide regulation that could be applied relatively quickly in implementation to identify a priority class of facilities. If public comment is supportive of this option, EPA may adopt the approach in the final rule.

Public Participation and Alternative Technology Evaluations

EPA expects that the existing permitting processes would facilitate early and continuous public participation on the alternative technology evaluation and the implementation of alternative technologies. For permitted facilities, the permit action (*e.g.,* permit renewal or Class 2 or 3 modification) that triggers the need for an alternative technology evaluation would include a variety of public participation steps, such as a pre-application meeting (for Class 3 modifications or permit renewals), notice to the facility mailing list, public comment period(s), and/or public notice of intent to issue a new, modified, or renewed permit. Additional steps may be added to ensure meaningful engagement with overburdened communities. Collectively, these steps would allow for the public to review the alternative technology evaluation, the tentative determination on the availability of a safe alternative technology, and the proposed implementation schedule if an alternative technology is determined to be safe and available. For interim status facilities, after conducting an alternative technology evaluation within one year of the effective date of the rule, the facility would be required to submit an updated permit application. The revised application would reflect a determination either that a safe alternative technology was available or that one was not available. In the first instance, the owner/operator would be applying for a permit for an alternative technology unit. In the latter instance, the facility would be seeking a permit for an OB/OD unit meeting the proposed new subpart Y standards for OB/OD units. This permitting process would afford multiple opportunities for public participation as specified in part 124, subparts A and B. These include pre-application public meetings, public comment, public notice, the ability to request a public hearing, and an avenue for appeal of the final permit decision. Because the alternative technology evaluation will inform whether the owner/operator must submit an application for an alternative technology permit or an OB/OD permit, EPA encourages facilities and regulators to consider engaging the public early during the alternative technology evaluation. For example, the facility may set up an on-site information booth, website, or information repository to share background on the facility and its operations, and the alternative technology evaluation prepared by the owner/operator.[50] In this way, public comment and input during the permitting process may be less likely to require submission of a revised permit application later in the permitting process.

Summary and Request for Comment

This proposal includes clarifying regulatory text regarding when alternative technology evaluations would be prepared, and timelines for the implementation of alternative technologies. EPA expects that the proposed regulations would reduce uncertainty and increase consistency in implementation of the regulations. For the timing of alternative technology evaluations, EPA believes the proposal, by linking the timing to permit actions, strikes a balance between expeditiously evaluating the availability of safe alternatives and managing the timing of the evaluations in a manner that reduces administrative burden and best utilizes implementation resources. With respect to the implementation deadlines for alternative technologies, EPA is proposing a flexible process for facility-specific deadlines to be developed and amended as necessary. At the same time, the resulting enforceable deadlines for interim milestones and implementation of the alternative technology would provide greater certainty and accountability. Additionally, EPA described and is requesting comment on three alternative options. One alternative option would be to set a regulatory deadline applicable to all facilities in the regulations. The second alternative option would establish a regulatory deadline applicable to all facilities but provide an avenue for negotiating a modified timeframe as appropriate. The third alternative option would be to set a regulatory deadline applicable to high priority facilities in the regulations, while allowing facility-specific implementation schedules to be developed for the rest of the universe. EPA is requesting comment on the proposed approach as well as each of the alternative options and will consider the input as part of the final action. If public comment is supportive such that additional information not previously considered by EPA in analyzing the advantages and disadvantages is presented, EPA may adopt one of these alternative options in the final rule.

F. Permitting of Alternative Technologies

Introduction and Description

Units that treat waste explosives are most often permitted according to the part 264, subpart X. As discussed in section II.A, these performance-based standards were developed to be applicable to a variety of waste management units, including OB/OD units, that were not already covered in the regulations. In adopting this approach, EPA concluded that it was not possible to set design and operating standards for all potential subpart X units, especially in the case of units for which there was little or no information available to allow for establishing technology-specific standards.

In the final rule for miscellaneous units, including OB/OD units, EPA did recognize that some miscellaneous units have design features similar to other units already covered in the regulations but are not similar enough that it would be appropriate to include or classify the miscellaneous unit under another section of regulation or to apply established performance standards to certain miscellaneous units.[51] For example, thermal treatment units, such as carbon regeneration units, use heat in the primary chamber to destroy organics in the waste stream (*i.e.,* spent carbon) much the same way that incinerators do. However, carbon regeneration units are designed to desorb contaminants from carbon without damaging the carbon and are not designed to destroy a wide variety of hazardous wastes or materials like incinerators do. Thus, these units have different design features and operating conditions based on their purpose. It would not be practical then to require a carbon regeneration unit to comply with the full suite of incinerator standards; rather, it would be appropriate to ''borrow'' some of the incinerator standards and apply them to the carbon regeneration unit to ensure that it operates in a manner protective of human health and the environment. This is the basis for the requirement in § 264.601 that directs the permitting authority to include the listed subparts that are appropriate for the miscellaneous unit being permitted.

With respect to this proposed rule, there are a variety of enclosed

[50] Please see US EPA's 2019 Resource Conservation and Recovery Act Public Participation Manual for more information and considerations related to public participation. The manual is available at: *https://www.epa.gov/sites/default/files/2019-09/documents/final_rcra_ppm_updated.pdf.*

[51] 52 FR 46950–46951, December 10, 1987.

alternative technologies that can be used for treatment of waste explosives in which subpart X standards would be appropriate. Thus, this section discusses the regulatory classification of devices treating waste explosives, as well as a range of related topics including clarifications on applicable regulatory requirements for certain waste explosives treatment practices and proposed changes to the existing subpart X standards and related permitting standards to account for alternative technologies.

Proposed Revisions and Supporting Rationale

In practice, units that treat waste explosives are most often permitted under subpart X, as described above. This includes all OB/OD units, as well as several types of alternative treatment technology units such as those that use chemical destruction and neutralization, and those that use thermal destruction and decontamination. However, thermal treatment units have been permitted according to the subpart X standards, while others have been permitted according to the subpart O and/or Clean Air Act (CAA) Hazardous Waste Combustor National Emission Standards for Hazardous Air Pollutants, subpart EEE standards (CAA subpart EEE) because they meet the definition of a unit regulated under these subparts. Occasionally, there are cases when the same type of thermal treatment unit is permitted under one set of standards in one State, but under a different set of standards in another State because the definitions are applied differently. In these cases, this variability can be frustrating for owners/operators that would like to operate the same or similar units in another State. For example, a State that permits a unit as an incinerator as defined in § 260.10 would be subject to both RCRA and CAA standards and permitting requirements, and in some instances, could have two sets of operating standards and emission limitations (*i.e.,* one set in the CAA title V permit and a second set in the RCRA permit) that must be complied with where States have not adopted the integration with MACT standards language.[52]

Although EPA recognizes that the differences in application of standards is not ideal, EPA is not proposing regulatory revisions at this time that would define the various types of thermal treatment units to provide more consistency in application of standards across the same types of thermal units for reasons discussed in the following section. EPA anticipates that this proposed rule would significantly increase the use of alternative treatment technologies, especially a variety of thermal units, which will require permitting according to subpart X or subpart O/CAA subpart EEE. EPA is interested, however, in hearing from commenters if it would be helpful for EPA to define the thermal treatment units that are available, which would provide more clarity when applying standards considering the following information.

Approaches To Permitting Thermal Treatment Units

If EPA were to define the different types of thermal treatment units, then a unit that is designed and operated like an incinerator and meets the definition of an incinerator[53] would be permitted according to part 264, subpart O and/or the CAA subpart EEE standards. The units that could be defined as incinerators treating waste explosives include the ammunition peculiar equipment (APE)-1236 rotary kiln incinerator, explosive waste incinerator (EWI), and bulk energetics disposal system (BEDS). The common feature of these units is that the wastes travel through a combustion chamber in which heat is applied inside the combustion chamber by a controlled flame.

Other types of thermal treatment units like contained burn chambers, SDCs, CDCs, explosive destruction systems (EDS), and DAVINCH, are most often permitted according to subpart X, and if EPA were to define these types of units, EPA would not define them as incinerators, but rather a type of miscellaneous unit because they do not use a controlled flame within the treatment chamber. The units in this category use an electronic ignition system to initiate treatment, or use heat applied externally to the chamber to initiate treatment.

Reasons for approaching thermal treatment units differently with respect to classification as a miscellaneous unit under subpart X versus an incinerator under subpart O/CAA subpart EEE relate to the authorized permitting authority's interpretation of applicability. Also, it is possible that the permitting authority may choose to take a more straightforward approach and regulate a unit that does not have a controlled flame in the treatment chamber under the full suite of incinerator standards, rather than regulating the unit under subpart X, and thus having to choose which standards should apply. However, a straight application of subpart O/CAA subpart EEE standards could make the facility's compliance complex and difficult because certain standards may not be practically applicable when a unit does not meet the definition of incinerator. To potentially avoid this type of situation, EPA could define the known types of thermal units that treat waste explosives to impart more consistency in application of standards. The downside to EPA's action would be that it could remove the flexibility that some regulatory authorities prefer when applying standards believed to be appropriate for the unit.

Regardless of the subpart that a technology's permit conditions are derived from, they must be protective of human health and the environment for the selected technology. To be protective, the standards, for example, must assure that the technology is monitorable both in terms of operational controls and effluents/emissions resulting from treatment operations. Alternative treatment technologies are enclosed processes that utilize a series of process and engineering controls beginning with introducing the wastes into the system and through recovery of the treated material and byproducts. Inherent in the design are controls to monitor the system to ensure that explosives safety and treatment protocols are met as the material moves through the treatment process. The system should also include controls to treat and monitor emissions and effluents to ensure they are protective prior to release. Thus, operational controls and associated effluent/emission treatment systems must be monitorable to determine compliance with applicable regulations and to ensure they are protective of human health and the environment.

In addition to the capability to monitor treatment byproducts, the technology must also be able to treat any toxic by-products to levels that are protective of human health and the environment before release. Contained alternative treatment technologies and associated pre-treatment technologies must not release toxic by-products. For example, a pre-treatment technology like water jet cutting will generate a new waste stream—water contaminated with explosives. This waste stream must be characterized and treated on-site or off-site to meet applicable environmental standards before release into the environment. Another example relates to thermal treatment processes. If chlorinated wastes are present in the waste stream, even if they are effectively treated in the primary chamber, the

[52] See §§ 264.340(b), 266.100(b) and 270.22, and 270.62.

[53] See § 260.10.

potential remains for dioxin/furan formation when the treatment gases are cooled after leaving the primary treatment chamber. Thus, it is essential that the systems are optimized to prevent dioxin/furan formation and that the air pollution control equipment can treat any dioxins/furans to required permit limits established according to the applicable regulatory standard (*e.g.,* a dioxin/furan standard under subpart O or subpart EEE) before release.

Again, any alternative technology must be designed and operated in a manner that is protective of human health and the environment. Under RCRA, permit writers consider the applicable regulatory limits (*e.g.,* required design, operating, and emission standards) the technology's test results (*e.g.,* established in literature and on a site-specific basis), and site-specific factors (*e.g.,* proximity to receptors and volume and types of waste) when developing permit conditions. The resulting permit conditions ensure that the technology is protective. In addition, alternative treatment technologies, in all likelihood, will also require permits under other programs such as the CAA and CWA.

Clarification of Wastes Contaminated With Explosives

Also related to permitting and application of appropriate standards, EPA is providing clarification on an issue that has presented challenges to regulatory classification. Over the past several years, EPA has learned that some facilities have been treating solid wastes that are minimally or potentially contaminated with explosives by OB in non-RCRA permitted units. This practice has been allowed in certain States that finalized an exception to OB for waste explosives under their air regulations, based on the premise that these materials pose an explosive hazard.[54] The exception is nearly identical to RCRA; however, there is no CAA Federal equivalent to the State air regulation for allowing uncontrolled burning of solid waste that may pose an explosive hazard. Rather, individual States have chosen to implement the exception through their CAA State implementation plans.

Facilities have argued that their wastes may contain explosives and may pose a safety hazard, and thus their OB is exempted from State air regulations as described above; and at the same time have asserted that these wastes are not RCRA D003 reactive waste, and thus their burning is not subject to RCRA regulations either. EPA does not agree that the above State air and RCRA-related assertions can be made concurrently for the same wastes. If the waste does not meet RCRA's reactive waste characteristic and is not a waste explosive, then it cannot be considered reactive and explosive for purposes of qualifying for the exception under State air regulations (see footnote 58). Or, in other words, if a waste is considered an explosive safety hazard under State air regulations, it must also be considered a reactive hazardous waste under RCRA. EPA notes that if a waste is contaminated with explosives that results in the waste posing a safety hazard or, if the owner/operator has conservatively designated the waste as possibly explosive, then the waste is a RCRA reactive waste and must be managed under RCRA, including the prohibition on OB/OD unless there is no available safe alternative technology. EPA notes that many of the wastes at issue include non-combustible items such as concrete, masonry bricks, metal, pipes, vessels, soil, and combustible items such as cardboard, fiber drums, PPE, gloves, filter socks, and plastic waste. EPA finds that the majority of these wastes have alternative treatment technologies available and thus treatment by OB/OD of these waste would generally not be allowed. An exception could include large components associated with explosives manufacturing (*e.g.,* large diameter concrete pipe, process equipment) that cannot safely be ''resized'' to the size necessary to support treatment in contained burn equipment or a chemical neutralization process. Cutting (either with a torch or saw) such items present a significant safety hazard.

One type of thermal technology that has been proven and used widely for these materials is a flash furnace which uses a controlled flame in the treatment chamber. Flash furnaces have been permitted under both subpart X and subpart O/CAA subpart EEE standards. Again, the difference in implementation can be attributed to State preference, the purpose of the treatment, or EPA policy regarding controlled flame. An example of a flash furnace that would be suited for permitting under subpart X is for decontamination of non-combustibles. In this case, treatment via chemical neutralization unit is the primary treatment, and a flash furnace is the polishing treatment. The purpose of the flash furnace is to ensure that any trace explosives remaining after neutralization would be removed through heat. A polishing step like this may be necessary when there is uncertainty that a neutralization solution has reached the elbow of a pipe or small crevices of other materials. Because of the very small amount of explosives potentially present, EPA believes that application of subpart X standards is the appropriate choice for this type of thermal unit despite the use of a controlled flame in the treatment chamber, as subpart X allows for the development of permit conditions that are more fitting and implementable for this technology application.

Permitting and New Standards for Treatment of Waste Explosives

In this rulemaking, EPA proposes to designate a new subpart Y for the new technical standards for OB/OD units and the new standards for alternative treatment technology evaluations applicable to OB/OD owners/operators. When issuing permits for OB/OD units, regulatory agencies would incorporate the new subpart Y standards, and thus, issue ''Subpart Y permits'' once authorized for subpart Y. (See Section IV. State Authorization, Permitting of OB/OD Units section for further discussion.) For alternative treatment technologies, permits would continue to be issued under subpart X, with the exception of units that are determined to be strictly subpart O/CAA subpart EEE units. In designating a new subpart Y for OB/OD units, EPA proposes several revisions related to the permit application procedures in part 270 and to the facility standards in parts 264 and 265 to account for the new subpart Y. Some of the revisions are conforming changes while others are areas in which EPA believes additional clarity is needed.

Proposed Changes to 40 CFR Part 270 Subpart B—Permit Application

EPA proposes to make several revisions to § 270.23 Specific part B information requirements for miscellaneous units to account for new standards proposed in this rule for both OB/OD units and alternative treatment technologies. One revision that EPA proposes is to add a new paragraph (e) in § 270.23 and redesignate existing paragraph (e) as (f), to specify that the part B application for units permitted under subpart X as an alternative to subpart Y must include the required evaluation of alternative technologies and a schedule to implement the selected alternatives. A second revision is to add miscellaneous subpart X ''treatment units'' to paragraph (a)(3) of § 270.23 to specify that permit applications for treatment units, in addition to disposal units, must provide

[54] *https://docs.legis.wisconsin.gov/code/admin_code/nr/400/429* and *https://publications.tnsosfiles.com/rules/1200/1200-03/1200-03-04.pdf.*

a detailed description of the plans to comply with the post-closure requirement of § 264.603 when they are unable to clean close. This addition will conform to the existing requirements of § 264.603 as it relates to both miscellaneous disposal and treatment units. Finally, EPA proposes to revise the title of § 270.23 to add ''OB/OD units'' and to include related and applicable references to the newly proposed subpart Y standards for OB/OD units throughout the section. Because OB/OD units have historically been permitted as subpart X units, EPA believes that the OB/OD part B information requirements should remain in this section based on familiarity, and thus provide a clear direction for the information expected of permit applicants.

Proposed Changes to 40 CFR Part 264 Subpart X—Miscellaneous Units and 40 CFR Part 265 Subpart P—Thermal Treatment

EPA is proposing a few changes to the subparts X and P regulations. Specifically, EPA is proposing to amend the environmental performance standards in § 264.601(b) and (b)(3) to include stormwater considerations. In § 264.601(b), EPA proposes to add stormwater to the list of environmental media for which prevention of any releases that may have adverse effects on human health or the environment. In addition, EPA proposes to add to § 264.601(b)(3) stormwater run-on and run-off patterns around the subpart X unit as part of the hydrologic characteristics of the unit. These additions are necessary to capture and address any impacts to stormwater management units or areas from contaminants contributed by subpart X units. EPA believes that adding consideration of stormwater impacts to the subpart X environmental performance standards would improve protection of human health and the environment.

In addition, EPA is proposing to revise § 264.603 (Post-closure care) to clarify that if a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated ''at the time of certification of closure'' (rather than ''during closure,'' which is the wording of the existing regulation), then that unit must also meet the environmental performance standards in § 264.601 during post-closure care. EPA believes that this change more accurately reflects that there is a finite point in time in which the removal and decontamination actions end despite remaining contamination and thus, closure ends, and post-closure care begins. Also related to § 264.603, is inclusion of similar requirements in the new subpart Y standards specific to post-closure for OB/OD units since these units would no longer be considered as miscellaneous units under subpart X. EPA proposes to carry over similar language with appropriate changes in the new § 264.714. Post-closure care for OB/OD units is particularly important when is it not possible to remove waste explosives and associated contaminated soils and groundwater at closure. As treatment units, OB/OD units are required to close in accordance with §§ 264.114 and 264.603. Should the owner/operator be unable to remove or decontaminate contaminated components, soils, subsoils, structures, and equipment after reasonable efforts to do so, these units will require monitoring, and potentially, remediation and removal actions, during the post-closure period.[55]

EPA is also proposing, in part 265, subpart P, to update the references to the ''Assistant Administrator for Solid Waste and Emergency Response'' to be the ''Assistant Administrator for Land and Emergency Management,'' which reflects the new name for this EPA office.

Summary and Request for Comment

Waste explosives have a variety of treatment options, many of which are classified as miscellaneous units and are permitted under subpart X due to their design or purpose. Certain types of thermal treatment units, however, have been permitted as subpart O/CAA subpart EEE units. In some instances, the units are clearly incinerators and in others they share similar aspects but not enough that the full suite of incinerator standards would be practical. In a few cases, there are identical thermal treatment units that have been permitted under one set of standards in one State and a different set in another State. As discussed, this difference can be attributed to a permitting authority's interpretation of applicability based on whether a unit meets the definition of incinerator or not. Also, permitting authorities may choose to take a more straightforward approach and regulate a unit that does not have a controlled flame in the treatment chamber under the full suite of incinerator standards, rather than choosing which standards should apply to a subpart X unit.

EPA recognizes that the current approach to regulating thermal treatment units can result in inconsistencies across different States. Given that this proposed rule is anticipated to increase the use of alternative treatment technologies, and especially a variety of thermal units, EPA requests comment on whether EPA should develop definitions for the various types of thermal units discussed to provide more consistency when applying standards.

EPA also discusses several proposed revisions to parts 264, 265, and 270 to accommodate the new standards for OB/OD units contained in the new subpart Y, to clarify existing language in subpart X, and to update the name of the EPA office in part 265. EPA views most of the proposed revisions as conforming changes needed to ensure that OB/OD units continue to be properly regulated. EPA does, however, propose to add stormwater as an additional medium to monitor under subpart X to ensure that contaminants from miscellaneous units that migrate to stormwater areas are also addressed. Last, EPA proposes a wording change in § 264.603 for treatment and storage units to read ''at the time of certification of closure'' versus ''during closure'' since this more accurately reflects the point in the closure process that a determination is made that the closure activities will cease, and post-closure care will begin. If commenters do not support any of the additions or changes noted, EPA would like to hear why.

G. Technical Standards for OB/OD Units

Introduction and Description

As part of this proposal, EPA is proposing to explicitly describe the existing requirement that owners/operators of OB/OD units demonstrate, through comprehensive waste analysis and an alternative technologies evaluation, eligibility for the exemption to the prohibition on OB/OD established in 1980 (see section II.D). EPA finds that clarifying in the regulations how owners/operators would demonstrate eligibility for the exemption would further reduce reliance on OB/OD due to consistent application of the standards. However, EPA acknowledges that safe alternative technologies are not currently available for every explosive waste stream and thus there will be a continued need for OB/OD to treat explosive wastes which do not yet have an alternative safe mode of treatment.

[55] An example of post-closure monitoring and removal actions that is likely to be indefinite is at Ft. Wingate Army Depot, NM, where munitions and sub-munitions are dispersed over hillsides making it too dangerous to attempt removal due to the steep grade. Due to erosion activity, the munitions continue to travel downslope into the arroyos where they eventually can be removed.

All OB/OD units are currently permitted under RCRA subpart X standards. As described above in Section F. Permitting of Alternative Technologies, due to the varied nature of miscellaneous units, subpart X standards are performance based and do not contain specific technical standards. Rather, subpart X directs permitting authorities to ensure permits ''contain such terms and provisions as are necessary to protect human health and the environment'' (§ 264.601). This, understandably, has led to some variability in permit conditions from different regulatory authorities with respect to OB/OD units.

EPA is proposing a new subpart, subpart Y, to establish technical standards for OB/OD units. EPA anticipates this would increase consistency in permitting OB/OD units and provide minimum criteria for protecting human health and the environment.

Proposed Revisions and Supporting Rationale

EPA is proposing, in new subpart Y, to establish technical standards for OB/OD units at §§ 264.708, 264.710, and 264.712 and in the interim status regulations in §§ 265.708, 265.710, and 265.712. Many of the requirements proposed are derived from what most OB/OD permits currently require. In addition, feedback received from EPA's early engagement on the proposed rulemaking confirmed broad consensus among permitting authorities and regulated entities that these technical standards are appropriate and are, in many cases, already in use.

EPA's approach in the proposed regulations is to not prescribe specific quantitative limits, thresholds, or values, but rather to propose §§ 264.708 and 264.710 operating and monitoring requirements that must be considered, and included as applicable, in the subpart Y permit. This is to preserve the flexibility needed for permitting authorities to determine specific conditions on a facility- and waste-specific basis. The permitting authority, with input from the facility's permit application and received during public comment on the draft permit, would determine the appropriate limits for each requirement and issue them as conditions of the final permit. Specifically, EPA is proposing the following requirements for subpart Y OB/OD units.

Under § 264.708(a), EPA is proposing that each waste stream be treated by OB/OD as specified in the permit. This provision includes language for acceptable variation within a waste stream that is deemed acceptable to the permitting authority.

Operating Requirements

Under § 264.708(b), EPA is proposing that optimal parameters for OB/OD operation of the unit be specified to minimize the amount of residue and particulate matter that could cross the facility's boundary, for example, through movement of a plume. Restrictions on timing of OB/OD based on wind speed, wind direction, weather conditions (*e.g.,* precipitation), humidity, cloud ceiling level, and, as appropriate, air pollution status may be necessary to reduce the potential for contaminants to migrate through the air and into communities, where they can deposit onto the soil and leached into groundwater used for irrigation and drinking water. For example, certain restrictions based on wind direction may be needed to reduce plume migration over a nearby community or water body. To ensure set parameters are adhered to, EPA is also proposing that owners/operators be required to monitor and record atmospheric conditions, as applicable. EPA is also proposing that limits, as appropriate, on frequency of OB/OD events and quantity (*e.g.,* by weight and or NEW) be established per event, day, and/or year. In addition, EPA proposes under this section to include restrictions on timing of OB/OD events (*e.g.,* limit OB/OD to daytime hours only to allow for monitoring of plumes or during certain times of the day to minimize disruption to nearby community activities). EPA proposes noise and ground vibration exposure limits for areas outside the facility boundary. In order to comply with noise and ground vibration limits, it may be necessary for the facility to change operations such as atmospheric restrictions, maximum NEW per event, or engineering controls. If the facility is unable to comply with noise or ground vibration limits, the unit may need to be relocated.

Under § 264.708(b)(6), EPA is proposing that specific design and operating requirements for the OB/OD unit be identified. This includes design specifications for the unit (*e.g.,* pan, pit, cage) to include containment devices (*e.g.,* metal lids or covers for burn pans or soil covers for OD units), secondary containment (*e.g.,* liners), and other appropriate engineering controls (*e.g.,* stormwater run-on and run-off controls). Controls and measures could include concrete pads with integrated curbs and sump pumps, lined drainage ditches, collection basins, blast barriers/shields/blankets, and berms. Routine operation and maintenance standards including removal of residues, kickout, and visible surface contamination (*e.g.,* black soot, staining, ejecta) from the unit and surrounding area should be considered. Overall, the design and operation of the unit should prevent or minimize surface, subsurface, and groundwater contamination and aerial dispersion and release and/or migration of residues, kickout, and contaminants into the environment. Considerations for depth to groundwater and distances to surface water, property boundary, and sensitive receptors such as residences, schools, and daycares should also be considered. Surface water, as defined in § 141.2, is ''all water which is open to the atmosphere and subject to surface runoff.'' This definition includes, but is not limited to, lakes, ponds, streams, rivers, coastal waters, reservoirs, and temporary waters from storm surges or similar that are affected by surface runoff. Design and construction of the units should take into account the potential for climate change impacts, such as changes to precipitation and to groundwater levels and flow, potential extreme weather events, and, as appropriate, the potential for sea-level rise. Considerations for areas in 100-year floodplains must also be considered under existing requirements in § 264.18(b).

EPA is proposing § 264.708(b)(8) to require a safe distance plan to be included in the permit. Under § 264.708(b)(9), facilities would have a security plan and controls to minimize public access to the OB/OD units. Security may be done through a variety of methods, one being the addition of fencing the perimeter of the unit including the kickout area.

Public Notice and Outreach Plan

EPA recognizes the importance of, and is committed to, community involvement on a site-specific basis both during the permitting process and during the life of the permitted unit. Public participation plays an integral role in bringing government, private industry, public interest groups, and communities together to engage on important decisions about hazardous waste management facilities.[56] Section 7004(b) of RCRA and EPA RCRA permitting regulations, found at parts 124 and 270, form the foundation for mandatory public participation activities during the permitting, renewal, and modification processes.

In addition to agency-led public participation in these permitting

[56] Executive Order 14096: Federal Register Revitalizing Our Nation's Commitment to Environmental Justice for All.

processes, it is important for facility owners/operators to engage with communities directly, on an ongoing basis, to learn about citizens' concerns and share information; this engagement can provide opportunities for the public to provide valuable information and ideas that improve the quality of public health protection. EPA is proposing § 264.708(b)(10) that owners/operators develop a public notice and outreach plan so that communities are informed of facility actions and can fully consider and raise issues about activities that impact community health. Under § 264.708(b)(10), OB/OD permits would have to include conditions requiring a public notice and outreach plan including notice to the surrounding community of OB/OD activities and events, the method of notice distribution, method(s) for community members to contact the facility with questions or concerns, and the timeframe for any notifications. The outreach plan would not need to include a schedule of OB/OD activities, but it would include the method and frequency of notification to the surrounding communities. All outreach plans would include how information would be made public regarding contaminants emitted, released, or ejected from the OB/OD operations and environmental monitoring results and data (described in the Monitoring Requirements section and § 264.710). The outreach plan should tailor public participation approaches to reach out effectively to the specific populations in the community. Examples include using translation or interpretation services; providing multilingual fact sheets and other information; partnering with community groups or community leaders; and using non-traditional media outlets for outreach.

Monitoring Requirements

Under § 264.710(a), EPA is proposing owners/operators of OB/OD units be required to develop plans for and conduct soil, sediment, surface water, stormwater, groundwater, and air monitoring, as appropriate per site-specific conditions. Monitoring plans would include plans for sampling, analysis, evaluation, reporting, and appropriate response actions. Monitoring plans would address the principal products, constituents, byproducts, and other releases to the environment specific to the wastes treated in the OB/OD unit that have the potential to migrate outside the unit boundary and adversely affect human health and the environment. For each monitored constituent and media type (soil, water, air, etc.), the monitoring plan would include an action level, a concentration or amount where the facility must take appropriate action to mitigate and manage the release of contamination, based on the best available science. EPA notes that many of the requirements set forth in this section of the proposal are already in effect at many facilities. Existing monitoring may be incorporated into the new subpart Y permit if it meets the minimum standards in the proposal. The purpose of this requirement is to ensure that the subpart Y permitted unit is protective of human health and the environment. Because OB/OD units are not contained and have no controls on releases, monitoring of environmental media is critical to ensure hazardous constituents are not migrating beyond the unit boundary. In addition, monitoring would provide for early detection of releases, and allow releases to be addressed in a timely manner. This section of the proposed regulations outlines minimum frequencies for the required monitoring in § 264.710(a). However, in § 264.710(c), EPA is proposing that the minimum monitoring frequencies may be reduced if the unit is not used frequently enough to warrant the outlined monitoring plans, the permit limits the OB/OD treatment activity in the unit, and the Director makes the determination that a reduced monitoring plan is acceptable for the site. Monitoring may not be required for specific media if there are no pathways for contaminants to reach receptors, and the Director makes the determination it is not needed.

Under § 264.710(a)(1), EPA proposes groundwater monitoring requirements, including an upgradient well for background monitoring and that all downgradient wells be located to detect potential releases of contaminants to uppermost flow zones and preferential flow paths (pathways allowing more rapid transport of water into soil and groundwater). Approved groundwater monitoring would continue until the unit completes RCRA closure and is under a post-closure permit as applicable. Such a plan would include piezometers to identify and track changes to groundwater direction and flow, unless the Director determines they are not necessary for the particular unit and facility due to hydrogeologic conditions. EPA is also proposing stormwater and surface water monitoring plans in §§ 264.710(a)(2) and 264.710(a)(3) respectively. Determinations and plans related to groundwater and stormwater should take into account the potential for climate change impacts, such as changes to precipitation and to groundwater levels and flow, potential extreme weather events, and, as appropriate, the potential for sea-level rise. Owners/operators would design and propose plans to detect any potential releases from the OB/OD, and all monitoring would be conducted regularly according to an approved monitoring plan until the unit completes RCRA closure and is under a post-closure permit as applicable. Sediments in surface water would be monitored under an approved sediments sampling plan.

Under § 264.710(a)(4), EPA proposes monthly soil monitoring for the area around the unit. The owner/operator must test for contamination and contamination is found at or above the action level specified in the monitoring plan, the owner/operator would take appropriate response actions as required in the monitoring plan. One possible response is the periodic removal of residuals and contaminated soil. This soil does not include soil or environmental media used as engineering controls such as soil cover for detonation events, but this requirement includes the soil around the unit to detect potential releases into the environment.

EPA is proposing air monitoring plans under § 264.710(a)(5). Owners/operators would design and implement a plan to detect potential releases into the air from the OB/OD unit. At a minimum, these would include an upwind sampling point not impacted by other OB/OD operations to determine a background with ambient concentrations unless the facility makes the assumption there is zero background contamination. The testing would include at least one monitoring station as close to the OB/OD unit as possible downwind of the prevailing wind direction. It should be noted that due to the difficulties of sampling OB/OD emissions (described in recent studies in sampling OB emissions with drones[57]) and relating the results to total emissions and exposure, finding high levels of contaminants in air monitoring results may indicate a need for further investigation or controls, but sampling results that do not find high levels of contaminants do not provide conclusive proof that the OB/OD operation poses no risk.

In § 264.710(a)(6), owners/operators must monitor air smoke plumes during each OB/OD event. The visual

[57] Aurell, J. Field Determination of Multipollutant, Open Area Combustion Source Emission Factors with a Hexacopter Unmanned Aerial Vehicle. *Atmos Environ* (1994). 2017 Oct 20, 166(11): 433–440. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6223134/.*

monitoring must include direction, duration, extent, opacity, and whether the plume goes off facility.

Under § 264.710(a)(7), kickout monitoring and retrieval plans would be required. After each OB/OD event, owners/operators would monitor and record all kickout, including distance from the unit, description of waste, and location for all kickout that goes off the facility boundary. On a weekly basis, the owner/operator would retrieve all kickout that goes off the facility and keep a record of all such kickout. If a landowner refuses entry for this purpose, the facility would still document the ejecta and suspected location. The owner/operator should reduce the NEW per event if the kickout regularly exceeds the unit or facility boundary; they may also request a permit modification to expand the unit boundary. These records would be maintained on-site for the operating life of the unit and until all remaining kickout is found and treated or until RCRA closure and a post-closure permit is issued as applicable.

Recordkeeping, Reporting, Inspection, and Training Requirements

Under § 264.712, EPA is proposing to require recordkeeping, reporting, inspection, and training requirements. The proposed requirements are supplementary to the general permitting requirements found in §§ 264.15 and 264.16, subparts C and D, and § 264.73 to clarify and to add additional provisions that are applicable to OB/OD units. Under § 264.712(a), owners/operators would be required to maintain records of all wastes treated by OB/OD and associated treatment events. This section expands the description and record of treated waste required in § 264.73 to include chemical composition of energetic and inert chemicals, materials, and binders; physical form/dimensions/composition; description of casing; number of items; total weight; and NEW. Much of the information required for the recordkeeping would be included in the waste analysis for the waste stream treated with OB/OD. This information may be referenced as part of the facility records. These records would include a description of wastes treated, time and duration of treatment, atmospheric conditions at time of treatment, and a description of any performance issues (incomplete treatment, smoldering, black plumes beyond facility boundary, releases of ejecta or kickout from the unit boundary) and response actions taken (*e.g.,* collection and reburn events).

In § 264.712(b), EPA is proposing minimum inspection schedules in addition to those found in § 264.15. However, EPA is proposing that the minimum inspection frequencies may be reduced if the unit is not used frequently enough to warrant the outlined inspection plans, the permit limits the OB/OD treatment activity in the unit, and the Director makes the determination that a reduced inspection plan is acceptable for the site. The proposed requirements include inspections of the OB/OD unit at the end of each waste treatment day, to identify and remove untreated wastes, debris, shrapnel, burn residues, and other material, and to identify obvious damage to the treatment unit that would affect unit performance. EPA is also proposing monthly inspections to verify structural integrity of the unit, *e.g.,* ensuring concrete pads remain free of cracks and breaks. The inspection schedule may be reduced if unit activity decreases and the facility notifies the Director.

For training under § 264.712(c), EPA is proposing owners/operators must train all personnel involved in the handling and OB/OD treatment of the waste at least annually and document that training, maintaining the training records until unit closure. The proposed language includes requirements specific to OB/OD units, including that the training must be tailored to the unique nature of the explosive wastes treated and that the training must be updated with each new waste stream or whenever operations change the way treatment is conducted for the unit.

EPA proposes § 264.712(d), reporting requirements specific to owner/operators of OB/OD units. Owners/operators would be required to report any unit failures to the Director within seven days. Unit failures are any event where the unit is damaged or where treatment does not occur in the OB/OD unit as intended. The unit failure cause and the potential correction/repair for the unit must then be submitted to the Director within 30 days of initial failure. Annual reporting would consist of a summary of all documented treatment residues and untreated waste beyond the OB/OD area from the biannual inspection in § 264.712(b). The owners/operators would report all unauthorized releases of hazardous constituents and treatment byproducts immediately. The Director may request records as they deem necessary.

Closure and Post-Closure Requirements

The general requirements for closure and post-closure are under part 264, subpart G, §§ 264.110 through 264.120 and part 265, subpart G, §§ 265.110 through 265.121 for interim status units. Because EPA is proposing technical standards for OB/OD units in the new subpart Y, EPA is also proposing to reference the subpart G standards in the new subpart and include additional standards for OB/OD units in the new §§ 264.714 and 265.714. The subpart G closure standards require that all contaminated equipment, structures, and soils must be properly disposed of or decontaminated. For OB/OD units, this could entail removal of all explosive waste and its decomposition products, leachate, run-off, soils, and subsoils contaminated with explosive wastes as well as containment system components such as liners and liner systems and equipment contaminated with explosive waste and/or leachate.

In addition to the subpart G standards, EPA is proposing to add to subpart Y at § 264.714 that, if after conducting removal and decontamination and making all reasonable efforts to remove or decontaminate any contaminated components, soils, subsoils, structures, and equipment, the owner/operator finds that not all contaminated soils and subsoils can be practicably removed or decontaminated, the owner/operator must close the unit and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills at § 264.310. EPA believes that this proposed regulatory language is needed based on the closure case study EPA conducted for nine OB/OD facilities (see footnote 5). The results of the study show that, of the nine facilities that have performed closure, most continue to have contamination in the soil, subsoil, and groundwater that cannot be removed or remediated to required action levels for the specified future land use. In addition, some of these facilities' closure plans do not include the necessary monitoring for the waste left in place. EPA expects that adding this language will ensure application of the appropriate closure standards and thus, more protective measures to be enacted.

Should an OB/OD unit be closed as a landfill unit and a cover or cap is emplaced to prevent migration of contamination, § 264.310 requires that the integrity and effectiveness of the final cover be maintained during the post-closure period. EPA proposes at § 264.714(b), in addition to the requirements of § 264.310, to require that, before any final engineered cap or vegetation cover is put in place, any remaining waste explosives and waste explosive residues concentrations be remediated to levels to ensure that the

explosive safety hazard is no longer present. EPA proposes this additional requirement based on the safety and environmental hazards associated with waste explosives and unexploded ordnance (UXO) when left in place. There have been several instances where waste explosives and UXO were left in place, or consolidated and buried, and covered, causing a range of issues from underground fires to flooding and frost eroding the cover and exposing the waste.[58] As a result, EPA believes that waste explosives, UXO, and explosive waste residues must be remediated and removed to levels that no longer present an explosive safety hazard prior to placement of a cap or cover. However, EPA does believe that a cover or cap would be appropriate after removal and when contaminated soil has been remediated to levels that the explosives concentration no longer presents an explosives safety hazard and proposes this condition accordingly. Explosive materials left in the environment present unique safety hazards because the material is unreacted and thus, there is potential for an accidental explosion when disturbed. During the closure process, soils containing less than 10 percent explosives by weight are considered to be unreactive.[59] [60] Therefore, if closure activities successfully remove the safety hazard as verified by testing to determine the explosive concentration, a cover or cap would be acceptable.

Summary and Request for Comment

EPA is proposing to establish technical standards specific for OB/OD units as part of a new subpart Y. Should EPA finalize this rulemaking and after the effective date of the final rule, OB/OD units would be permitted in accordance with the new standards under subpart Y, rather than the subpart X performance-based standards. EPA requests comments on the proposed technical standards in §§ 264.708, 264.710, and 264.712. In addition, EPA requests comment on whether additional technical standards should be incorporated for OB/OD units and on the proposed requirements for closure and post-closure in addition to the subpart G standards. EPA seeks comment on the public notice and outreach plan requirements, including what elements will best support meaningful involvement. EPA also requests comment on whether more frequent reporting and data submission requirements would be appropriate and on additional requirements recordkeeping requirements to document movement of waste explosives between storage and treatment. Based on the level of support in public comments, EPA may include additional technical standards or other closure and post-closure requirements in the final rulemaking.

H. Wastes Prohibited From OB/OD

Introduction and Description of Wastes To Prohibit From OB/OD

As discussed in section II.A., OB/OD lacks controls needed for complete combustion and for control of emissions. EPA is thus particularly concerned about OB/OD treatment of waste streams that contain chemicals or explosive material that require very high temperatures for sustained periods of time to ensure adequate destruction and/or ensure that hazardous byproducts or products of incomplete combustion do not form. In addition, EPA is concerned with OB/OD treatment of wastes that may release particularly toxic or dangerous contaminants that would threaten human health and the environment.

Many chemicals or wastes that are difficult or impossible to destroy by OB/OD and/or would pose acute threats to human health and the environment such as chemical, nuclear, and biological agents, are already restricted or prohibited from treatment by OB/OD. Most permitting authorities also restrict or prohibit treatment of certain waste streams by OB/OD in permits. However, because EPA had not previously promulgated specific technical standards for OB/OD units, the RCRA regulations remain silent on this issue. In addition, EPA is aware of emerging chemicals or contaminants of concern (see footnote 3), like certain insensitive high explosive (HE) formulations, for which treatment by OB/OD is ineffective or could pose significant risk to human health and the environment through dispersal of contaminants.

Proposed Revisions and Supporting Rationale

The wastes containing the chemicals or explosive materials discussed in this preamble either adversely affect or pose a threat to human health and the environment. This is because many of these chemicals have high mobility in air, soil, and groundwater resulting in contamination of soil, water, plants, and food, as well as direct exposure to humans by inhalation, ingestion, or dermal contact. Also, some of these chemicals can transform into more toxic compounds, enhance the solubility and migration capacity of other contaminant metals, persist in the environment, and bioaccumulate in the food chain. Treatment of these wastes by OB/OD can cause the dispersal of these chemicals into the air and onto the ground, providing a pathway to enter the soil, waterways, livestock, and crops.

For these reasons, including that many RCRA permits already prohibit many of the chemicals and explosive items discussed, EPA is proposing §§ 264.708(b)(11) and 265.708(b)(11) to prohibit treatment by OB/OD of chemical weapons,[61] mixed waste containing depleted uranium (DU), white and red phosphorus, Picatinny Arsenal Explosive-21 (PAX-21), and PCBs. The proposed wastes to prohibit will not apply in emergency response situations.

[58] In Badger, WI, explosives and explosive residues were buried, and a prescribed burn ignited the residues causing an underground fire for 1½ days. Ft. Wainwright, AK, had flooding and frost, which eroded the cover, exposing munitions that the public accessed.

[59] *Approaches for the Remediation of Federal Facility Sites Contaminated with Explosive or Radioactive Wastes;* EPA Handbook, Office of Research and Development; EPA/625/R–93/013, September 1993. See p.30.

[60] EPA Federal Facilities Forum Issue Paper: Site Characterization for Munitions Constituents. EPA–505–S–11–001, January 2012. See p. 136.

[61] In this proposal, EPA is proposing the definition in 32 CFR 179.3: ''means generally configured as a munition containing a chemical compound that is intended to kill, seriously injure, or incapacitate a person through its physiological effects. CWM includes V- and G-series nerve agents or H-series (mustard) and L-series (lewisite) blister agents in other-than-munition configurations; and certain industrial chemicals (*e.g.,* hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)) configured as a military munition. Due to their hazards, prevalence, and military-unique application, chemical agent identification sets (CAIS) are also considered CWM. CWM does not include riot control devices; chemical defoliants and herbicides; industrial chemicals (*e.g.,* AC, CK, or CG) not configured as a munition; smoke and other obscuration-producing items; flame and incendiary-producing items; or soil, water, debris, or other media contaminated with low concentrations of chemical agents where no CA hazards exist. For the purposes of this Protocol, CWM encompasses four subcategories of specific materials: (1) CWM, explosively configured are all munitions that contain a CA fill and any explosive component. Examples are M55 rockets with CA, the M23 VX mine, and the M360 105-mm GB artillery cartridge. (2) CWM, nonexplosively configured are all munitions that contain a CA fill, but that do not contain any explosive components. Examples are any chemical munition that does not contain explosive components and VX or mustard agent spray canisters. (3) CWM, bulk container are all non-munitions-configured containers of CA (*e.g.,* a ton container) and CAIS K941, toxic gas set M–1 and K942, toxic gas set M–2/E11. (4) CAIS are military training aids containing small quantities of various CA and other chemicals. All forms of CAIS are scored the same in this rule, except CAIS K941, toxic gas set M–1; and CAIS K942, toxic gas set M–2/E11, which are considered forms of CWM, bulk container, due to the relatively large quantities of agent contained in those types of sets.

Chemical Weapons

Chemical weapons were produced by the United States from World War I to 1968. These weapons were never used in battle and are now obsolete and deteriorating with time. These chemical weapons are made of nerve agents (sarin, tabun, VX) and vesicant, or blister agents (sulfur mustards agents H/HD and HT, lewisite).[62] Nerve agents are like organophosphate pesticides, but much more potent, and exert their adverse effects by interfering with the nervous system. Humans can be exposed to nerve agents through inhalation, ingestion, skin, or eye contact. Exposure to low or moderate doses of sarin can cause several effects including but not limited to chest tightness, cough, rapid breathing, confusion, and drowsiness among many other effects. Large doses of this agent can cause loss of consciousness, convulsions, paralysis, and respiratory failure possibly leading to death.[63] Exposure to tabun causes adverse effects including but not limited to miosis, nausea, vomiting, dyspnea, and cramping. Severe effects include loss of consciousness, seizures, muscular twitching, floppy paralysis, secretions from nose and mouth, apnea, and death.[64] VX is persistent in the environment and exposure to this agent has effects similar to those of tabun.[65]

Vesicants or blister agents combine with proteins and deoxyribonucleic acid (DNA) to cause cellular changes immediately after exposure. Clinical effects include skin erythema, blistering, pharyngitis, cough, dyspnea, conjunctivitis, burns, nausea, and vomiting. Other effects include but are not limited to necrosis, blindness, atrioventricular block, cardiac arrest, conclusions, coma, anemia, hemorrhage, and bone marrow suppression, among others.[66]

Congress ordered the destruction of all U.S. chemical weapons in The DoD Authorization Act, 1986 (Pub. L. 99–145) and for that process to be carried out by the U.S Army in a manner to protect the environment, the public, and workforce.[67] Subsequent National Defense Authorization Acts directed research into alternatives to incineration for chemical weapons, created Chemical Demilitarization Citizens' Advisory Commissions, and formed the Assembled Chemical Weapons Assessment program (ACWA).[68] ACWA activities have continued since its creation, and at the time of this proposal, the Army has destroyed the remaining U.S. chemical weapons stockpile. The final two facilities that recently completed their activities were using alternative technologies. There are no chemical weapons being treated via OB or OD today. To remain consistent with current bans and practices, EPA is proposing to ban all chemical weapons from OB/OD.

Mixed Waste Containing Depleted Uranium

Mixed waste, as defined in § 266.210, is waste that contains both RCRA hazardous waste and source, special nuclear, or byproduct material subject to the Atomic Energy Act of 1954. Thus, waste explosives (which are RCRA hazardous waste due to their reactivity characteristic) and which contain depleted uranium are considered mixed wastes under RCRA. EPA has promulgated a conditional exemption from the regulatory definition of hazardous waste for low-level mixed waste in part 266, subpart N; however, treatment by OB/OD is not eligible for this condition exemption. Specifically, § 266.235 prohibits under the conditional exemption the treatment of mixed waste that cannot be done in a tank or container without a permit.

Uranium ore occurs naturally in the environment and contains several forms of uranium known as isotopes (U-234, U-235, and U-238). All uranium isotopes are radioactive; however, only one of these isotopes, Uranium-235 (U-235),[69] provides the fuel used to both produce nuclear power and in development of nuclear weapons. In nature, U-235 only makes up a very small part of the uranium ore. Given its importance for nuclear power and nuclear weapons technology, U-235 is often removed from the natural uranium ore and concentrated through a process called uranium enrichment. DU is the material left behind after enrichment. As with natural uranium ore, DU is radioactive.[70] Radioactive contaminants can be released to the environment if munitions or other materials containing DU are open burned or detonated.

Exposure to DU occurs through inhalation, ingestion, and skin contact.[71] The most likely route of DU exposure is through inhalation. Burning or detonating waste containing DU does not destroy or treat the DU to make it less radioactive or toxic. OB/OD causes DU to enter the air where it is suspended in the atmosphere, eventually depositing on the ground and potentially migrating to surface and groundwater, where it poses a risk of contaminating plants and livestock. Ingestion of DU could then occur through the consumption of the contaminated livestock, vegetation, and drinking water.[72] Skin contact itself is not considered a hazard, but DU can enter the body through open wounds. DU is toxic in humans and can cause detrimental health outcomes. High concentrations of uranium retained in the kidneys have potential to damage the organ and cause renal failure. Due to the radioactive nature of the waste, DU can irradiate the organs once inside the body. Increased cancer risk is also a concern, caused by exposure to radiation emitted from DU.

It is EPA's understanding that no OB/OD units currently treat mixed waste containing more than trace amounts of DU. Because of its acute effects to human health and the environment, EPA is proposing to prohibit treatment by OB/OD of mixed wastes containing more than trace amounts of DU.

White and Red Phosphorus

White phosphorus[73] is produced from rocks containing phosphate and used in the manufacture of munitions, pyrotechnics, explosives, smoke bombs, and other uses.[74] Yellow phosphorus is another term for white phosphorus that contains impurities in the crystalline structure causing yellowing. White phosphorous is pyrophoric and ignites in contact with oxygen. Upon auto-ignition with air, white phosphorous can form a phosphoric acid residue causing further contamination and damage. Red phosphorus forms when

[62] History of U.S. Chemical Weapons Elimination, *https://www.cdc.gov/nceh/demil/history.htm.*

[63] Sarin: Exposure, Decontamination, Treatment, *https://emergency.cdc.gov/agent/sarin/basics/facts.asp.*

[64] Tabun (GA): Nerve Agent, *https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750004.html.*

[65] VX: Nerve Agent, *https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750005.html.*

[66] Vesicant/Blister Agent Poisoning, *https://emergency.cdc.gov/agent/vesicants/tsd.asp.*

[67] Facts: Assembled Chemical Weapons Alternatives Program Legislation, *https://www.peoacwa.army.mil/2021/03/12/facts-peo-acwa-program-legislation.*

[68] Assembled Chemical Weapons Alternatives, *https://www.peoacwa.army.mil/wp-content/uploads/ACWA_Program_Legislation_1985-2022_FINAL_21April2022.pdf.*

[69] Uranium-235, *https://comptox.epa.gov/dashboard/chemical/details/DTXSID80872929.*

[70] Depleted Uranium, *https://www.epa.gov/radtown/depleted-uranium.*

[71] Chemical Effects of DU, *https://health.mil/Military-Health-Topics/Health-Readiness/Environmental-Exposures/Depleted-Uranium/Effects-and-Exposures/Chemical-Effects.*

[72] Depleted Uranium, *https://www.iaea.org/topics/spent-fuel-management/depleted-uranium.*

[73] White Phosphorus (P4), *https://comptox.epa.gov/dashboard/chemical/details/DTXSID90923991.*

[74] Phosphorus Hazard Summary, *https://www.epa.gov/sites/default/files/2016-09/documents/phosphorus.pdf.*

white phosphorus is exposed to high heat or light radiation, causing the crystalline structure of white phosphorus to become amorphous. Due to this amorphous nature, red phosphorus is more stable than white/yellow phosphorous under standard conditions. These chemicals are waxy crystalline solids.[75]

Exposure routes of white and red phosphorus include absorption through the skin, inhalation, and ingestion. This chemical can cause contamination of the local air, waterways, fish, birds, and soils.[76] When white phosphorus enters water with low oxygen, it may degrade to a highly toxic compound called phosphine. Phosphine accumulates in fish that live in contaminated water bodies and can also remain intact in deep soil at low oxygen concentrations. Phosphine is known to cause respiratory, neurological, and gastrointestinal effects. Some of the symptoms include headaches, drowsiness, vomiting, gastrointestinal distress, cough with fluorescent green sputum, and pulmonary irritation and edema, among others. Animal studies have shown that phosphine can cause effects to the liver, kidney and spleen, and other effects including paralysis, convulsions, and dyspnea.[77]

White and red phosphorus can cause severe irritation, second to third degree burns, spasmodic blinking, increased sensitivity to light, and damage to the cornea upon eye contact. This substance can be absorbed through the skin and cause systemic effects. If inhaled, it can cause systemic effects, pulmonary edema, and upper respiratory tract irritation. Ingestion of phosphorus can cause nausea, vomiting, diarrhea, severe abdominal pain, burning pain in the throat along with intense thirst, and death may occur due to cardiovascular collapse.[78]

Given the extreme reactivity of white and red phosphorous with oxygen and the severe health impacts caused by exposure, EPA is proposing to prohibit treatment of wastes containing white and red phosphorous by OB/OD.

[75] White phosphorus, *https://www.acs.org/content/acs/en/molecule-of-the-week/archive/w/white-phosphorus.html#:~:text=White%20phosphorus%20is%20one%20of,darkened%20from%20exposure%20to%20lightml.*

[76] White Phosphorus—ToxFAQs, *https://www.atsdr.cdc.gov/toxfaqs/tfacts103.pdf.*

[77] Phosphine Hazard Summary, *https://www.epa.gov/sites/default/files/2016-09/documents/phosphine.pdf.*

[78] White Phosphorus: Systemic Agent, *https://www.cdc.gov/niosh/ershdb/emergencyresponsecard_29750025.html.*

Improved Conventional Munitions (ICMs) and Submunitions

ICMs and cluster bombs are munitions characterized by the delivery of two or more antipersonnel, anti-material, or anti-armor submunitions (also known as bomblets) by a parent munition.[79] ICMs and cluster bombs employ submunitions to affect an area with more than one target, such as dispersed enemy formations, ground and air defense units, and other mixed unit targets.[80] OD of these types of wastes has resulted in sites that cannot be adequately cleaned up due to the presence of dangerous kickout which may be armed.[81] This results in permanent restrictions on any future land use, as is the case of Fort Wingate Depot Activity in New Mexico.[82] An Army policy dated March 2, 2001, restricted the maintenance, characterization, clearance of ranges and other areas known or suspected of containing ICMs and submunitions.

Because treatment by OB/OD causes dangerous dispersal, rather than destruction, of these wastes, and land unsuitable for future use, EPA is proposing to prohibit treatment of ICMs and submunitions by OB/OD.

Picatinny Arsenal Explosive—21 (PAX-21)

Insensitive munitions (IM) are munitions developed to operate with the same performance as conventional/traditional munitions but more safely as they are less sensitive to external stimuli such as heat, shock, or impact.[83] [84] Insensitive high explosive (HE) formulations are the chemical constituents in the energetic material and other materials that add to the munitions insensitivity.[85] This includes solid high-energy materials, energetic plasticizers which alter the mechanical properties to increase material flexibility, and polymeric binders, which bind all the chemicals together.[86]

The incomplete detonation of IM and insensitive HE formulations results in unreacted materials being released to the environment, potentially causing adverse effects to the human health and the environment. Detonation tests were conducted on PAX-21 as part of the Strategic Environmental Research and Development Program (SERDP) Project ER–2219 and results showed a high deposition of ammonium perchlorate.[87] [88] Insensitive high explosive formulations have been shown to have low sorption to soil resulting in a high aqueous solubility, and potential to be transported to groundwater. Due to the greater likelihood of dispersal, rather than destruction, by OB/OD and the adverse health impacts associated with these insensitive HE formulations, EPA is proposing to prohibit treatment of munitions containing PAX-21 by OB/OD.

Polychlorinated Biphenyls

PCBs are a group of compounds manufactured from 1929 until manufacturing was banned under the Toxic Substances Control Act (TSCA) of 1976 and subsequent EPA regulations in 1979 (44 FR 31514, May 31, 1979). PCBs consist of two connected phenyl rings with a number of chlorine atoms; the number and location of chlorine atoms on the rings determine the exact chemical, physical, and toxicological properties. PCBs have been demonstrated to cause cancer in animals, in addition to many other severe health effects including adverse effects to the immune, reproductive, nervous, and endocrine systems.[89] [90]

The Federal PCB Regulations currently prohibit the OB of PCBs under § 761.50(a)(1), ''No person may open

[79] Improved Conventional Munitions and Submunitions, *https://apps.dtic.mil/sti/pdfs/ADA402342.pdf.*

[80] Improved Conventional Munitions Policy, *https://csbaonline.org/uploads/documents/Improved_Conventional_Munitions_FINAL3.pdf.*

[81] A Global Overview of Explosive Submunitions, *https://www.hrw.org/sites/default/files/related_material/submunitions.pdf.*

[82] FORT WINGATE DEPOT ACTIVITY Base Realignment & Closure Installation Action Plan, *https://www.ftwingate.org/docs/pub/FWDA_IAP_FY07.pdf.*

[83] Anniyappan, M., Talawar, M.B., Sinha, R.K. *et al.* Review on Advanced Energetic Materials for Insensitive Munition Formulations. *Combust Explos Shock Waves.* (2020). 56, 495–519. *https://doi.org/10.1134/S0010508220050019.*

[84] NATO Standard—Policy for Introduction Assessment of Insensitive Munitions (IM).

[85] The physical design and materials of the munition also are developed to be insensitive.

[86] Emily May Lent, Glenn Leach & Mark S. Johnson (2021), Development of health-based environmental screening levels for insensitive munitions constituents, Human and Ecological Risk Assessment: *An International Journal,* 27:6, 1543–1567, DOI: 10.1080/10807039.2020.1859352.

[87] Characterization of Residues from the Detonation of Insensitive Munitions SERDP Project ER–2219, *https://apps.dtic.mil/sti/pdfs/AD1053694.pdf.*

[88] Walsh MR, Walsh ME, Ramsey, CA, Thiboutot S, Ampleman G. Perchlorate contamination from detonation of insensitive high-explosive rounds. *J Hazard Mater.* 2013 Nov 15; 262:228–33. doi:10.1016/j.hazmat.2013.08.045.

[89] PCBs: Cancer Dose-Response Assessment and Application to Environmental Mixtures, *https://www.epa.gov/sites/default/files/2015-10/documents/pcbs_cancer_dose-response_assessment_and_application_to_environmental_mixtures.pdf.*

[90] Learn About Polychlorinated Biphenyls, *https://www.epa.gov/pcbs/learn-about-polychlorinated-biphenyls-pcbs#healtheffects.*

burn PCBs. Combustion of PCBs approved under § 761.60 (a) or (e), or otherwise allowed under part 761, is not open burning.'' This ban includes any activity conducted at RCRA OB/OD units as those units are not approved for disposal under TSCA. To be consistent with the current PCB regulations, EPA is proposing to include a mirror provision in the RCRA regulations clarifying that treatment of PCB-containing waste by OB/OD is prohibited.

I. Delay of Closure for OB/OD Units

Introduction and Description

Owners or operators of permitted and interim status TSDFs must comply with the facility closure standards in parts 264 and 265, subpart G, and the specific standards applicable to the unit in which they are managing hazardous waste. These closure standards require all owners/operators to treat, remove from the unit or facility, or dispose of on-site all hazardous waste in accordance with the approved closure plan within 90 days after receiving the final volume of hazardous waste or non-hazardous waste, or within 90 days after approval of the closure plan, whichever is later (§§ 264.113(a) and 265.113(a)). In addition, the owner/operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes or non-hazardous wastes (§§ 264.113(b) and 265.113(b)).

The closure standards at §§ 264.113 and 265.113 allow additional time for closure or ''delayed closure'' if the owner/operator can make certain demonstrations. To qualify for delayed closure, the owner/operator must demonstrate that either the closure activities will require more time than allotted by the regulation, or that specific conditions related to recommencing operation of the unit after final receipt of hazardous or non-hazardous wastes can be met. For the latter, the owner/operator must demonstrate that the unit (or facility) has capacity to receive more waste, that there is a reasonable likelihood that operation of the unit will recommence within one year, and that closure of the unit would be incompatible with continued operation of the site. The owner/operator must also demonstrate that they have taken and will continue to take all steps to prevent threats to human health and the environment, including compliance with all applicable permit requirements.

Any hazardous waste management facility can qualify for delayed closure by demonstrating they meet the regulatory requirements. The existing regulatory requirements allow for OB/OD units to delay closure; however, there are some OB/OD units that are impacted by activities that do not include waste management. EPA believes that additional bases for delayed closure would be appropriate for these OB/OD units, considering circumstances unique to them. Specifically, these OB/OD units include those used for actions that involve munitions that are used for their intended purpose. Munitions used for their intended purpose include those used during training exercises, weapons testing, and range cleanup activities (see footnote 26). For these activities, the OB/OD unit is no longer treating waste explosives but continues to be used for activities that in effect, are using the same or similar materials to the RCRA hazardous waste. Therefore, it would be impractical to clean up and close OB/OD units that are no longer treating waste explosives, but that continue to use products that are not subject to RCRA that contribute the same or similar contaminants. In another scenario, some OB/OD units no longer treat hazardous or solid wastes but continue to receive waste explosives contaminants from adjacent operations, such as an active OB/OD unit or an active military range. Again, it would be impractical to require closure of the inactive unit when it will continue or has the potential to continue to receive the same or similar contaminants. However, these scenarios are not specifically addressed under the existing demonstrations in § 264.113 that allow more time for closure. To address these situations, EPA proposes to amend the delayed closure regulations and add a new section specific to OB/OD units under the new subpart Y—Open Burning and Open Detonation Units.

Proposed Revisions and Supporting Rationale

As noted, the current delayed closure standards do not address the circumstances unique to OB/OD units when they no longer receive hazardous or solid wastes but continue to receive contaminants from products or when adjacent activities continue to contaminate an inactive unit. Therefore, EPA proposes to include eligibility requirements for delayed closure of these OB/OD units in the new subpart Y regulations at §§ 264.713 and 265.713 titled Closure; time allowed for closure for certain activities. Also, EPA proposes to revise §§ 264.113(b) and 265.113(b) to cross-reference the newly proposed §§ 264.713 and 265.713 to direct the reader to the proposed additional bases for delayed closure for these unique circumstances. Last, consistent with current delayed closure requirements, EPA reiterates that the RCRA permit must be retained for the OB/OD unit until closure is completed.

As discussed above, EPA believes that additional bases for delayed closure would be appropriate for certain activities at OB/OD units, due to unique situations related to these types of units. In particular, explosive or energetic products may continue to be used within the unit, or the unit may continue to receive munitions constituents or explosive waste contaminants from adjacent operations. The new regulations in part 264, subpart Y, §§ 264.713 and 265.713 will address these situations for delayed closure only for these activities at OB/OD units. Otherwise, OB/OD units seeking delayed closure outside of these situations must demonstrate eligibility according to §§ 264.113 and 265.113.

EPA proposes to establish that OB/OD units used for activities such as training, weapons testing, and range cleanup are eligible for delayed closure under the proposed new regulations at §§ 264.713(a)(1) and 265.713(a)(1), because the existing closure regulations that allow delayed closure for hazardous waste management facilities do not account for activities unique to these OB/OD units. As with any other unit that has not certified closure, the OB/OD unit must maintain its permit during this delayed closure period. In addition to the unit's existing permit conditions, EPA proposes that the new monitoring requirements at § 264.710 be applicable conditions which include monitoring of soil, groundwater, stormwater, surface water, and air as appropriate to the location and circumstances of use of the unit. These robust monitoring requirements serve to better ensure that contaminants do not migrate beyond the unit's boundary during the delayed closure period. The proposed requirements are located in the new §§ 264.713(a)(3) and 265.713(a)(3).

In addition, for OB/OD units that are no longer treating hazardous wastes, but that are located within or adjacent to an active OB/OD unit or active military range, EPA also proposes to establish that these OB/OD units are eligible for delayed closure under the new regulations. Again, EPA believes that this is another situation unique to OB/OD units, which the existing regulations do not account for. For this situation, EPA is proposing that a requirement be included in the new regulation, in addition to complying with monitoring

requirements in § 264.710, that a demonstration be made showing the potential for contamination from the adjacent activities as a condition of eligibility for the need for delayed closure under these circumstances. EPA proposes that a demonstration would include submission of maps illustrating the boundaries of the activities that overlap with the inactive unit's boundary, information about the activities that could impact the boundary of the inactive unit, meteorological conditions that could cause deposition of contaminants within the inactive unit boundary, and lastly, that all steps to prevent threats to human health and the environment have been taken and all applicable permit requirements, or interim status requirements, are being complied with. The proposed requirements are located in the new §§ 264.713(a)(2) and 265.713(a)(2).

As a final note, under either of these situations, the inactive OB/OD unit in delayed closure status may be used for emergency treatment if that need arises. However, that action would fall under RCRA such that the unit's permit conditions would be applicable to the use of the unit. Although the explosives or munitions being treated under the emergency response are exempt from most RCRA provisions, including the need to obtain a permit, the unit itself may still have permit conditions that must be met. For example, when the OB/OD location is used for emergency response treatment, the applicable (and perhaps modified) operating, monitoring, and recordkeeping permit conditions must be complied with. For inactive OB/OD units that no longer treat hazardous waste, but which may be impacted by waste explosives from adjacent operations, such as emergency response to munitions or an active military range, it may not be appropriate to require regular monitoring of the OB/OD unit because the location may be receiving munitions constituents from non-RCRA munitions activities occurring near the inactive OB/OD units. Thus, it may be appropriate to modify monitoring as appropriate to the location and circumstances of use of the unit. For more information on emergencies and RCRA permitting, see Section K. Emergency Provisions.

In regard to the timeline for notification of closure of OB/OD units, the closure regulations at §§ 264.112(d) and 265.112(d) do not specifically refer to OB/OD units. For the time allotted for notification of the expected date to begin partial and final closure of units, EPA proposes to modify §§ 264.112(d)(1) and 265.112(d)(1) by adding OB/OD units to the types of units listed. The current regulations specify the time at which the notification of partial and final closure must occur according to the type of unit. For surface impoundments, waste piles, land treatment or landfill units, notification is required at least 60 days prior to the date in which partial or final closure is expected to begin. For treatment or storage tanks, container storage, incinerator units or boilers and industrial furnaces, notification is required at least 45 days prior. Since OB/OD units are treatment units that resemble land treatment units, EPA is proposing to revise paragraph (d)(1) to include OB/OD units in the list of units that must notify at least 60 days prior.

Summary and Request for Comment

EPA believes that certain circumstances unique to OB/OD units should qualify for delayed closure when they: are used for activities in which military munitions are used as intended—product use, or they continue to receive munitions constituents or explosive waste contaminants from the active military range the unit is located on or from an adjacent OB/OD unit. EPA believes that the RCRA permit would address potential threats to human health and the environment while closure is delayed. Based on the rationale provided, EPA is proposing to add these unique circumstances that establish conditions for when certain OB/OD units would also be eligible for delayed closure at §§ 264.713 and 265.713 and make conforming changes to the existing regulations at §§ 264.112 and 265.112, and 264.113 and 265.113. EPA requests comment on the proposed additions for delayed closure and the associated timeframes for notification of beginning and completing closure.

J. Minimum Safe Distances for Treatment of Waste Explosives

Introduction and Description

The 1980 final interim status standards rule included a table of minimum safety distances developed by DoD to protect persons in the open from fragmentation, flying debris, or the effects of overpressure (see footnote 10). This table is currently located at § 265.382. The regulation notes that OB/OD must be conducted in accordance with the minimum distances specified in the table in a manner that does not threaten human health or the environment. Thus, the purpose of the safe distance table is to provide sufficient safe distance between the OB/OD units and the location of persons, property of others, and environmental receptors (*e.g.,* water bodies, agricultural land). These distances are to be included in permits issued to OB/OD units as applicable provisions according to the 1987 final subpart X permitting standards rule (see footnote 13). Since codification of the table in 1980, EPA has learned that the distances listed may be outdated and are now either over-protective in the case of OB or under protective in the case of OD. While being over-protective is still safe, the distances that are under protective are of concern.

Potential Revisions and Supporting Rationale

EPA believes that minimum safe distances continue to be important for protection of persons in the open, property of others, and human health and the environment, and seeks information on whether the distances listed in the table are in fact inaccurate so that appropriate updates can be made if necessary. It is EPA's preference to maintain a table in the regulation since it is straightforward and can be readily incorporated into permits.

The distances in the table were developed and published by DoD and subsequently incorporated into EPA's 1980 final interim status regulations. However, it appears that the method for calculating those distances is not the same as the method currently used by DoD, thus raising the possibility that the existing distances may not be protective. Presently, DoD calculates safe distances according to the Defense Explosives Safety Regulation (DESR) 6055.09.[91] EPA's reading of 6055.09 is that it is intended for determining separation distances for siting explosives storage, handling, and treatment areas within the property boundaries and determining the maximum allowable amount of explosives to be treated at the OB/OD units. Moreover, the DESR 6055.09 includes several pages of calculations, instructions, and references based on individual explosive items.

According to the DESR 6055.09 the minimum safe distances for the open burning will depend on the type of waste explosives being burned (bare, ammunition and explosives in packaging that may produce debris, ammunition and explosives in casings that may produce fragments, or static firing of motors). For waste bare explosives, minimum safe distances are calculated using the below quantity-distance (QD) formula:

[91] Defense Explosives Safety Regulation 6055.09 Edition 1, *https://denix.osd.mil/ddes/home/home-documents/desr-6055-09/.*

$D = K * W^{1/3}$

where ''*D*'' is the minimum safe distance (units of ft), ''*K*'' is a factor (also called K-factor) that is dependent upon the risk assumed or permitted (units of $ft/lb^{1/3}$), and ''*W*'' is the NEW (units of lbs). For bare explosives the K-factor is 40. There is a minimum safe distance of 75 ft if the distance calculated from the QD formula is less than 75 ft.

The minimum safe distance from the open burning of waste explosives in packaging that may produce debris will be the larger of the distance calculated using the QD formula or the distance calculated using the hazardous fragment distance (HFD) formula. The HFD is defined as the distance at which the density of hazardous fragments becomes 1 per 600 square feet (ft^2), and it can be calculated as follows:

$HFD = -1133.9 + [389 * \ln(NEW)]$

where ''*ln*'' is the natural logarithm. Calculated values can be found on the ''Structure'' column of Table V3.E3.T2. of the DESR 6055.09. This formula applies to NEW larger than 31 lbs up to 450 lbs. If NEW is 31 lbs or less, the minimum safe distance is 200 ft. For example, the distance using the QD formula for 50 lbs of NEW is 147 ft and the obtained distance from the Table V3.E3.T2 of the DESR 6055.09 (or the distance calculation using the HFD formula) is 388 ft. Therefore, the minimum safe distance would be the latter, as the QD formula resulted in a distance less than the minimum of 200 ft and less than the calculated value (or obtained from the table) of 388 ft.

The minimum safe distance from the open burning of waste explosives in casings that may produce fragments, and open burning of rocket motors will be the larger distance of the calculated using the QD formula or the HFD in accordance with paragraph V3.E3.1.2.1. of the DESR 6055.09. This paragraph outlines different studies that can be conducted to determine the minimum safe distances for fragments. In the absence of proper studies, the hazardous debris distances (HDD) from Table V3.E3.T11. of the DESR 6055.09 apply. This formula is based on a maximum credible event. The HDD is the distance at which the areal number density of hazardous debris becomes one per 600 square feet (ft^2). The HDD can be calculated using the below formula and has a minimum distance of 200 ft.

$HDD = -1133.9 + [389 * \ln(NEW)]$

This formula applies to NEW larger than 31 lbs up to 450 lbs. If NEW is 31 lbs or less, the minimum safe distance is 200 ft.

The minimum safe distances for the open detonation of wastes explosives that will not produce fragments will be the larger of a minimum distance of 200 ft or the distance calculated using the QD formula with a K-factor of 328. If there are fragments produced from the open detonations, the minimum safe distance will be the larger of a minimum distance of 200 ft, the distance calculated using the QD formula with a K-factor of 328, or the maximum fragment distance (MFD) in accordance with paragraph V5.E3.2.7. of the DESR 6055.09. That is to say that it can be obtained from greater of the two distances given in Tables V5.E3.T1. or V5.E3.T2. for the MFD, or an item-specific calculation in accordance with DDESB Technical Paper 16.[92] The MFD is defined as the calculated maximum distance to which any fragment from the cylindrical portion of an ammunition and explosive case is expected to be thrown by the design mode detonation of a single ammunition and explosive item. The MFD will depend on the type and diameter of the munition.

EPA is not proposing revisions to the table in § 265.382 because of the uncertainties surrounding how to accurately develop and provide minimum safe distances that can be easily referenced. However, to the extent that commenters can provide a workable solution, EPA may make regulatory changes in the final rule. EPA asks that commenters keep in mind that EPA is interested in methods that factor in the distance from the OB/OD units to persons in the open, property of others, and environmental receptors (*e.g.,* water bodies, agricultural land) beyond the facility boundary, that would be protected. For example, would it be possible to calculate the distance, on a site-specific basis, using the maximum permitted limit in NEW for the OD unit(s)? While this method of calculation, if feasible, would not result in a table of distances that all facilities could use, the method itself could be finalized and published for use on a site-specific basis. Should EPA adopt the DESR 6055.09 calculations for the minimum safe distances? Should EPA make changes in the final rule it would also include the changes in the proposed part 264, subpart Y standards for OB/OD as well.

Summary and Request for Comment

Through discussions with DoD, EPA has learned that the distances in the table at § 265.382 may be either overprotective or not protective enough. EPA believes it is important to address circumstances in which its regulation may no longer be protective. It is EPA's preference to keep a table in the regulation similar to the current one because it is easy to understand and implement versus relying on the extensive calculations and site-specific and explosive-specific inputs such as that required by DESR 6055.09.

To this end, EPA would like to know whether commenters are aware of any methods that could be used to determine safe distances between OB/OD units and the location of persons in the open, the property of others, and environmental receptors. Ideally, the method would allow for totals to be calculated based on maximum NEW according to OB events and to OD events and could be either input into a table for reference by facilities and regulatory agencies, or the method for calculating the maximum NEW could be published for use by facilities to determine safe distances.

K. Emergency Provisions

Introduction and Description

The emergency provisions in RCRA, including the specific regulatory provisions related to an ''explosives or munitions emergency'' as defined in § 260.10, were developed to ensure emergency situations are addressed in a timely manner without imposing regulatory burdens that would delay the response and further endanger the public, environment, and responding personnel. The MMR clarified that RCRA generator, transporter, and permit requirements do not apply to responses to immediate threats involving munitions or other explosives, or to an imminent and substantial threat to a discharge of hazardous waste,[93] because RCRA requirements may impede emergency responses, especially by causing delays or confusion (see footnote 26, 62 FR 6622 and 6642) herein also referred to as ''emergency response exempt from RCRA permitting.'' [94] When immediate responses are determined not to be necessary by an explosives specialist, and the emergency responses can be delayed, EPA or the authorized State

[92] Primary Fragment Characterization Tools: A DDESB Technical Paper 16 Update *https://ndiastorage.blob.core.usgovcloudapi.net/ndia/2018/intexpsafety/HamiltonSPaper.pdf.*

[93] The MMR also established that, in addition to an immediate threat from military munitions and explosives, an imminent and substantial threat of discharge of hazardous waste is exempt from the same RCRA requirements, as both threats may require an immediate and expeditious response action. See § 270.1(c)(3)(i)(B) and (D).

[94] These emergency actions, however, are not exempt from the RCRA corrective action and section 7003 authorities once the emergency is over.

agency may issue a temporary RCRA emergency permit under § 270.61. Both provisions address emergency situations, but they differ based on the urgency of the response needed and thus, applicable requirements.

The explosives or munitions emergency response provisions at §§ 262.10(i), 263.10(e), 264.1(g)(8), 265.1(c)(11)(i)(D), and 270.1(c)(3)(i)(D) specify the emergency as an *immediate threat* to human health, public safety, property, or the environment, from military munitions or other explosive devices or material, requiring an immediate response, as determined by an explosives or munitions emergency response specialist (as defined in § 260.10) and are exempt from substantive RCRA requirements, including permits. On the other hand, the emergency permit provision at § 270.61 applies to situations or events in which there is an *imminent* and *substantial endangerment* to human health or the environment, but an immediate response is not necessary. In the MMR, EPA notes that while a permit is not required for immediate or time critical responses, alternatively, an emergency permit could be issued to a non-permitted facility or to a permitted facility for hazardous waste not covered in a permit when an immediate response is not necessary (see footnote 26, 62 FR 6643). Another distinguishing aspect of these provisions is that emergency response exemption decisions are generally made independently by an ''explosives or munitions emergency response specialist'' whereas actions taken in an emergency permit scenario are made in coordination with regulators.[95]

In the context of emergency situations, the key difference between an immediate or time-critical threat (*i.e.,* an explosives and munitions emergency) versus short-term treatment that can be delayed under an emergency permit, is that an immediate threat requires that a response must be initiated right away. Response to an immediate threat can be delayed for hours or days (but not weeks or months) for practical considerations such as nightfall, for inclement weather to conclude, or to allow time for emergency response specialists to mobilize and set up. The explosives and munitions emergency continues until the explosives and munitions response specialist determines the critical threat is over.'' If an immediate response is not needed such that there is time to discuss whether a RCRA emergency permit is appropriate, then responders should consult with the regulatory authority as to how to proceed. The presumption in this case is that the required treatment can be addressed within a 90-day period under a RCRA emergency permit, or if appropriate, a traditional RCRA permit.

Examples of situations involving an immediate threat include those where used munitions and explosives (*i.e.,* those that were previously fired but did not function or are degraded in the environment) are discovered and are determined to be primed, fused, and armed; the status of explosive items cannot be confirmed; or the public or property is threatened and the munitions or explosives can be transported to a safer location, including to an explosive ordnance disposal (EOD) range, to defuse, detonate, or otherwise to abate the immediate threat.[96] Immediate threats may also involve bulk propellants and other munitions and explosives and pyrotechnics that have become unstable (*e.g.,* unused discarded military munitions that have been discovered, certain unstable category D propellants,[97] and certain lab wastes such as aged or crystallized picric acid), and uncertain/unknown explosive devices (*e.g.,* improvised explosive devices (IEDs).

On the other hand, if the response can be delayed without significantly compromising safety or increasing the risks posed to life, property, health, or the environment, and to the responding personnel, treatment of the explosives or munitions should be discussed with the regulatory authority to determine if the expedited emergency permit provisions in § 270.61 or a traditional permit according to § 270.1 would be appropriate. Situations in which the treatment could be delayed include where the public or property are not threatened by a potential explosion (*e.g.,* in remote areas such as some former ranges or where immediate action is not necessary to prevent explosion or exposure) (see footnote 26, 62 FR 6643). In these cases, there is time to consult with the regulatory authority on which type of RCRA permit should be required.

Proposed Revisions and Rationale

As discussed, the explosives or munitions emergency response exemptions and emergency permit provisions are designed specifically to allow for expedient responses to immediate threats or imminent and substantial endangerment without creating regulatory burdens that could obstruct the response. EPA believes that there should be more clarity provided on the differences between them, as well as specifying when requirements for consideration of alternative treatment technologies would apply. Therefore, EPA proposes to require minimal reporting for explosives or munitions emergency responses after the emergency is over, so that the regulatory authority can better understand the circumstances that contributed to the immediate threat. With respect to alternative technologies and their applicability to the emergency provisions, EPA proposes that, as explosives or munitions responses are exempt from RCRA permitting, these responses would also be exempt from the need to evaluate whether alternatives can be used. For actions that are covered under an emergency permit, EPA proposes that these be required to consider if an alternative treatment technology can be used in lieu of OB/OD. EPA is also proposing revisions to the existing emergency permit regulations at § 270.61 to underscore that the emergency permit duration is not to exceed 90 days but to allow for a one-time permit renewal only for explosives and munitions to extend the emergency permit for up to another 90 days for unanticipated circumstances.[98] Also, if additional time is needed beyond 180 days to accommodate procurement and operation of an alternative technology for treatment at the treatment location, the Director may renew the permit for a total period not to exceed one year. Last, EPA proposes to revise the

[95] Safe Handling, Storage and Treatment of Waste Fireworks, *https://www.epa.gov/hwpermitting/safe-handling-storage-and-treatment-waste-fireworks.*

[96] See definition for *Explosives or munitions emergency response* at 40 CFR 260.10.

[97] Chemical stabilizers are added to propellants to slow the aging process. In time, the stabilizer levels will drop to a point where the propellant may auto-ignite and thus monitoring the stability level of each propellant is essential for safe storage. The U.S. Army classifies propellant according to the percent stabilizer it contains; category D has <0.20% stabilizer remaining, which is a level of deterioration that presents a potential safety hazard and are unsafe for continued storage. The propellant must be treated/destroyed within 60 days, which may include shipping off-site within the 60 days for treatment/destruction. U.S. Department of the Army Pamphlet 742–1. *Inspection of Supplies and Equipment; Ammunition Surveillance Procedures.* November 22, 2016. *https://safety.army.mil/Portals/0/Documents/ON-DUTY/EXPLOSIVESSAFETY/Standard/DA-PAM-742-1_Ammunition-Surveillance-Procedures_22Nov16.pdf?ver=2016-12-19-150215-207.*

[98] 40 CFR 270.61(b)(2) states that the emergency permit shall not exceed 90 days in duration and does not provide for any extensions. What is being proposed is to allow for a one-time only extension up to 90 days, if needed. An extension may be needed because, for example, the time to safely dismantle and treat items will take more than 90 days because of, for example, weather or other unanticipated delays such as time to deploy an MTU.

definition of explosives or munitions emergency in § 260.10 to replace ''imminent threat'' with ''immediate threat'' for consistency.

Emergency Responses Exempt From RCRA Permitting

As noted above, EPA is proposing to add a reporting requirement that would be triggered when the explosives or munitions emergency response has been completed. EPA expects that the proposed additional information would aid in clarity for regulators to better understand the circumstances that contributed to the immediate threat, as well as to provide more complete information that could inform future decisions, for example, should there be a need for remediation purposes or for land development activities. EPA proposes that the following information be documented by the explosives or munitions emergency response specialist: the type of explosive or munition; if it is primed, fused, armed, fired and did not function, or if unknown or uncertain; and if it has deteriorated and the stability is unknown or uncertain. EPA proposes that this information then would need to be submitted to the regulatory authority, via the environmental or regulatory compliance liaison at the response unit's base or facility of origin, within five days of concluding the response, and when applicable, the information includes whether an alternative was immediately available and safe for use given the site-specific situation. See proposed §§ 264.715(a)(1) and 265.715(a)(1). Finally, EPA proposes to add a new paragraph (c)(3)(iv) to § 270.1(c)(3) that points to the new reporting requirements of § 264.715.

RCRA Emergency Permits

If an emergency response is not declared as an immediate threat, then it would be conducted under a temporary 90-day RCRA emergency permit or possibly, a traditional RCRA permit. Again, the RCRA emergency permit provisions are structured to allow for expedient response by not requiring the substantive requirements that a traditional RCRA permit does, and can even be oral, as long as a written permit follows within five days. However, EPA finds that the emergency permit provisions are often being used for situations that do not conclude within the 90 days required by the regulation. EPA acknowledges that in some cases, emergency situations could conceivably require more than 90 days to conclude if a large number of additional explosives or munitions are unexpectedly found, or weather or other unanticipated delays such as time to deploy an MTU are encountered; these situations would be an appropriate basis for proposing a one-time extension of 90 days, or longer in situations where MTUs are utilized. But, this is different than the situation in which requests are made to renew emergency permits on a continuous 90-day cycle to respond to explosives or munitions that are continuously found/generated in the same location and treated on an ongoing basis. Examples of this can include when fireworks are regularly confiscated at a port of entry, when propellants, explosives, pyrotechnics (PEP) deteriorates, or when very small quantity generators like university laboratories have reactive chemicals that require ongoing disposal due to exceedance of the shelf life, and the stability is questionable.[99]

The regulation at § 270.61(b)(2) specifies that an emergency permit ''shall not exceed 90 days in duration'' and does not provide for a renewal nor repeated renewals. Because these permits are limited in duration, there is an expectation that treatment under an emergency permit will not result in continuous treatment. By allowing for the continued use of OB/OD under emergency permits that provide significantly fewer protections than a traditional RCRA permit, when issued on a recurring basis, there is greater potential for contaminants to migrate into soil and water resources and impact human health and the environment.

EPA proposes at § 270.61(b)(2) to strengthen the emergency permit regulatory language to emphasize that the duration of the permit must not exceed 90 days, but also would allow for a one-time renewal, only for explosives and munitions, of an additional 90 days to address unforeseen delays or circumstances as proposed at § 270.61(b)(7). Any treatment that requires more than 180 days to complete would not qualify for an emergency permit for treatment because this indicates an open-ended need or one that is too extensive to be concluded in 180 days. However, EPA also anticipates that it is possible that 180 days may not be sufficient when accounting for the time it may take to procure and operate an MTU. Therefore, EPA is proposing that if additional time is needed beyond 180 days to accommodate procurement and operation of an alternative technology for treatment at the treatment location, the Director may renew the permit for a total period not to exceed one year. As discussed in detail in the below section an evaluation of alternatives to OB/OD is proposed to be required for emergency permits.

Last, because there is some question regarding whether a treatment activity is eligible for an emergency permit as described above, EPA proposes that, in addition to the information proposed to be included for explosives or munitions emergency responses exempt from RCRA permitting, the following additional information be included for treatment of explosives or munitions conducted under an emergency permit: the anticipated frequency and quantity of generation and the expected timeframe from discovery or generation to achieving final treatment. See proposed §§ 264.715(b)(1) and 265.715(b)(1). EPA believes that this information is necessary to assess and confirm whether an emergency permit is appropriate or a traditional RCRA permit should be required.

Emergency Permits and Alternative Treatment Technologies

Consistent with the primary purpose of this proposed rule, which is to clarify that there must be an evaluation of safe and available alternatives before new OB/OD can be initiated under a RCRA permit, EPA proposes that treatment of explosives or munitions conducted under an emergency permit (*i.e.,* do not require an immediate response and thus are not RCRA exempt) be subject to the requirement to evaluate whether there are alternatives, but according to less prescriptive requirements, before OB/OD can be used.

Specifically, EPA proposes that the evaluation of alternatives for these activities need only (1) address whether an existing alternative technology is available that can safely treat the waste, and (2) include the rationale for the treatment method selected if an alternative technology cannot be used (see proposed §§ 264.715(b)(1) and 265.715(b)(1)). For these activities, inherent in the determination that an alternative technology or MTU is safe and available is that it can be deployed in a reasonable amount of time given the site-specific situation.

Regarding timing for submission of the required information, EPA notes that the process to obtain approval for emergency permits is very streamlined (*i.e.,* can be oral but must be followed

[99] For very small quantity generators, a more appropriate, effective, and timely solution could be a mobile treatment unit. EPA has proposed an approach to allow for and facilitate the use of mobile treatment units in Section L. Mobile Treatment Units for Explosive Wastes. However, an emergency permit may be appropriate when the treatment activities occur infrequently, such as twice per year or less.

in five days by a written permit). For consistency, EPA proposes that the evaluation of technologies be submitted to the regulatory authority within five (5) days of the permit application. If treatment using OB/OD has begun, upon identification of an alternative, the OB/OD must cease when the alternative technology has been deployed according to proposed § 264.715(b)(4), and consistent with § 270.61(b)(4), and a new permit application would be submitted per § 270.61(a).

Because explosives or munitions emergency responses are exempt from RCRA permitting (and other substantive RCRA requirements), these responses, by extension, would also be exempt from requirements to conduct an alternative technology evaluation. However, EPA does propose to require documentation of whether there was a safe alternative immediately available for explosives or munitions emergency responses, which is located at §§ 264.715(a)(1)(v) and 265.715(a)(1)(v). This proposed rule does not require an evaluation for the reasons discussed, however, EPA believes it important to highlight historical site-specific uses of alternatives when people, property, or the environment have been threatened. In these limited and very site-specific cases, alternative technologies were the safer and available method. Thus, under similar future scenarios, alternative technologies could conceivably be considered by the explosives and munitions emergency response specialist.

Site-specific cases when MTUs (*e.g.,* mobile contained burn, contained detonation, or chemical treatment units) were used for certain explosive waste streams during emergency situations include Camp Minden, LA; Pier 91 in Seattle, Washington; and American University Experimental Station (AUES), Spring Valley, Washington, DC. Additionally, in another case at Massachusetts Military Reservation, an emergency that was initially determined to be exempt from RCRA permitting, was evaluated and it was subsequently determined that an MTU could be used to treat the munitions. In each of these emergency situations, an alternative technology was used in place of OB/OD to better protect public safety, property, and/or the environment.

Although a hypothetical example, a case in which EPA could anticipate an alternative technology evaluation to be conducted is when there are potentially significant quantities of munitions and UXO that will be removed and treated. EPA is aware of many former training ranges where buried munitions and UXO remain that have yet to be addressed. If there are potentially significant quantities to be removed during future cleanup activities, for example, based on knowledge of the area and use or confirmed through a geophysical investigation, EPA would expect that an alternative technology evaluation be performed accordingly. In these situations, it is reasonable to conduct the evaluation because at the time the decision is made to investigate, there is time to do the evaluation, there are potentially alternatives, and with appropriate planning, there is time to implement a selected alternative(s). EPA notes however, that such cleanup activities are most likely to be conducted under CERCLA. In such a case, the CERCLA program has its own processes and requirements that would apply to the evaluation of potential ARARs and remedial alternatives.

EPA presents these examples to illustrate how, in limited cases, emergencies, occasionally including those that are determined to be explosives or munitions emergency responses exempt from RCRA permitting, can nonetheless utilize alternative technologies in place of OB/OD. EPA also recognizes that it does not make practical sense to impose a requirement (*i.e.,* an evaluation of safe and available alternative technologies as described in Section II.D. Alternative Treatment Technologies) that would delay the emergency response and further endanger the emergency response specialists or the public. At the same time, MTUs as alternative technologies to OB/OD have been utilized for explosives or munitions emergency responses pre-dating this proposed rulemaking, indicating that there are limited, site-specific cases in which deploying them was reasonable for the response.

There are documented uses of MTUs beyond the cases referred to above, and there are several vendors that provide enclosed units that have been proven safe and effective for emergency responses. Through this rulemaking, as discussed in the next section, EPA intends to facilitate the use of MTUs by reducing and removing implementation barriers and as a result, MTUs should become more widely available, lending to more expedient and routine use. Last, EPA notes that if an MTU is determined to be safe and available for the site-specific conditions, whether for explosives or munitions emergency responses exempt from RCRA permitting or treatment conducted under an emergency permit, the MTU itself would not require a permit to operate. See Section L. Mobile Treatment Units for Waste Explosives for additional information regarding the proposed MTU permit approach.

Summary and Request for Comment

The RCRA regulations differentiate between explosives or munitions emergency responses and treatment activities conducted under an emergency permit based on how quickly a response is required. An explosives or munitions emergency requires an immediate response and is exempt from RCRA TSD standards (§§ 262.10(i), 263.10(e), 264.1(g)(8) and 265.1(c)(11)) and permit requirements (§ 270.1(c)(3)). When immediate responses are determined to not be necessary by an explosives specialist, the treatment is subject to a RCRA emergency permit or potentially, a traditional RCRA permit (§ 270.61 or § 270.1, respectively).

To better ensure that emergency responses and treatment actions are conducted under the appropriate provisions of RCRA, EPA is proposing to add new regulatory language to the new parts 264 and 265, subpart Y standards at §§ 264.715 and 265.715, revise the existing regulations at § 270.61 Emergency permits, revise the definition of explosives or munitions emergency in § 260.10, and add a new paragraph (c)(3)(iv) to the exclusion for explosives or munitions emergency responses in § 270.1(c)(3) that points to the new parts 264 and 265, subpart Y standards of §§ 264.715 and 265.715 for the new reporting requirements.

For the new subpart Y standards, EPA requests comment on the proposed inclusion of information that would need to be documented and submitted for the explosives or munitions found or generated after an explosives or munitions emergency response is completed. EPA also requests comment on the proposed requirement that additional descriptive information for the explosives or munitions found or generated be submitted for treatment conducted under an emergency permit to better distinguish between these treatment activities and those that can be addressed under a traditional RCRA permit.

With respect to treatment activities for explosives or munitions that require a RCRA emergency permit, the timing for submittal of information is proposed to be the same as the five-day requirement in § 270.61(b)(1) for emergency permits. EPA requests comment on whether this five-day deadline is reasonable for treatment that require a RCRA emergency permit.

Regarding revisions to the emergency permit provisions at § 270.61, EPA proposes to clarify the duration of the permit to be only 90 days by removing

''shall'' and replacing with ''must.'' Consistent with this revision, EPA proposes to revise all places in paragraph (b) that use the term ''shall'' to be clear in meaning by removing ''shall'' and replacing with ''must.'' EPA also proposes to add a new paragraph (b)(7) that would allow for a one-time only extension, only for explosives and munitions, for an additional 90-day period, and to allow for renewal of the permit for a total period not to exceed one year to account for procurement and use of an alternative technology. EPA requests comment on the appropriateness of these clarifications and additions.

Finally, with respect to alternative treatment technologies and how this proposed rule intersects with the emergency provisions, EPA discusses the need to only document and report whether there was a safe alternative immediately available for explosives or munitions emergency responses that are exempt from RCRA permitting, and to consider whether an alternative technology is available that can safely treat the waste within a reasonable time for treatment that requires an emergency permit. EPA requests comment on the merits of not requiring an intensive evaluation of alternatives for treatment conducted under a RCRA emergency permit, but rather the more simplified consideration of available existing MTU alternatives as proposed at §§ 264.715(b) and 265.715(b), based on the known prior uses of contained technologies such as detonation chambers, contained burn, and chemical treatment MTUs for certain explosive waste streams.

L. Mobile Treatment Units for Waste Explosives

Introduction and Description

EPA is proposing regulations and a framework for the RCRA permitting and operation of MTUs that treat waste explosives. MTUs would be considered themselves facilities and be issued a permit by the Agency (EPA) in a unique two-stage process that enables the MTU owner/operator to treat waste explosives on-site where they are generated.

EPA believes MTUs are an important component of the proposed regulations and would offer a solution to some of the challenges associated with the management and treatment of waste explosives. First, MTUs could reduce the need for OB/OD in the near term, potentially providing alternative technology treatment services sooner than permitting and constructing a permanent on-site unit. In addition, because the use of MTUs to treat waste explosives could be less costly than building, maintaining, and operating alternative technologies, MTUs could decrease reliance on OB/OD. The benefits would be particularly keen for stationary TSD facilities that do not treat waste explosives routinely or only treat very small quantities of self-generated wastes. Lastly, MTUs could offer an additional compliance option beyond off-site shipment and building an alternative technology unit, and thereby provide additional regulatory flexibility. These kinds of benefits could be realized in cleanup activities as well as in the treatment of as-generated waste. As cleanup programs evaluate potential remedies and treatment technologies as part of the cleanup process, the availability of relatively low-cost permitted alternative technology for some waste streams could reduce the overall use of OB/OD.

This may be particularly true in situations where the treatment is episodic and/or of short duration. For example, law enforcement authorities episodically conduct OB/OD of confiscated ammunition, fireworks, and other explosives.[100] Because the need for OB/OD is only episodic, MTUs are likely to provide an alternative. In addition, some waste explosives for which safe alternatives exist may not be safe to transport off-site to a facility using an alternative technology. For example, forbidden explosives are not eligible to receive a DOT competent authority approval (*i.e.,* an EX number issued by DOT to allow transport) and therefore, cannot be shipped off-site (see 49 CFR 173.54). Or, in cases where obtaining a DOT EX number may not be timely or long-distance transport is not preferred due to increased risk for an accident, MTUs could provide a solution. EPA is aware of at least one scenario in which a mobile detonation chamber was brought in to treat waste explosives as part of a response rather than ship the waste explosives to an off-site treatment location.[101] Mobile treatment units could bring alternative technology to these locations thereby mitigating the transportation safety concern.

At present, the RCRA regulations require that owners/operators of MTUs obtain a RCRA permit for treatment from the permitting authority at each site where it will operate. Furthermore, every time the unit moves across State lines, a new permit with potentially unique State-specific requirements would need to be issued. EPA recognizes that the RCRA permit process is time and resource intensive and thus, not very conducive to meeting the needs of facilities that only require a short-term and/or infrequent treatment option. EPA previously proposed regulatory amendments to create a framework to enable streamlined permitting of MTUs to facilitate their use in the RCRA program.[102] However, that proposal, which was significantly broader than the changes being proposed, was never finalized. The proposal was not finalized primarily because it would not have materially reduced the permitting burden vis-à-vis issuing facility-specific permits at each location an MTU would be used. Mindful of the shortcomings of that approach, EPA is proposing a different approach. One key difference in the MTU permitting approach being proposed is the scope. Specifically, EPA is proposing a framework for MTUs solely to treat waste explosives, rather than all hazardous wastes as in the 1987 proposal. Additionally, EPA has endeavored to create a more standardized two-stage permitting process than that employed in the previous proposal.

This proposal would establish a framework for the permitting of MTUs that includes requirements related to public participation, recordkeeping and reporting, contingency planning, closure, operation and design standards, and permit terms. The current RCRA subtitle C regulatory structure developed for permitting and regulating hazardous waste TSDFs, including the corrective action requirements, was developed to address stationary facilities. Given the mobile nature of these units, EPA believes it makes sense to adapt the permitting framework, including public participation requirements as applied to them. EPA also believes that the corrective action requirements of § 264.101 do not apply to MTUs. This proposal intends to provide an additional compliance option for waste explosives management and treatment, while maintaining a robust permitting framework. The proposed approach for waste explosive

[100] See Letter from National Bomb Squad Advisory Board to EPA Administrator Scott Pruitt dated March 28, 2017, in which the National Bomb Squad Advisory Board notes that public safety bomb squads and other explosive specialists routinely destroy large quantities of seized illegal fireworks, other explosives, and pyrotechnics. The letter identified OB/OD as the preferred method.

[101] EPA was also informed during public outreach that shipping eligibility has in some cases been an impediment to off-site shipment of waste explosives for treatment by an alternative technology. See the *Summary of Meeting with Owners and Operators of Open Burning/Open Detonation Facilities: Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives* from March 15, 2022, and March 31, 2022, available in the docket to this rulemaking.

[102] 52 FR 20914, June 3, 1987.

MTUs is described in more depth in the following sections.

Proposed Approach and Supporting Rationale

EPA is proposing a two-stage permitting process for MTUs. In the first stage, EPA would issue a nationwide conditional approval to the MTU owner/operator. The issuance of the nationwide conditional approval to the owner/operator of an MTU would enable the owner/operator to subsequently during the duration of their conditional approval receive a RCRA permit, after a second expedited process, that would authorize treatment at individual job sites. While the conditional approval is a prerequisite to obtaining a permit to treat waste explosives, it does not authorize the MTU to treat the waste. In other words, the conditional approval would allow an owner/operator of an MTU to apply for a location-specific permit, but in the absence of a location specific permit, it would not authorize the owner/operator to treat waste explosives.

In the second stage, a location-specific RCRA permit authorizing treatment of waste explosives would be issued location-by-location (*e.g.,* for specific jobs) once public notice requirements and other requirements specific to that location are satisfied. To avoid an unnecessarily duplicative two-stage process, EPA intends that the vast majority of the permitting workload would be associated with the nationwide conditional approval that would accompany the MTU to each job site.

EPA is proposing new or amended regulatory text in several areas in order to create a standardized framework for the permitting and regulation of MTUs. Key components of the framework include: State authorization, permitting, public notice, recordkeeping and reporting, contingency planning, closure, operation and design standards, and permit terms. These key components are discussed in greater detail in the following sections, which are organized by describing first the permitting process and second, the permit modification process.

Permitting

EPA is proposing a two-stage permitting process for MTUs under a new part 270, subpart K. The proposed framework would create a new special form of an individual RCRA permit enabling MTUs to treat waste explosives. Because the applicable provisions being proposed for MTUs cite to a variety of other RCRA subparts, EPA believes a new section, under subpart F, provides the most transparent mechanism for incorporating these provisions, and would also provide for ease of reference. EPA has codified other special forms of permits under subpart F, such as permits by rule, emergency permits, and remedial action plans (RAPs).

In the first stage of the permitting process, EPA would issue a nationwide conditional approval to the MTU owner/operator that would accompany the unit to every job site and would contain the bulk of the permit terms and conditions [requirements] applicable to the unit. In the second stage, the location-specific RCRA permit authorizing treatment of waste explosives at a specific site would be issued by EPA. Prior to issuance of the location specific permit, EPA would provide public notice as required by section 7004(b) and would establish any other requirements specific to that location.

In the following sections, EPA discusses three key aspects of the proposed permitting process: the proposed procedures to obtain a permit, the proposed application content requirements, and the conditions EPA is proposing to be required in all RCRA permits for MTUs. These aspects are each discussed twice. First, each is discussed in the context of the first stage of the proposed MTU permitting process—the issuance of the nationwide conditional approval. Second, these aspects are each discussed again in the context of the second stage of the proposed permitting process—the location-specific RCRA permit for an MTU to treat waste explosives.

Before discussing the permitting procedures however, EPA notes that this proposed permitting approach would not apply to MTUs used for emergency responses or emergency treatment involving waste explosives. When MTUs are brought to a location to respond to an emergency, the RCRA emergency permit provisions at § 270.61 and emergency exemption provisions at §§ 264.1(g)(8)(i)(D), 265.1(c)(11), and 270.1(c)(3)(D) would supersede the two-stage permitting process proposed in this rule. This is because the RCRA emergency provisions were developed to ensure emergency situations are addressed in a timely manner without imposing regulatory burdens that would delay the response and further endanger the public, environment, and responding personnel. To require that an MTU that was brought in to treat recovered explosives during an emergency response revise its nationwide conditional approval and obtain a final permit for the job site could significantly delay initiation of the response.

Procedural Process Applicable to Issuance of Nationwide Conditional Approvals

As discussed above, the nationwide conditional approval would be issued under the processes described in part 270, subpart K at the newly proposed § 270.332. The proposed process for obtaining a nationwide conditional approval described in § 270.332 is very similar to the process established for obtaining RAPs in part 270, subpart H. The regulations governing issuance of RAPs include a variety of procedural steps and processes to provide for consistent and fair treatment of applications, and opportunity for public participation, and that ensure the RAPs are protective. In addition, the process for RAP issuance does not heavily rely on part 124 procedures, which EPA believes are not well suited to issuing permits for MTUs. The part 124 regulations were developed for facilities being permitted in a single stage permitting process. EPA believes more flexibility is necessary to craft a two-stage process for MTUs to accommodate the mobile nature of the units and the relatively short time horizons in which they will be operating at any one site. Additionally, the part 124 regulations include some features that are less practical for MTUs. For example, under part 124, the Director cannot begin processing an application until the owner/operator has fully complied with the permit application requirements. This does not fit the envisioned two-stage permitting process for MTUs. In light of these considerations, EPA modeled the proposed approach for issuing conditional approvals (the first stage of the MTU permitting process) and for issuing location-specific permits (the second stage) after the RAP regulations. EPA, at the same time, worked to ensure the proposed approach provides meaningful public participation opportunities. Discussion on public participation during the MTU permitting process is located in the section titled ''Public Notice and Input.''

The proposed procedural steps for issuing a nationwide conditional approval include: (1) application signature and submission, (2) a tentative finding by EPA on the application's completeness and consistency with the applicable regulatory standards, (3) preparation of a draft conditional approval or notice of intent to deny; (4) public notice and comment; and (5) final determination of the nationwide conditional approval. Finally, the

proposed regulations include an appeal process for final decisions.

Application Contents for Nationwide Conditional Approvals

Applications for an MTU conditional approval would be required to contain the information in the newly proposed § 270.333. Under the proposal, the applicant for a nationwide conditional approval would be required to submit to EPA all of the information required in part A permit applications at § 270.13 except for the information required by § 270.13(b), (f), and (l). EPA is proposing to not require submission of the facility location information, Tribal land information, and topographical map required by § 270.13(b), (f) and (l) during this initial stage. Instead, with the exception of the topographical map required by § 270.13(l), EPA is proposing that the location-specific information in these three sections would be submitted during the location-specific second stage of the permitting process. EPA, in this proposal, is not requiring the topographical map required by § 270.13(l) as part of a traditional RCRA permit application for MTUs given their mobile nature. MTUs will operate for only short periods of time in any location and must ''clean close'' after every treatment activity (see Section II.L. Closure and Financial Requirements for more information on the proposed closure requirements for MTUs). As such, EPA believes the preparation of a topographical map for each location at which an MTU may operate would be unnecessary and overly burdensome.

Additionally, EPA is proposing that the application for a conditional approval must include enough information to demonstrate that design and operation of the MTU will comply with applicable requirements of part 264 as specified by a new paragraph (k) at § 264.1. The part 264 standards represent minimum national standards which define the acceptable management of hazardous waste at permitted facilities and apply to all facilities which are permitted to treat, store, or dispose of hazardous waste. As discussed in this preamble section, a tailored set of the part 264 requirements would apply to MTUs. EPA is proposing this information to include preparedness and prevention information, a contingency plan (which would be updated in the second stage with specifics on arrangements made with local authorities for each job site), closure plans, and information on the types of waste explosives the unit may treat, among other information. This information is important as it would serve, in part, as the basis for determinations that the proposed design and operating standards of the unit meet the applicable regulatory standards.

Some of the unit specific information that would be required as part of an application for an MTU nationwide conditional approval includes information currently required in part B applications for subpart X at § 270.23(a), (d), and (f).[103] As discussed in ''Design and Operating Standards for MTUs,'' EPA believes that design and operating standards developed under subpart X are appropriate for MTUs. This information includes a detailed description of the unit, including physical characteristics, materials of construction, and dimensions of the unit. Additionally, the unit specific standards would also include detailed plans and engineering reports describing how the unit will be designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of § 264.601 and the applicable requirements of § 264.602. For an MTU, EPA expects this information would include information on how the unit will be transported to ensure the unit's treatment efficacy and integrity are maintained. This information is proposed to be required as it helps ensure that the unit's operations will be safe and protective by way of achieving the performance standards required for miscellaneous units.

Second, the part B application information required for subpart X units would require the applicant for a nationwide conditional approval to also submit a report on a demonstration of the effectiveness of the treatment based on laboratory or field data, including information on emissions from the unit. This information is important to assist the permit writer in determining the efficacy of the proposed treatment technology. Lastly, EPA is proposing to require that the application include the additional information required for subpart X units determined by EPA to be necessary to evaluate compliance of the unit with the environmental performance standards of § 264.601 for ensuring protection of human health and the environment, consistent with § 270.23(e).

In the case of an applicant seeking a nationwide conditional approval for multiple identical MTUs, the applicant would also be required to submit a certification from a registered professional engineer that the units are identical. In this way, multiple identical units would be able to go through the nationwide conditional approval application process concurrently utilizing one application package. This could further streamline the permitting process for owners/operators seeking to own or operate a fleet of identical MTUs.

EPA anticipates this stage of the permitting process (*i.e.,* obtaining a conditional nationwide approval) would comprise the vast majority of the effort required for an MTU to obtain a RCRA permit. Relevant location-specific information and demonstrations would be submitted and made as part of the second stage of the permitting process.

Conditions for Nationwide Conditional Approvals

Under this proposal, the information and conditions that would need to be in the nationwide conditional approval are identified in § 270.334. EPA expects that nationwide conditional approvals issued to owners/operators of MTUs would include all unit design and operating standards applicable to MTUs. A major component of those unit design and operating standards would be those requirements found in part 264. In addition to the design and operating requirements, the nationwide conditional approval would also include terms related to closure (interim and final), financial assurance, contingency and emergency planning, and recordkeeping and reporting requirements. The proposed applicable part 264 standards are discussed in more detail in a preamble section titled ''Applicable Part 264 Standards''. As noted earlier, EPA is proposing a new paragraph at § 264.1(k) that describes the part 264 standards applicable to MTUs. These standards and conditions would be required to be included in the draft nationwide conditional approval prepared by EPA for public notice and comment. While these conditions would be included in the nationwide conditional approval, some of the location-specific information required to comply with these conditions would not be required until the second (location-specific) phase of the MTU permitting process. For example, it is not reasonable to request information related to arrangements with local authorities required by § 264.37 during the nationwide conditional approval process when the specific locations of operation are unknown.

It is worth noting that the applicable part 264 requirements include certain subpart X requirements. These would require, among other things, that the conditional approval contain such terms

[103] Note that, currently, there is no § 270.23(f). However, as a result of this proposal, current § 270.23(e) would be redesignated as § 270.23(f).

and conditions as necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from units covered by the conditional approval. This requirement would address unit-specific issues that may arise and require unique permit terms to facilitate the safe and protective operation of the unit in question. This type of authority is available for subpart X units in traditional RCRA permits and has been a valuable tool for addressing unit-specific matters. The authority to require, via permit conditions, a response to releases from the unit is a valuable addition to the proposed MTU permitting process. EPA believes it is important for the owner/operator of an MTU that experiences a release to be responsible for responding to the release. As such, EPA is proposing at § 264.1(k) that nationwide conditional approvals must include requirements for responses to releases of hazardous waste or hazardous constituents from the unit. EPA expects such releases would be rare but believes the owner/operator of the MTU should address those releases. This requirement, combined with the proposed closure and financial assurance requirements for MTUs (see Section II.L. Closure and Financial Requirements), should provide strong protections against contamination remaining after treatment and closure concludes.

In addition to the part 264 requirements, the nationwide conditional approval would also need to include the terms and conditions applicable to all RCRA permits and the recordkeeping and reporting requirements at §§ 270.30 and 270.31, respectively. These include basic obligations, good housekeeping, and recordkeeping requirements that, much like stationary facilities, would be necessary to ensure permitted MTU operations are protective of human health and the environment. Relatedly, EPA is proposing that the nationwide conditional approval include a notification requirement that the owner/operator of an MTU must notify EPA each time an MTU treats waste explosives at a location. This notification would need to include the start and end dates of treatment and the quantity of wastes treated. The conditional approval would also be required to contain terms and conditions for modifying, revoking and reissuing, and terminating the MTU permit (including the conditional approval), as provided in §§ 270.40 through 270.43. Relatedly, EPA is proposing amendments to § 270.42 to address how permit modifications requested by the owner/operator would work for MTUs. Specifically, EPA is proposing that all modifications to a permit for an MTU would be required to adhere to the process for Class I permit modifications in § 270.42(a) and would require the prior written approval of the Director.

Procedural Process Applicable to Issuance of Location-Specific Permits

Under this proposal, the second stage of the MTU permitting process—the location-specific permit—would also be governed by the processes described in part 270, subpart K at the newly proposed § 270.335. As with the procedures for the nationwide conditional approval, EPA modeled the permitting process for the location-specific permit after that established for RAPs in part 270, subpart H. This process would be followed at all locations at which an MTU intended to operate, including instances where the MTU intended to treat waste explosives at another (stationary) permitted TSDF. In the case of an MTU being permitted to treat waste explosives at a permitted TSDF, the owner/operators of the stationary TSDF would not need to modify their permit or sign onto the MTU's permit. As such, the obligations and the responsibilities of the respective owner/operators in the two permits would be distinct.

The proposed regulations include a variety of procedural steps and processes to provide for consistent and fair treatment of applications for MTU location-specific permits, as well as opportunity for public participation. The proposed procedural steps for issuing the location-specific permit include: (1) Application signature and submission, (2) a tentative finding by the EPA on the application's completeness and consistency with the applicable regulatory standards, (3) preparation of a draft location-specific permit or notice of intent to deny; (4) public notice and comment; and (5) final determination of the location-specific permit. Finally, the proposed regulations include an appeals process for final decisions.

During this second stage of the permitting process, public notice of a draft location-specific permit would include newspaper and radio and notice to relevant local and State government offices. These public notice steps would be undertaken no less than 45 days before operations are intended to begin. During this time, EPA would post the draft location-specific permit, along with the nationwide conditional approval, on its website. If during that 45-day period, EPA receives notice of opposition to the EPA's intention to issue a location-specific permit or a request for a hearing, EPA would hold a public hearing. Following the public notice period, EPA would issue its final determination of its location-specific permit. More discussion on public participation during the MTU permitting process is located in the section titled ''Public Notice and Input.''

Application Contents for Location-Specific Permits

At newly created § 270.336, EPA is proposing specific information that would need to be submitted by an applicant during the second stage of the permitting process for an MTU—the location-specific permit. This information includes the nationwide conditional approval that would have already been issued by EPA and select location-specific information typically required in a RCRA permit application that would not have been required during the nationwide conditional approval stage.

The submission of a valid nationwide conditional approval would be the foundation for the information submission requirements during the location-specific stage of the proposed permitting process. The nationwide conditional approval would contain all of the nationwide operational and design standards specific to that MTU plus other various requirements including closure (interim and final), financial assurance, and recordkeeping and reporting. In most cases, this document, which would be incorporated into the location-specific permit, if issued, would comprise the bulk of the terms and conditions that would apply to the unit. At this stage of the process some of those conditions could be refined, as necessary, to address location-specific issues.

At this stage, EPA is proposing to require some limited location-specific information such as location information (name, address, longitude and latitude, and Tribal land status) for the proposed site at which the applicant is seeking a permit to operate. This information is required by § 270.13(b) and (f) for traditional RCRA permits as well. In addition, EPA would require information about the requested start date of operation, expected duration of activities, and what types and volumes of wastes would be treated. EPA is also proposing to require information demonstrating compliance with

§ 264.37—arrangement with local authorities. This information is important to document that the owner/operator has attempted to contact and make arrangements with local authorities (*e.g.,* fire departments, emergency responders, hospitals) to familiarize the authorities with the MTU's operations and the wastes to be treated and make any necessary arrangements. Relatedly, EPA is proposing to require an updated contingency plan that includes the information required by § 264.52(c) reflecting the arrangements with local authorities. While the contingency plan is required to be submitted during the nationwide conditional approval stage, information in the plan related to arrangements with local authorities would be required at this stage.

EPA is also proposing to require evidence of an arrangement between the original generator of the waste explosives and the MTU owner/operator as to who will take the actions required to comply with the applicable part 262 regulations related to any hazardous waste generated by the MTU's operations. As discussed in more detail in the Mobile Treatment Units as Generators section below, when a mobile treatment unit is operating on the site of a generator or another TSDF, EPA considers the original generator of hazardous waste and the owner/operator of the mobile treatment unit to be co-generators of the treatment residuals and both parties are subject to the RCRA generator regulations in part 262. However, this does not mean that both generators must satisfy each regulatory requirement individually. When two or more parties contribute to the generation of a hazardous waste, as is the case in the generation of treatment residuals from a mobile treatment unit, these requirements are satisfied if one of the parties assumes and performs the duties of the generator on behalf of both parties. Thus, to assure awareness of and compliance with these provisions, it will be important for the owner/operator of the MTU and the original generator of the hazardous waste to work out who will take responsibility for compliance with these part 262 requirements. Such evidence might include a contract specifying which party would comply with the requirements. EPA is proposing this information be submitted as part of the location-specific RCRA permit stage at § 270.336.

Finally, EPA is proposing to require the submission of information specific to the location determined by EPA to be necessary for evaluation of compliance of the unit with the environmental performance standards of § 264.601. EPA believes this information would be important for informing potential permit conditions necessary to allow for safe and protective operation of the unit at the specific location in question. This information could also shape whether issuing a permit is appropriate for the subject unit at the location in question. As noted in the discussion of the nationwide conditional approval application contents, information necessary to evaluate compliance with the § 264.601 environmental performance standards was also required as part of the nationwide conditional approval application. It is EPA's expectation that most of the unit design and operation standards necessary to ensure compliance with the environmental performance standard in § 264.601 will be developed during the nationwide conditional approval stage. However, relevant information about the location and site, and the specific wastes to be treated, could not practically be submitted during the nationwide conditional approval application process. As such, EPA is proposing an analogous requirement as part of the location-specific RCRA permit application. Examples of the type of information EPA expects the Director may request would include information demonstrating that the unit's proposed operation does not present a threat of releases that may impact neighboring property or receptors.

Required Conditions for Location-Specific RCRA MTU Permits

At newly created § 270.337, EPA is proposing regulations that would specify the required conditions in a location-specific permit. Specifically, the regulations would require three categories of conditions. First, the location-specific RCRA permit must, by reference or explicitly, include the information and terms and conditions in the nationwide conditional approval issued in accordance with § 270.332. As discussed above, the nationwide conditional approval would include all the nationwide unit design and operating standards. As such, it is essential that these standards be included in the location-specific permit issued to the owner/operator to treat waste explosives at a specific location.

Secondly, the location-specific permit issued to an MTU must include the location-specific information required by § 270.13(b) that must be submitted as part of the permit application. This information simply identifies the location of the proposed MTU treatment operations. Additionally, it would be required to contain specifications on the types and quantities of wastes permitted to be treated at the site as well as the dates of operation. These specifications would be derived from the information that is proposed to be required to be submitted as part of the permit application.

Finally, the RCRA permit would be required to include any additional terms or conditions, including revisions to the nationwide conditional approval, that EPA determines are necessary to achieve the environmental performance standard in § 264.601 and the applicable monitoring, analysis, inspection, response, and reporting requirements of § 264.602. The environmental performance standard in § 264.601 requires terms and provisions necessary to protect human health and the environment, including, but not limited to, as appropriate, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of hazardous waste or hazardous constituents from the unit. EPA is proposing to include this provision to accommodate unit and location-specific issues that may arise and require unique permit terms to facilitate the safe and protective operation of the unit in question. This type of authority is available for subpart X units in traditional RCRA permits and has been a valuable tool for addressing unit-specific matters. EPA expects that some permit terms and provisions necessary to achieve the environmental performance standard for subpart X units would be developed on a nationwide basis and included in the nationwide conditional approval. This second (location-specific permit) stage would also provide an opportunity to revise terms and conditions in the conditional approval in order to account for location-specific considerations, or otherwise update the terms and conditions. For example, the location-specific permit would include operating conditions tailored as necessary to ensure effective and protective treatment of the specific waste streams at a job site.

Finally, and as described in the Conditions for Nationwide Conditional Approval section above, the environmental performance standard also provides the authority to require, via permit conditions, a response to releases from any units covered by the location-specific permit. For MTUs, EPA believes an obligation to respond to releases should be included in every MTU permit (via the nationwide conditional approval) and has proposed that requirement in § 264.1(k).

Appeals and Public Comment During MTU Permit Issuance Process

In the above sections, EPA described a proposed two-stage approach to developing and issuing MTU permits that includes appeals processes and opportunities for public comment. One challenge associated with developing the permitting process for MTUs was providing both ample opportunity for public input and appeal of the conditions in the nationwide conditional approval and the location-specific permit, and a predictable and timely permitting process. To illustrate how this balance may play out under the proposed approach, below is an example. EPA requests comment on whether this approach achieves an appropriate balance or whether refinements might be beneficial.

The first step of the proposed approach would involve an MTU applying for a nationwide conditional approval. This application would be required to include the information specified in the newly proposed § 270.333, such as information about the MTU's design and proposed operation in accordance with the applicable regulatory standards in the newly proposed § 264.1(k). EPA would review the application to determine whether it included the required information and whether the proposed design and operating standards meet the regulatory criteria. If EPA determines the application is complete and the proposed design of the MTU and the proposed operating standards meet the requirements, the Agency would prepare a draft nationwide conditional approval. If EPA determines the application is not complete the Agency would request additional information from the applicant. If the applicant fails to remedy the deficiencies, EPA would prepare a notice of intent to deny the nationwide conditional approval. By contrast, if EPA determines that the proposed design and operating standards do not meet the applicable regulatory requirements, the Agency can either issue a notice of intent to deny the conditional approval or can propose a draft conditional approval that contains the terms and conditions EPA determines to be necessary.

During the nationwide conditional approval stage, the draft nationwide conditional approval or notice of intent to deny the nationwide conditional approval would be made available for public comment along with the administrative record that formed the basis of the action. At this point the applicant, or any other interested party, could raise comments criticizing the proposed decisions. For example, the applicant may submit a comment opposing a term EPA proposed to include in the nationwide conditional approval, based on a determination by EPA that the condition was necessary to protect human health and the environment, as required by § 264.601. Alternatively, a commenter could raise concern that the applicant had failed to demonstrate that the MTU meets one or more of the performance standards in § 264.1(k). A commenter could not however, comment on whether one of the performance standards listed in § 264.1(k) is appropriate, as that issue would have been resolved by the final rule. A challenge on that basis may only be brought in a challenge to the final rule. EPA would consider and respond to all significant comments received before making a final decision on the nationwide conditional approval.

If EPA denies the nationwide conditional approval, such a decision could be appealed as described in newly proposed § 270.332(i). By contrast, a decision to issue the nationwide conditional approval could not be appealed at that time; this is because, as noted below, there would be an opportunity to comment again upon the terms in the nationwide conditional approval as part of the process to issue a location-specific RCRA permit before the MTU would be allowed to operate under the conditions described in the nationwide conditional approval. Once EPA issues a decision on a location specific RCRA permit, issues raised during either of the two comment periods could form the basis for an appeal. For example, if the applicant had raised concern that a particular condition EPA had included in the nationwide conditional approval pursuant to § 264.601 was not necessary to protect human health and the environment, the applicant could only appeal that decision once the location specific RCRA permit was issued for the MTU.

During the second stage of the MTU permitting process, the applicant would apply for a location-specific permit by submitting both the nationwide conditional approval previously issued and the rest of the information required by § 270.336. Similar to the first stage, EPA would review the application for completeness and to ensure the proposed design and operating standards meet the applicable regulatory standards. If EPA believes there are deficiencies, the Agency may request additional information from the applicant or otherwise request the deficiencies to be remedied. EPA would then either prepare a draft location-specific permit or a notice of intent to deny. In either case, the draft document and the administrative record supporting the decision would be publicly noticed and made available for public comment. During this time, the applicant or other parties may comment on the Agency's proposed decision or any of the specific terms and conditions in the draft location-specific permit, were one prepared.

As noted previously, an applicant, or any other party, at this stage, may submit a comment on a term in the draft location-specific permit regardless of whether they had previously offered the comment during the nationwide conditional approval stage. This also means that it is possible that a party (*e.g.,* a local community group) might comment for the first time on a term in the location-specific permit incorporated by reference to the nationwide conditional approval. This is because a local community group may not be aware of the specific applicant's MTU permit application until it reached the location-specific stage. EPA recognizes that parties potentially commenting twice on the same condition and opening the same conditions up to multiple rounds of comment may not be the most streamlined approach. However, EPA believes this approach provides due process and robust public participation while still providing a principled and predictable permitting process.

EPA would consider and respond to all significant comments received upon the proposed location-specific permit or decision to deny the location-specific permit. EPA would revise the proposal as appropriate based on the public comment received prior to issuance. Both an EPA decision to issue a location-specific permit and a decision to deny the permit, could be appealed as described in newly proposed § 270.335(i). As mentioned above, EPA requests comment on the appeals processes provided by the proposed MTU permitting approach.

Permit Modifications

As noted above in the discussion of the conditions that EPA is proposing to require to be included in nationwide conditional approval, EPA is also proposing to require that the nationwide conditional approval include terms and conditions for modifying, revoking and reissuing, and terminating the location-specific RCRA MTU permit in accordance with §§ 270.41 through 270.43. Over the proposed five-year term of the permit, EPA anticipates there may be a need to modify it to account for changes, for example, when

the unit returns to the same location for additional treatment events, but the waste stream to be treated has changed.

In consideration of the potential for changes that would need to be made to the location-specific RCRA permit before the MTU could recommence operations when it returns, EPA is proposing that any modifications to the permit would be a Class 1 modification with prior Agency approval. To effect this, EPA also proposes to include a new line entry to appendix I of § 270.42 specific to MTUs. A Class 1 modification with prior approval allows for the owner/operator to make changes as needed provided that: the permitting agency is notified, all persons on the mailing list are notified, and the change is approved by the permitting agency. EPA believes that the Class 1 with prior Agency approval is appropriate for MTUs because these units will all have already undergone prior testing to establish protective design and operating standards. Thus, any subsequent changes to the design and operating parameters to address changes in the waste stream and ensure the parameters remain protective, could be incorporated into the permit using the Class 1 with prior approval modification procedure. In the event that there may be a significant change that could affect the MTU's performance, such as a design change to the MTU (*e.g.,* modification of the air pollution control system) or the waste stream is proposed to have an increased NEW that may be at the capacity limits of the MTU (*e.g.,* the unit previously only treated wastes at 75% of the NEW design limit), it would be at the discretion of the Agency to require a Class 2 or Class 3 modification procedure.

Public Participation

As described above, EPA is proposing a framework for permitting MTUs which would include public notice at two different stages. Under the proposed framework, the public would have the opportunity to participate in the permitting process during both the issuance of the national conditional approval and, again, during the issuance of the location-specific permit.

During the national conditional approval process, EPA would publish notice of a draft nationwide conditional approval in the **Federal Register** for public comment and allow at least 30 days for public comment. During that time, the draft nationwide conditional approval and administrative record would be available online for examination. In addition, EPA would also notify the public of the opportunity to comment via email to a list of interested entities the Agency would maintain. EPA expects this list would include environmental and community groups, Tribes, Federal and State regulators, and industry representatives. At this time, EPA would also encourage applicants to consider notifying communities in which they expect to apply for a location-specific permit. Such early engagement with communities could streamline the location-specific permitting stage.

The draft nationwide conditional approval available for public comment would contain the unit design and operating conditions among other applicable part 264 and part 270 conditions. EPA would review and consider public comments received prior to responding to comments and would notify the applicant and any commenters of changes from the draft to the final conditional approval as a result of the public comments.

During the location-specific permit process (after the final nationwide conditional approval has been issued), EPA is proposing that for each location (job site) at which the owner/operator of an MTU would be operating, EPA would provide public notice to the surrounding community. Specifically, EPA would publish notice in a major local newspaper and broadcast over radio the intent to issue the location-specific permit that would allow the MTU to operate at the site.[104] Additionally, EPA would issue notices to each unit of local government having jurisdiction over the area in which the MTU is proposed to operate and to the applicable State agency. In contrast to the first stage, EPA would not publish notice in the **Federal Register**. Under the proposed approach, EPA would provide public notice and opportunity for comment no less than 45 days before operations are intended to begin. During this time, EPA would post the draft location-specific permit on its website along with the background information from the notices.

If during that 45-day period, EPA receives notice of opposition to the EPA's intent to issue a location-specific permit or a request for a hearing, EPA would hold a public hearing. In the event a public hearing is held, the hearing would serve as an opportunity for the public to provide oral and written comments. EPA would consider and respond to any comments received in making its decision on the location-specific permit. If during that 45-day period, EPA does not receive any notice of opposition, significant adverse comment, or request for a hearing, the location-specific permit will commence in force on the date in the permit.

EPA believes public notice of a location-specific permit is an important component of the proposed MTU permitting process as it would provide awareness of RCRA activities within a specific community, with the opportunity to request a public hearing or oppose certain conditions, including conditions from the nationwide conditional approval. It would also provide an opportunity to ensure the notice meets the needs of the community, for example, providing notice in languages other than English and/or translation services for a community in which some members have limited English proficiency, or identifying additional avenues of providing notification to potentially interested community members, such as through social media or community organizations. EPA expects local communities would generally be interested in MTUs in that they would provide an alternative treatment method to OB/OD in their community. Additionally, this stage of public notice may help inform whether any location-specific conditions in the permit (*e.g.,* specific siting restrictions, hours of operation, etc.) should be revised.

EPA believes the public participation approach proposed for MTUs treating waste explosives strikes an appropriate balance between providing for adequate public notice while ensuring the permitting process would not be so onerous that it dissuades companies from providing valuable alternative treatment services in lieu of OB/OD.

State Authorization

Because of the need for national consistency related to permitting of units that cross State boundaries, EPA is proposing the Agency would not authorize States for permitting of MTUs and is requesting comment on whether States should be authorized. See section IV for more discussion about state authorization and MTUs.

Corrective Action (40 CFR 264.101)

Section 264.101 requires that permits include conditions for facility-wide corrective action to address releases of hazardous waste and hazardous constituents from solid waste management units. For purposes of corrective action, EPA regulations at § 260.10 define ''facility'' as all contiguous land under the control of the owner/operator. In developing this proposed rule, EPA considered the

[104] Note that the Permitting Updates Rule is considering proposed regulatory changes related to major local newspaper and radio broadcast requirements.

applicability of that definition to MTUs. EPA particularly considered the relationship between the MTU and the multiple parcels of land on which it might operate over its lifetime.

After considering the applicability of the definition of facility to MTUs, EPA believes that MTUs are unique among TSD units because they are mobile and operate for short periods of time at multiple locations and can thus be defined as facilities unto themselves. EPA is thus proposing that the ''facility'' subject to the requirement to obtain an MTU permit be limited to the MTU unit, and not include the land on which it operates. Because an MTU facility would not include the land on which it operates, an MTU operating at a RCRA TSDF would not become part of the TSDF and thus would not become subject to facility-wide corrective action obligations at that TSDF. An MTU operating at a site would not cause the land at that site to become a TSDF and incur resulting corrective action obligations. EPA is proposing this approach for several reasons.

Under this proposed rule, units qualifying for special MTU permits would be allowed to remain at a particular site only 180 days and would be required to clean close before leaving the site. Thus, as MTUs are defined in this proposal, they would not be associated with any particular parcel of land for the life of the unit or even for extended periods of time, but with multiple parcels of land for short periods of time, and because they clean close, could not contribute to corrective action obligations associated with the land on which they operate.

Further, a large part of EPA's goal in this proposal is to create incentives for the permitting and use of MTUs. Much of the benefit MTUs provide is derived from the fact that they move from location to location, minimizing the risks associated with transporting explosive hazardous waste. And owners/operators of MTUs are unlikely to choose to operate on multiple parcels if they were to become responsible for facility-wide corrective action at each. Thus, EPA believes that the proposed approach creates incentives that maximize the environmental benefits associated with MTUs.

Additionally, to assure protection of human health and the environment, EPA is narrowly defining MTUs by proposing strict limits on the duration of operation at any one location and an affirmative ''clean closure'' requirement for those units. The MTU would be permitted to operate and/or remain at any location for a maximum of 180 days at a time and be required to achieve clean closure standards, including addressing any releases from the unit before it leaves the location. Furthermore, EPA is proposing at 264.1(k) to modify the incorporated part 264, subpart X standards, in order to specify that all MTU permits contain requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Of course, failure of the MTU owner/operator to adhere to the time limits and closure requirements would result in the unit failing to remain an MTU as defined in the regulations. In such instances, the MTU would cease to be a unique facility. In such a situation, an MTU operating at a RCRA TSD would become a part of the facility at which it was operating and would be subject to applicable requirements including facility-wide corrective action requirements; where an MTU was operating at a non-TSD site, the site would become a TSD and all owners/operators would become subject to TSD requirements, including the requirement for facility-wide corrective action.

Applicable Part 264 Standards

Thus far, EPA has focused on how the public notification and permitting procedures of Parts 124 and 270, respectively, could be adapted for MTUs. Equally important is consideration of applicable technical standards in part 264 that would specify what must be included in the permit as conditions for the protection of human health and the environment. In the following sections, EPA discusses its proposal for which part 264 standards are necessary and appropriate, and thus should apply, for MTUs.

General Facility Standards

General Facility standards in part 264, subpart B apply to all owners/operators of RCRA TSDs, with some exceptions, and cover a variety of good housekeeping requirements, including recordkeeping, personnel training, and safety requirements. EPA is proposing to apply several subpart B requirements to MTUs: §§ 264.11, 264.13, 264.16, and 264.17.

Because MTUs would be treating RCRA hazardous waste, it is important that all activities conducted by the MTU owner/operator be tracked throughout its operational life. Thus, each MTU would be required to obtain an EPA Identification number. For general waste analysis, the regulation specifies that before an owner/operator treats, stores, or disposes or any hazardous wastes, a detailed chemical and physical analysis of a representative sample of the wastes be performed. The MTU owner/operator would be required to obtain the waste analysis, per the § 264.13 requirements, from the facility or entity requiring the services of the MTU.[105]

The personnel training requirements in § 264.16 establish standards for personnel training and requirements for maintaining records of such training. EPA believes these requirements would be appropriate for the personnel operating MTUs. Specifically, the personnel operating the MTU should have the pertinent training related to the safe management and treatment of waste explosives for their unit. EPA expects that the personnel at the facilities and sites at which the MTU would operate would already have applicable training and, in the case the MTU was operating at a TSDF, would already be required to meet the personnel training requirements in subpart B. That being said, the operators of the MTU itself should also have the appropriate training as required by § 264.16 as such training would be important to ensuring the unit's safe and protective operations.

As noted above, EPA is also proposing that the general requirements for ignitable, reactive, or incompatible wastes at § 264.17 of subpart B would apply to MTUs. This section requires owners/operators to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. The requirements specify certain waste management practices (*e.g.,* separating ignitable and reactive wastes from sources of heat, flame, etc.) but also allow flexibility for site-specific practices to be employed to prevent accidental ignition or reaction of the wastes. Since MTUs would be managing waste explosives, EPA believes these requirements are appropriate for MTUs.

The remainder of this subpart's standards are either covered in more specificity by other part 264 standards, as discussed and applied below, or are entirely related to activities outside the scope of responsibilities for owners/operators of MTUs. For the applicable requirements of this subpart, references to §§ 264.11, 264.13, 264.16, and 264.17, general requirements for ignitable, reactive, or incompatible wastes are included in the proposed new paragraph (k) of § 264.1. All proposed requirements would be included in the conditional nationwide approval.

Preparedness and Prevention

The regulations of subpart C Preparedness and Prevention are

[105] When MTUs are procured for emergency treatment, the waste analysis would be limited to the procedures proposed in the new regulation at § 264.715(c) and (d).

applicable to every RCRA TSD facility and are designed to prevent or minimize releases of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. These regulations are written to address overall facility design and operations to minimize the possibility of releases and ensure that the necessary equipment is available for responding to emergencies and for requesting emergency response services. EPA believes that these regulations are important and applicable to MTUs. Therefore, EPA proposes to incorporate elements of subpart C into a new paragraph at § 264.1(k).

Required equipment for an MTU would be transported with the unit and include items such as fire extinguishers, spill control, and decontamination equipment that must be periodically tested and maintained. Also, communication devices would be required for personnel operating the unit that will ensure access to emergency responders. Finally, prior to beginning operations, notifications would be required to be made to local authorities and emergency responders to ensure awareness of the MTU's operations at the facility or location.

All proposed requirements, with exception of notification to local authorities and emergency responders (§ 264.37), would be included in the conditional nationwide approval. When the location for the MTU is determined, permit conditions with the notification information would be developed as part of the location-specific permit stage.

Contingency Plan and Emergency Procedures

Owners and operators of RCRA TSD facilities are required to develop contingency plans and emergency procedures under subpart D to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water (see § 264.51). EPA recognizes that all of the requirements in this subpart are essential for MTUs and therefore, proposes to incorporate the regulations of subpart D into the new paragraph at § 264.1(k) (discussed in the above section) to clearly define the applicable requirements for MTUs.

EPA notes that there are unit-specific and some location-specific aspects that would need to be addressed. For the unit-specific aspects, these would be addressed in the nationwide conditional approval and include §§ 264.50 through 264.56, with exception of § 264.52(c) which is location-specific. Paragraph (c) would be addressed later during drafting of the location-specific permit.

Manifest System, Recordkeeping and Reporting

Another set of existing requirements that EPA considered for potential applicability to MTUs is the part 264, subpart E. Part 264, subpart E includes requirements to ensure that hazardous waste is accounted for and properly managed by tracking, through manifests and maintenance of its operating record, its transportation, and other aspects of its management. EPA is proposing that only a subset of the requirements in this section would apply to MTUs. Specifically, EPA is proposing that the use of manifest system requirements at § 264.71(c), operating record requirements at § 264.73, the availability, retention, and disposition of records requirements at § 264.74, and the biennial report requirements at § 264.75 would apply to MTUs. As with the other part 264 subparts, EPA is proposing to prescribe which components of subpart E would apply to MTUs in the new paragraph (k) at § 264.1.

As noted above, EPA is proposing that an MTU owner/operator be required to keep a written operating record that would accompany the unit to every location in which it operates and to maintain the operating record throughout the operational life of the unit until final closure. The contents of the operating record would include identification and quantities of the wastes treated, the location of the treatment, the operational period for each location at which the MTU operates, any malfunctions of the unit or incidents encountered, and the responses taken to address them, routine equipment inspections, and monitoring and testing data. EPA proposes to include references to §§ 264.73 through 264.75, and § 264.77 (*i.e.,* excluding the unmanifested waste report provisions under § 264.76), in the new paragraph (k). Additionally, because MTUs are unique treatment units by way of their mobility, limited waste streams, and short duration of operation, EPA is providing additional context on the information needs and procedures to achieve compliance with the applicable subpart E requirements.

Regarding the wastes to be treated and the quantities, this information would be made available through the waste characterization information from the facility at which the MTU would operate or emergency response personnel procuring the services of the MTU. The location of the treatment would include the name of the facility, where applicable, the address the MTU will be located, and a map with the longitude and latitude coordinates for the MTU location and a depiction of the MTU treatment area boundaries. Regarding the operational period, this would include the dates upon which the MTU arrives and departs, as well as when treatment operations begin (*i.e.,* wastes fed to the unit, including start-up and testing) and cease (*i.e.,* last waste fed to the unit before interim closure). Any malfunctions of the unit and its associated equipment that result in unplanned releases of emissions, effluents, or contaminants to the environment, accidental spills, and/or any incidents that require implementation of the contingency plan would be required to be documented in the operating record. Inspections of the unit and associated equipment to detect leaks, spills, and fugitive emissions would be documented in the operating record. Finally, all testing conducted in preparation for treatment at each site, as well as monitoring data any time waste is being processed, would be documented in the operating record.

For any facility or unit that treats hazardous waste, it is important to identify what the recordkeeping and reporting requirements are so that all wastes can continue to be accounted for. EPA believes that requiring the proposed contents to be included in the operating record would provide a detailed accounting of the wastes to be treated by the MTU, as well as ensure that the unit operates in a manner that is protective of human health and the environment. Because the operating record is unit specific and contains unit-specific information and data, it would be developed initially for inclusion in the nationwide conditional approval and referenced or incorporated into the location-specific permits. All other applicable requirements of subpart E would also be unit specific and be part of the nationwide conditional approval.

One portion of the requirements in part 264, subpart E that would not apply to MTUs is the manifest requirements at §§ 264.71, 264.72, and 264.77, with the exception of § 264.71(c), discussed later in this section. EPA does not believe the part 264, subpart E manifest requirements that apply to the receipt and storage of wastes would be necessary for MTUs because MTUs, as defined by this proposal, would provide a temporary treatment service on the site of permanent facilities and would not transport, receive, or store the wastes to be treated. As described in the ''Closure and Financial Requirements'' section below, EPA is proposing interim closure measures for MTUs that would

require decontamination of the unit at the end of each job prior to leaving the location. As such, the MTU would not transport hazardous waste. Additionally, because the MTU would travel to generator or TSD facilities to treat waste explosives, the MTU would also not receive shipments of wastes from off-site. In light of this, EPA does not believe it is necessary to apply the subpart E manifest requirements applicable to receiving wastes and storing wastes to MTUs. Of course, the RCRA manifest and transportation requirements in Parts 262 (and referenced in 264.72(c)) and 263, respectively, would apply in the event the MTU was not properly closed (*i.e.,* still contained hazardous waste) and was transported off-site, and when the MTU generates waste and ships it offsite, as discussed below.

Mobile Treatment Units as Generators

As with other hazardous waste treatment units, when a mobile treatment unit generates treatment residuals such as air pollution control residues, spent activated carbon, and/or bottom ash, this new waste would be considered a new point of generation. The derived-from rule in § 261.3(c) applies to determining which hazardous waste codes apply to those treatment residuals. When hazardous waste treatment units generate treatment residuals, the generator of those hazardous waste treatment residuals becomes subject to part 262 for the waste that they generate.[106] This includes, but is not limited to, making an accurate hazardous waste determination, management standards and labeling for the accumulation unit (*e.g.,* container or tank), getting the waste off site in accordance with the appropriate accumulation time limits, manifesting when shipping the hazardous waste off site, etc.

When a mobile treatment unit is operating on the site of a generator or another TSDF, EPA considers the original generator of hazardous waste and the owner/operator of the mobile treatment unit to be co-generators of the treatment residuals and both parties are subject to the RCRA generator regulations in part 262. However, this does not mean that both generators must satisfy each regulatory requirement individually. When two or more parties contribute to the generation of a hazardous waste, as is the case in the generation of treatment residuals from a mobile treatment unit, these requirements are satisfied if one of the parties assumes and performs the duties of the generator on behalf of both parties. Thus, to assure compliance with these provisions, it will be important for the owner/operator of the MTU and the original generator of the hazardous waste to work out who will take responsibility for compliance with these part 262 requirements. As noted in the discussion of the Application Contents for Location-Specific Permits, EPA is proposing to require the MTU permit applicant submit evidence of an arrangement between the original generator of the waste explosives and the MTU owner/operator as to who will take the actions required to comply with the applicable part 262 regulations related to any hazardous waste generated by the MTU's operations. In any event, EPA reserves the right to enforce against any and all persons who fit the definition of ''generator'' in a particular case if the requirements of part 262 are not adequately met.[107]

Closure and Financial Requirements

All RCRA TSD facilities must comply with the closure standards in parts 264 and 265, subpart G, and the specific closure standards applicable to the units in which they are managing hazardous waste. As noted throughout this proposed permitting framework, MTUs are a unique subset of treatment units. This poses challenges too for closure and financial requirements. With regard to closure, MTUs do not fit neatly within the existing closure standards construct because the units only operate for a limited duration before they move on to the next location and begin treating hazardous wastes again. MTUs should not trigger application of the closure standards until after their final use and decommissioning. Rather, during the operational life of the unit, as it moves between locations, a temporary or ''interim'' closure would be appropriate. This would require that any hazardous constituents are removed from the unit and properly managed in preparation for transport of the MTU and use at another location. Thus, EPA proposes closure requirements for MTUs that include an interim closure as well as select final closure requirements. EPA notes that, whether conducting interim closure or final closure, because MTUs are treatment units, they must clean close under either closure scenario in accordance with § 264.114 and the MTU specific requirements at § 264.1(k)(5). In other words, an MTU cannot leave behind contamination that did not already exist.

Clean closure for MTUs is particularly important considering that MTUs are mobile and limited to 180 days of operation at one location. As a public policy matter, requiring the owner/operator of the MTU to be responsible for clean closing the MTU including any contamination in the treatment area is most appropriate. This requirement best aligns the costs of closure with the party profiting from the operation of the MTU. Additionally, it should also limit the risk to the property owners contracting with MTUs. Finally, EPA expects that clean closure will be readily achievable by MTUs due to the controlled and contained nature of the treatment employed and the short operating periods. If the MTU owner/operator fails to clean close, the MTU would cease to be an MTU as defined by this proposal and would be a TSD unit. In that case the MTU owner/operator (as well as the owner/operator of the property at which the MTU was operating) would be liable for corrective action.

For the interim closure requirements, EPA envisions that when the treatment concludes at each location, the MTU owner/operator would be required to close in a manner that completely decontaminates the MTU and removes any contaminated environmental media, residuals or debris resulting from the MTU's operation.[108] Residues associated with the unit include any present on the surfaces and within the unit and its ancillary equipment such as air pollution control equipment, tanks, containers, piping, as well as other wastes generated by the unit such as spent activated carbon, bottom ash, fly ash, and water or fluids. In regard to the operational footprint of an MTU, this would be the area that surrounds the unit that became contaminated should an accidental spill occur or in which treatment residues could be inadvertently deposited. The residues, wastes, and contaminated media from spill cleanup would be considered newly generated wastes which the MTU owner/operator would be responsible for determining if they are hazardous wastes and managing them accordingly (see Manifest System, Recordkeeping and Reporting section above for generator and manifesting responsibilities). To affect interim closure requirements, EPA proposes to include them with the final closure

[106] See Hazardous Waste Generator Improvements Final Rule, 81 FR 85732; November 28, 2016, page 85762.

[107] See 45 FR 72024; October 30, 1980, page 72026. Also see RCRA Online memos 12515, 12706, and 13280.

[108] Note that the MTU owner/operator would be responsible for verifying that all hazardous residues are removed from the unit, and if necessary, obtaining applicable DOT approvals prior to transporting the unit.

requirements in the new paragraph (k) of § 264.1.

For the final closure requirements, which in contrast to the interim closure would include final disposition of the MTU itself, EPA believes that the closure performance standards in subpart G are applicable but is proposing an explicit obligation to clean close the MTU. As discussed, the existing closure regulations do not accommodate the mobile nature of MTUs. So, in addition to developing interim closure requirements for MTUs, EPA is proposing to adopt a more limited set of subpart G closure requirements for inclusion in the new paragraph (k) to serve as the final closure requirements. This would encompass §§ 264.111 through 264.115. Also, as with interim closure, final closure must also adhere to the clean closure requirements. Specifically, the MTU would be required to close in a manner that completely decontaminates the MTU and removes any contaminated environmental media, residuals or debris resulting from the MTU's operation. EPA solicits comment on the proposed closure requirements.

Interrelated with closure is financial assurance. The financial requirements located in part 264, subpart H require that all TSDFs demonstrate that they will have the financial resources to properly close the facility or unit when its operational life is over and have third-party liability coverage for sudden and nonsudden accidental releases. Similar to the closure requirements, only certain requirements in subpart H would be relevant to MTUs. For example, financial assurance for post closure care would not be applicable because the proposed rule requires MTUs to clean close at the end of their operational life. Similarly, nonsudden accidental third-party liability coverage would not be relevant as MTUs would not be permitted as surface impoundments, landfills, land treatment facilities, or disposal miscellaneous units. Therefore, EPA proposes at § 264.1(k) that a more limited set of the requirements in subpart H be applicable to MTUs. The applicable requirements EPA believes would ensure that the MTU owner/operator has adequate financial resources to close the unit as well as have third-party liability coverage for sudden accidental releases include §§ 264.140, 264.141, 264.142, 264.143, 264.147, 264.148, and 264.151.

EPA expects in implementation that some of the prescribed wording in § 264.151 for financial assurance mechanisms may need to be refined to accommodate the mobile nature of MTUs. For example, EPA anticipates that references to Regional Administrator may need to be replaced with a comparable official at EPA Headquarters given the potential for these units to travel across EPA Regions. Additionally, the § 264.151 instrument language requires, in certain places, the insertion of facility location information that would not be logical for mobile units. To accommodate these necessary variations, and others that may arise, EPA is proposing that variations to the required instrument wording in § 264.151 of subpart H necessary to effectuate the financial assurance requirement for mobile units would be acceptable. Of course, the Director would need to approve all variations, and these variations would be limited only to those necessary to accommodate mobile units.

Design and Operating Standards for MTUs

As discussed in section II. F. of this proposed rule, Permitting of Alternative Technologies, alternatives for treating waste explosives include thermal and chemical treatment and neutralization technologies. These technologies are predominantly permitted according to the subpart X standards located at § 264.601 with exception of a few alternatives that have been permitted as incinerators under the subpart O Incinerator and/or the CAA Hazardous Waste Combustor National Emission Standards for Hazardous Air Pollutants, subpart EEE standards because their design more closely meets the definition of incinerator. EPA also discussed in the permitting section that EPA's preferred permitting approach for thermal treatment units is under subpart X unless the unit uses a controlled flame in the treatment chamber.

With regard to MTUs, these units also can include thermal and chemical treatment and neutralization technologies. Although EPA's information is limited on MTUs that have been used for waste explosives, those that EPA are aware of are thermal technologies that have been issued subpart X permits, issued RCRA emergency permits, or have been exempt from RCRA permitting when used for legitimate recycling or used in response to a time sensitive emergency. For the information that EPA does have on mobile thermal technologies, none have used controlled flame inside the treatment chamber. Instead, they have either heated the treatment chamber externally using either propane or electrical conductivity or used donor charges to detonate and treat the explosives. EPA believes that design and operating standards developed according to subpart X would be appropriate for MTUs because they provide flexibility for units of different design and because it is unlikely that an MTU would utilize a controlled flame in the treatment chamber. However, in the event it would, EPA can still apply the incinerator standards via the subpart X standards. Therefore, EPA is proposing to apply the subpart X standards at § 264.601 and the part B unit specific information for miscellaneous units of § 270.23(a), (d), and (f) when developing the nationwide conditional approval, and § 270.23(f), again, when developing the location-specific permit.

Relatedly, when developing the design and operating conditions for treatment units, it is important to both consider the waste's characteristics and the unit's capability to effectively treat the wastes to meet the appliable emission or effluent standards. This is accomplished via a testing phase that uses wastes representative of those to be treated by the unit and the results are measured and compared to the standards. For MTUs, EPA discusses above that the nationwide conditional approval would contain the design and operating standards that would be applicable for each location that the unit operates at. EPA recognizes that each location will have waste streams that vary and thus, the design and operating standards established for the MTU at a prior location may not be appropriate for the wastes at the next location. To account for differences between locations, final design and operating standards, based on the location-specific wastes, would be incorporated into the final location-specific RCRA permit issued to the MTU to begin operation.

Nationwide Conditional Approval Term Limit

Permits for RCRA TSD facilities are valid for a period of up to ten years, upon which time they must be renewed for the facility to continue to operate. Because the nationwide conditional approval would contain conditions much like a permit—it would contain the unit specific information covering the design and operating requirements—EPA is proposing that it also have a term limit. Due to the mobility and multi-use nature of MTUs, EPA believes that a five-year limit would be more appropriate than a ten-year limit. A renewal every five years would ensure that the nationwide conditional approval is reviewed at intervals sufficient to address any significant changes, for example, a replacement of the treatment chamber, which may obviate the need for permit

modifications during the five-year permit term.

EPA is requesting comment on the proposed nationwide conditional approval term of five years. Specifically, EPA requests comment on whether a ten-year term would be appropriate. A ten-year term for the nationwide conditional approval would allow the owners/operators of MTUs to provide a greater number of treatment services under the same nationwide conditional approval and may result in greater availability of MTUs and a lower cost of services. However, as noted above, the longer term of the nationwide conditional approval would result in less frequent scrutiny of the terms and conditions in the nationwide conditional approval. In such a scenario, the location-specific permit issuance process may become more cumbersome if there is a perceived need to re-examine the nationwide conditional approval for needed updates. EPA is not proposing a ten-year nationwide conditional approval term and is instead proposing a five-year term. However, if the public comment is sufficiently supportive of the idea of a ten-year nationwide conditional approval term, EPA could finalize a ten-year term.

Limitation on Duration of Location-Specific Permit and Operation at Job Site

Additional aspects of the location-specific permit that are important to consider are the term limits of the location-specific permit and the maximum allowable duration of operation at the location in which an MTU will operate. EPA is proposing that the location-specific permit could be issued for a term of no greater than five years. Similar to the discussion of the duration of the nationwide conditional approval, EPA believes a five-year term limit is appropriate for MTUs. However, EPA is proposing that the permit would restrict the duration of operation at a location to 180 consecutive days before which the unit must complete interim closure. EPA envisions that MTUs would provide a treatment solution on an as-needed basis for waste explosives that can be safely treated by an alternative technology. As such, EPA does not anticipate that MTUs would need to remain at any one location for extended periods of time and proposes to limit the amount of operational time at a job site not to exceed 180 days. EPA is proposing that the operational time at a job site would be calculated as the number of calendar days between the date of initial start-up of the unit at a location and the date at which interim closure is completed.

Facilities that may seek to use MTUs are likely to be those that generate small quantities of waste explosives that require treatment a few times per year (*e.g.,* 5–10 treatment events annually) or that prefer not to invest in additional permanent alternatives for small waste streams. Also, explosives or munitions emergency response specialists may seek, or may be required, to use MTUs as an alternative to OB/OD when the emergency response action does not pose an immediate threat. Thus, EPA does not anticipate that MTUs would need to remain at a location for extended periods since the volume of waste requiring treatment should not be significant in any scenario. A time limitation of 180 days would also be consistent with the proposed total amount of time an emergency response could be conducted under a RCRA emergency permit (for more information on proposed changes, see Section K. Emergency Provisions). EPA believes that establishing a limit on the duration would ensure that the units do not become semi-permanent or permanent fixtures that would be more appropriately regulated as a unit of the facility or the entity requiring treatment. In such a scenario, likewise under the CAA, the unit would become a stationary source triggering application of relevant standards.

While EPA is proposing to limit the duration of operation in the location-specific permit to 180 days at any time, the proposed approach would allow the MTU to later return to the same location without being reissued the same location-specific permit. In effect, for the duration of an MTU location-specific permit, the MTU would be able to return to the location to provide multiple treatment services provided that the MTU never exceeds the proposed 180 consecutive operational day limit at the location and that the wastes do not vary significantly from prior treatment events. In the scenario that the wastes varied significantly and could no longer be treated under the terms of the existing permit, the MTU owner/operator could request a modification to the permit (see the section titled Permit Modifications above for more information on how MTU permits would be modified). EPA expects that this will allow for more efficient deployment of the MTU for recurring treatment work at a location while ensuring the protective conditions of the location-specific permit are applied and that the MTU does not start to resemble a permanent unit.

To effectuate these proposed limitations, EPA is proposing language in both in the definitions of MTU nationwide conditional approval, and MTU location specific permit in § 260.10 and also in the proposed RCRA MTU permit conditions at § 270.337.

Alternative Approaches for MTUs

One-Stage RCRA MTU Permit

As discussed above, EPA is proposing a two-stage permitting process for MTUs treating waste explosives. EPA is proposing a two-stage process in order to separate the nationwide procedures (*e.g.,* development of the nationwide design and operating standards, public comment on draft nationwide conditional approval) from the location-specific procedures (*e.g.,* development location-specific permit conditions, public notice). In this way, EPA believes that location-specific permits can be issued relatively quickly by incorporating the nationwide conditional approval previously issued. Additionally, a distinct location-specific stage provides certain benefits. First, it allows for the development of permit conditions that may be necessary for the protective operation of an MTU at a given location with given waste streams. Secondly, it provides for targeted public notice of the intent to issue a permit.

Under RCRA, before issuing a permit, the Director must cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue the permit. Additionally, the Director must transmit in writing notice of the agency's intention to issue the permit to each unit of local government having jurisdiction over the area in which the facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility. EPA expects that satisfying these public notice obligations, and providing meaningful opportunity for community participation, may be more efficiently done on a location-by-location basis. As such, EPA is proposing a two-stage process, in part, to allow for a location-specific stage where this public outreach can occur.

However, EPA is requesting comment on a variation to the proposed option, under which EPA would permit MTUs in a single stage. Under such an approach, the technical part 264 standards applicable to an MTU would be largely unchanged, but the key procedural steps involved in issuing an MTU permit would be collapsed into one stage. The result would be a permit

that could allow for the MTU to operate at multiple locations under one permit. The primary appeal of this variation is that it may allow for more readily dispatchable MTUs that, over the duration of their permit, could operate at multiple locations with fewer procedural steps.

EPA sees two potential shortcomings of this variation. First, in order to satisfy the public notice requirements required by RCRA, the MTU owner/operator would have to identify the areas and regions in which they expect and/or seek to operate in advance. Relatedly, the public notice requirements would presumably be more burdensome. However, this additional burden may be more than offset by the flexibility provided by a permit allowing an MTU to operate in multiple locations. Prior to issuance of a permit allowing them to operate in the specified areas, the public notice requirements would have to be satisfied in all of those areas. For example, this would require radio and newspaper notice on applicable local radio stations and in applicable newspapers of general circulation. If the MTU sought a permit to operate in several States, this would presumably require significantly more newspaper and local radio notifications be provided. Additionally, the notice would need to be provided to each unit of local government having jurisdiction over the areas in which the MTU is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such an MTU. Finally, EPA would need to hold an informal public hearing if one is requested.[109]

A second potential shortcoming would be a lack of an opportunity to develop permit conditions tailored to location and waste-specific considerations. In practice, this may be addressed by more comprehensive permit conditions. For example, the permit could set operating parameters for each of the potential waste types the unit may treat. The permit could also be required to include maximum limits or standards that would be protective in nearly all conceivable scenarios. The permit, much like in the proposed approach, would also be subject to environmental performance standards applicable across all locations. At a minimum, EPA expects developing the permit conditions that ensure protectiveness for a greater range of scenarios may mean more stringent standards would be applied than may be necessary at any given location. This potential for additional permitting burden may be offset, however, by the flexibility afforded by a permit allowing the MTU to treat waste explosives in more than one location.

If such an approach were implemented, EPA expects the permitting procedures would, similarly to the proposed approach, be derived from those required during the issuance of RAPs. Of course, to accommodate a one-stage process, EPA expects some other refinements and changes to the proposed approach (beyond those discussed above) would likely be necessary to accommodate a one-stage permitting process. For one, the Agency would also likely modify the permit modification regulations to specify an avenue whereby additional operating locations could be added to the scope of a permit. Such a modification would include, among other things, the public notice requirements that would be required were a permit issued *de novo* to the MTU. An additional variation from the proposed approach, separate from any amendment to the permit modification regulations, may include additional advance notification requirements, for example, submitted to EPA and posted on the MTU's company website, related to where the MTU intends to treat hazardous waste and the volumes and types of wastes to be treated. Such information would be important for EPA and community awareness.

Finally, EPA would consider requiring that the MTU owner/operator, not EPA, undertake the public notice requirements under such an approach. During the issuance of a traditional RCRA permit to a stationary facility, EPA or the authorized State undertake the post-application public notice efforts. However, given the MTU would have the best knowledge regarding the communities in which it intends to operate during the permit term, EPA believes it could be more appropriate for the owner/operator to satisfy public notification requirements. Additionally, such an arrangement may serve as a check to owners/operators applying for permits allowing the MTU to treat waste explosives in a more extensive geographical area than, in all likelihood, would be necessary. While EPA is not proposing this approach to permitting MTUs, EPA requests comment on the approach. If public comment is supportive, EPA may finalize such an approach.

[109] Presumably, such a public hearing could be held virtually and thus cover multiple population centers.

Permit by Rule—40 CFR Part 270 Subpart F, New Addition to 40 CFR 270.60

In developing an approach to encourage use of MTUs for waste explosives, EPA has so far focused on the RCRA permit process and how it could support more expeditious implementation of MTUs that would be more protective of human health and the environment than OB/OD. As discussed, MTUs could provide an on-demand treatment solution for facilities and entities that otherwise would need to invest in a permanent alternative or that cannot ship wastes off-site to another facility using alternative technologies. MTUs could also reduce wastes treated by OB/OD while a permanent alternative is pursued. While EPA is proposing a permitting approach that the Agency finds practical for MTUs, EPA recognizes that there are other alternative approaches that could also be considered for MTUs which could be more expeditious and further increase the use of MTUs. One of these alternatives considered but not proposed by EPA is a permit by rule.

Under RCRA, permits by rule exist at § 270.60 for certain classes of facilities conditioned on meeting regulatory-specified requirements. These are special forms of permits sometimes granted to facilities with permits for activities under other environmental laws. The RCRA regulations currently provide permits by rule for ocean disposal barges or vessels, injection wells, and publicly owned treatment works provided they meet certain criteria. EPA considered whether MTUs could reasonably operate under a permit by rule. MTUs not present a unique waste treatment solution, outside of a traditional TSD facility, for a specific subset of hazardous waste—waste explosives and may be amenable to a permit by rule. In addition, as noted above in the permitting framework discussions, many of the part 264 and 270 regulations cannot be directly referenced or incorporated because they were developed with fixed or permanent facilities in mind. MTUs require a tailored set of requirements under parts 264 and 270 because they are not traditional, permanent facilities.

EPA envisions an alternative to the proposed permitting approach whereby MTUs treating waste explosives would be granted a RCRA permit by rule, conditioned upon meeting specified requirements of part 264. EPA believes MTUs that comply with design and operating standards specified in part 264 would provide a more environmentally protective solution

than continued use of OB/OD. Similar to the proposed permitting approach, MTUs would be limited to 180 consecutive days of operation in any one location to ensure they do not become a stationary or permanent facility. An additional condition of the permit by rule could be a requirement to conduct certain public outreach steps prior to operating at any location. These steps could be the same public notice requirements required prior to issuance of a permit (*e.g.,* notice via newspaper and radio). A permit by rule would also allow for quicker implementation of MTUs and divert more wastes from OB/OD sooner. Thus, EPA has considered whether MTUs are another instance in which a permit by rule would be appropriate for consideration.

With respect to the conditions of the permit by rule that would need to be complied with to provide the necessary protections to human health and the environment, EPA envisions that under a permit by rule approach, select design and operating standards from part 264 would be adopted as conditions. As discussed earlier in the Design and Operating Standards section of the proposed permitting approach, the design and operating standards would be determined according to the part 264, subpart X standards for Miscellaneous Units. In addition, under this approach, the same unit-specific and location-specific part 264 requirements presented above in the proposed permitting approach would be appropriate to apply as conditions that must also be required to be met to have a permit by rule.

In the Design and Operating Standards section, EPA discusses each of the part 264 subparts that would constitute the unit specific applicable requirements. For example, under this approach (granting MTUs a permit by rule), MTU owners/operators would be required to develop a contingency plan that describes the actions to be taken by the MTU operators in response to fires, explosions, or any unplanned sudden or non-sudden releases. For each of the part 264 subparts (*i.e.,* subparts B through E, G, H, and X) that EPA identified as appropriate for MTUs under the proposed permitting approach, EPA would, under this alternative, apply those standards as the conditions that MTUs must meet to receive a permit by rule. The applicable conditions for the permit by rule would be in a new paragraph in § 270.60.

As noted above, a major benefit of a permit by rule approach is that it would allow for the most expedient implementation of MTUs and divert more wastes from OB/OD sooner. However, EPA has identified significant disadvantages with this approach. First, it would not afford the public or the State regulatory authority an opportunity to review and provide input on site-specific design and operating conditions to better ensure protectiveness. Second, it would be extremely challenging for EPA to develop and finalize design and operating standards that would be applicable to the wide variety of MTUs that may be used under this exemption, ranging from closed detonation and thermal destruction technologies to chemical destruction technologies such as supercritical water oxidation to unknown future technologies. (See discussion in Overview of OB/OD and Development of Alternative Technologies.)

A variation of this permit by rule that could address some of the disadvantages mentioned, could be to require as a condition of the permit by rule that the MTU owner/operator apply for and receive a nationwide conditional approval and comply with the terms and conditions in the approval. As presented in the proposed permitting approach above, the nationwide conditional approval would include the MTU design and operating standards for the specific type of unit, and conditions related to closure (interim and final), financial assurance, contingency and emergency planning, and recordkeeping and reporting requirements. Additionally, the nationwide conditional approval process would provide an opportunity for public comment on the draft approval before it would be finalized/approved by the regulatory authority and the unit could begin operations.

Although this option contains enhanced protections and opportunity for public and regulatory input prior to operations beginning, the nationwide conditional approval does not consider location-specific information such as identification of the location of the proposed MTU treatment operations, specifications on the types and quantities of wastes allowed to be treated at the location, operational conditions tailored to the specific wastes, or the dates of operation. Also, it lacks the additional opportunity for public participation at the local level that would be associated with issuance of a RCRA permit. For the above reasons, EPA has decided not to propose the permit by rule alternative. However, EPA is requesting comment on this variation on the permit by rule (*i.e.,* that incorporates a nationwide conditional approval), particularly with regard to how EPA could potentially address some of the identified gaps, for example by adding more conditions to the nationwide conditional approval. If public comment on this approach is supportive and constructive, EPA may finalize this approach.

Use of Existing Special Forms of Permits and Temporary Authorization Procedures

Other possible approaches for MTUs that could facilitate their use include relying on existing special permit procedures such as research, development, and demonstration (RD&D) permits under § 270.65 and temporary authorizations under § 270.42(e).

RD&D Permits

RD&D permits are intended to be used to evaluate feasibility of an innovative and experimental technology. In the case of MTUs, there are units that have been demonstrated and successfully used to treat waste explosives that would not be considered innovative or experimental and thus, would not qualify for an RD&D permit. EPA believes, however, that RD&D permits could be appropriate for an individual MTU under certain circumstances. Explosive wastes encompass a wide variety of items, some of which currently do not have an alternative technology that can safely or effectively treat them. A new experimental technology could be designed to address some of these challenging explosive waste streams, and thus qualify for an RD&D permit when brought to a location to demonstrate its capability.

The goal of RD&D projects is to determine whether they can provide a reliable treatment solution without the risk of investment in significant resources that could result in losses if a technology is not successful.[110] In addition, RD&D projects are short-term by their nature, since the results are intended to be applied to processes or units that could operate on a permanent basis in the future. HSWA added RCRA section 3005(g)(3) to allow EPA to issue RD&D permits for the purpose of promoting development of innovative and experimental hazardous waste treatment technologies and processes, provided that permit standards for such activities have not already been established by EPA.[111] Because of the

[110] EPA is aware of one RD&D permit that was issued by EPA Region 7 to Iowa Army Ammunition Plant specifically for testing and ensuring that the alternative treatment technology would be capable of safely treating waste explosives prior to its full commissioning.

[111] MTUs would be classified as part 264, subpart X. Subpart X provides performance-based standards

Continued

emphasis on technological advancements and the shorter duration of RD&D projects, the requirements for obtaining RD&D permits are less rigorous than traditional RCRA permits. That is, certain part 124 and part 270 requirements may be waived to expedite the issuance of RD&D permits, but standards deemed necessary to protect human health and the environment are required to be maintained (§ 270.65(a)(2) and (3)).

Based on the requirements for, and the intent of RD&D permits, EPA believes that these permits could be appropriate in certain cases and could provide a more streamlined permit solution than either a traditional RCRA permit or EPA's proposed two-stage permitting approach. One potential drawback, however, of RD&D permits is that because they are intended to evaluate the feasibility of an innovative and experimental technology, the permit would be limited to a one-time use covering the RD&D period of the MTU at the specified location. EPA anticipates that if an MTU successfully completes the RD&D activity, it would likely be contracted to return for future treatment. In this case, a subsequent RD&D permit would not be an available option if the same MTU returns that was previously and successfully demonstrated. A different permitting mechanism or procedure would be required to enable the treatment, unless perhaps there is a novel waste stream to be treated that the unit has not previously been demonstrated for.

Temporary Authorizations

Another potential alternative for operation of MTUs at TSDFs involves use of temporary authorizations. The temporary authorization procedure at § 270.42(e) was developed to allow owners/operators of permitted TSD facilities to conduct activities to respond promptly to changing conditions and are intended to improve the management of hazardous wastes. As further explained in the preamble for the final rule promulgating temporary authorization regulations, the temporary authorization is expected to be useful in the following two situations: (1) To address a one-time or short-term activity (up to 180 days) at a permitted facility; or (2) to allow a permitted facility to initiate a necessary activity while its permit modification request is undergoing the Class 2 or 3 review process.[112] For MTUs, EPA sees merit in both situations. In the first, the primary purpose of MTUs is to provide short-term treatment activities in which a full modification process could unnecessarily delay a more protective treatment option and discourage its implementation. For the second, MTUs would be providing a more environmentally protective solution when compared to the current treatment method of OB/OD, and the sooner it could begin the necessary treatment activity while a modification is under review, the better for the environment and for any nearby communities. EPA believes that temporary authorizations for the use of MTUs would be appropriate because they would provide a short-term treatment solution and improve hazardous waste management.

Temporary authorizations are limited to permitted facilities; however, EPA anticipates that permitted facilities would account for the majority of MTU use. Temporary authorizations may be obtained for activities that traditionally fall under the Class 2 or Class 3 permit modification procedures and must meet the corresponding criteria as described in § 270.42(e)(2)(i). EPA believes that MTUs can meet the specified criteria for both Class 2 and Class 3 procedures. Also, the regulation requires that temporary authorizations be issued for a limited period of no more than 180 days. If the work cannot be completed within the 180 days, a temporary authorization may be re-issued but a permittee must also request a Class 2 or Class 3 permit modification for the covered activity. This timing is consistent with EPA's proposal under the permitting option to limit the duration of operation at any one location, which EPA believes is necessary to ensure that the MTU does not become a permanent facility and would require a traditional RCRA permit. In addition, it may make sense then for permitted facilities that would like to use an MTU on a recurring basis (*e.g.,* for example, more than once per year) to submit a Class 2 or Class 3 permit modification request along with the temporary authorization for ease of future operation at the facility.

While EPA sees the benefits of a temporary authorization to include a streamlined and expeditious approach for facilitating use of more environmentally protective treatment via MTUs, EPA also notes that temporary authorizations can be issued without prior public notice and comment. The permittee, however, must still send a notice about the temporary authorization to the facility mailing list per § 124.10(c)(1)(ix). Again, because of the benefits MTUs offer over OB/OD and given that the units must still comply with relevant part 264 operating standards, EPA anticipates that there would be public support for MTUs and use of the temporary authorizations on a one-time, short-duration basis. Also, it should be noted that if, subsequent to or without a temporary authorization request, when a facility requests a Class 2 or 3 modification for longer-term or recurring MTU operation, public notice and comment would be provided as part of these modification processes.

Summary and Request for Comment

MTUs offer many potential environmental and economic benefits as a controlled and more protective alternative to OB/OD. In this proposal, EPA has endeavored to create a framework to facilitate the safe, effective, and efficient use of MTUs to treat waste explosives as an alternative to OB/OD. Specifically, EPA has proposed a two-stage permitting approach and has presented three alternative approaches for MTUs. The alternative approaches include a one-stage RCRA MTU permit, a non-permitting approach, and the use of two existing permit-based approaches which could be used in combination with the proposed permitting approach or on their own in certain cases. In developing each approach, EPA has strived to identify and construct them to facilitate use of MTUs as an alternative to OB/OD, and to provide sufficient regulatory oversight of the operation of MTUs.

EPA has presented several approaches for permitting MTUs for waste explosives and is interested in commenter feedback generally on the preference for one approach versus another, but also on specific aspects of each approach. With respect to EPA's proposed two-stage permitting process, EPA seeks comment on the proposed framework in which EPA would issue a nationwide conditional approval to the MTU owner/operator that would accompany the unit to every job site and would reflect the bulk of the permitting requirements applicable to the unit, followed by the EPA-issued location-specific RCRA permit authorizing treatment of waste explosives (*i.e.,* for a specific job site). Specifically, EPA would like feedback on the procedural processes proposed for both stages, for example, the completeness finding and public participation requirements and the application contents including the applicable part 264 and part 270 requirements. In addition, EPA would like to know if commenters agree with

for a variety of units. Thus, EPA does not interpret this to mean that MTUs have existing permit standards that are applicable to every type of MTU. MTU permits will be comprised of appropriate part 264 design and operating standards developed on a site-specific basis.

[112] 53 FR 37912, September 28, 1988.

the proposed time limitations for the nationwide conditional approval, the location-specific RCRA permit, and the operational time limits. Overall, EPA is interested in whether commenters believe this proposed approach to standardize a permit process, via a special form of permit specific to MTUs would be helpful in promoting the use of MTUs.

Regarding the alternative approaches, EPA presents a variation of the proposed two-stage permitting approach which essentially collapses all of the requirements into one-stage. Under this alternative one-stage RCRA MTU permit, the technical part 264 standards applicable to an MTU would be largely unchanged and the result would be a permit that could allow for the MTU to operate at multiple locations with fewer procedural steps. EPA recognizes that there are potential challenges with this approach particularly in regard to public notice requirements for the various locations at which the MTU could operate, and to developing permit conditions tailored to location and waste-specific considerations. In light of these shortcomings, EPA discusses potential avenues to mitigate them and thus, requests comment on whether this one-stage permit approach would be desirable, and if commenters agree with the mitigating solutions discussed.

EPA also discussed and described a permit by rule approach to permitting MTUs based on compliance with specified standards. For this alternative approach, EPA requests that commenters indicate if they agree with the approach generally, and specifically with the applicable part 264 standards which would be the same as those proposed for the nationwide conditional approval. In addition, given the disadvantages with the permit by rule approach discussed, EPA suggests that a requirement could be added to obtain a nationwide conditional approval. EPA requests comment on this variation to add a nationwide conditional approval and whether certain location-specific requirements should be added to the nationwide conditional approval to provide further protections.

Last, EPA discussed how existing RCRA permit procedures could be applied to MTUs in certain circumstances. While there would not be any changes needed for RD&D permits or the temporary authorization procedures to accommodate MTUs, EPA requests comment on the merits of using these existing procedures for MTUs where applicable.

III. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer their own hazardous waste programs in lieu of the Federal program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for State authorization are found at part 271.

After a State receives initial authorization, new Federal requirements and prohibitions promulgated under RCRA authority existing prior to the 1984 HSWA do not apply in that State until the State adopts and receives authorization for equivalent State requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized States. As such, EPA carries out the HSWA requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the State to do so.

Authorized States are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than existing Federal requirements. Under RCRA section 3009, States may impose standards more stringent than those in the Federal program (see also § 271.1(i)). Therefore, authorized States are not required to adopt new Federal regulations that are considered less stringent than previous Federal regulations or that narrow the scope of the RCRA program.

Effect on State Authorization

This proposed rule would be promulgated primarily pursuant to section 3004(n) of RCRA, a provision added by HSWA. RCRA section 3004(n) directs the Agency to develop standards to control air emissions at hazardous waste TSDFs as may be necessary to protect human health and the environment. These proposed revisions would reduce OB/OD of waste explosives through strengthened requirements that narrow facility eligibility to treat by OB/OD. Specifically, this proposal would increase control of air emissions through greater adoption and use of alternative technologies, and the increased control of air emissions is EPA's principal objective in this proposal. The Agency is proposing to add the requirements to table 1 in § 271.1(j) accordingly.

In addition, this proposed rule would be more stringent than the existing Federal regulations. This is because the proposed rule would establish new (1) requirements for the content and timing of alternative technology evaluations and implementation of safe alternatives; (2) technical standards for OB/OD units, including prohibition of certain wastes from treatment by OB/OD; (3) requirements for emergency responses subject to emergency permits to consider alternatives to OB/OD; (4) requirements for delay of closure as applicable to OB/OD units including continuation of permits until clean closure is completed; and (5) standardized MTU permitting procedures which include a two-stage permitting process with national and local public notice, five-year permit term, and limits on operating duration of the unit at any one location.

Because this proposed rule would be implemented under HSWA authority and is more stringent than the existing Federal requirements, the proposed rule would take effect in authorized States at the same time it takes effect in unauthorized States. All permits issued after the effective date would incorporate the appropriate standards. The proposed standards would apply to interim status facilities on the effective date of the standards.

Interim status facility owners/operators who have submitted part B applications but have not received their final permits as of the effective date of the standards would be required to modify their part B applications to incorporate the part 264 and 270 requirements of the final rule into their applications. For permitted facilities, the new standards would not apply until the facility's permit is modified or renewed. When new regulations are promulgated after the issuance of a permit, EPA or authorized States may reopen the permit to incorporate the new requirements as stated in § 270.41.

With respect to State authorization, this proposal: (1) Would, under proposed part 264, subpart Y, establish new technical standards for OB/OD units, which authorized States already have authority to permit; and (2) would for the first time establish national procedures for permitting of mobile treatment units that would cross State borders. In light of these circumstances, EPA describes how State implementation of the proposed rule would work in authorized States.

Permitting of OB/OD Units

In 1987, the Agency promulgated the part 264, subpart X miscellaneous unit standards. In that 1987 rule, the Agency stated that OB/OD units are one example of a miscellaneous unit that could be permitted under those standards. Thus, authorized States currently have authority to permit OB/OD units under the existing part 264, subpart X standards.

With respect to implementing the proposed part 264, subpart Y standards for OB/OD units and new provisions related to emergency responses exempt from RCRA permitting and for emergency permits, authorized States would continue to implement their programs rather than EPA taking separate actions under Federal authority, provided authorized State permits are as stringent as the new requirements.

EPA is proposing new technical standards for OB/OD units under a new subpart Y in part 264. Because the proposed subpart Y technical standards would be imposed under HSWA authority and are more stringent than the existing Federal program, these technical standards would take effect in authorized States at the same time as unauthorized States.

States that are authorized to implement part 264, subpart X standards may already have authority for requirements similar to those in this proposed rule. Specifically, subpart X standards already require permits to contain such terms and provisions as necessary to protect human health and the environment, including permit terms and requirements of various other unit standards in part 264 and requirements in part 270. This is further underscored by the fact that many OB/OD permits issued by States already contain conditions consistent with many of the subpart Y standards EPA is proposing. Authorized States would continue to administer and enforce these standards under subpart X, provided permits issued after the effective date of the final rule include permit terms and conditions that are equivalent to the proposed subpart Y standards. This permit administration could continue until the authorized State adopts and becomes authorized for subpart Y as required under RCRA. States would also continue to administer and enforce RCRA emergency permits in the same manner; authorized States already have authority under § 270.61(b)(6) to incorporate other applicable requirements, such as those similar to requirements proposed.

While this State permit administration would continue as described above, EPA would also have an obligation to ensure the regulations promulgated under HSWA authority are implemented in all States after the effective date of the final rule. To satisfy this obligation, EPA would review and provide comments on draft permits provided by authorized States to ensure the requirements are implemented. Should an authorized State issue a final permit that fails to include the newly promulgated HSWA requirements, EPA would have the authority to issue a joint permit with the State to include those requirements.

Permitting of Mobile Treatment Units

With respect to permitting MTUs for waste explosives, EPA would not authorize states to permit MTUs, although it may consider doing so at some point in the future.

MTUs are unique in that they would be permitted to treat waste explosives at multiple locations including, potentially, in multiple States. As described above in this proposal, MTUs could serve as an important and cost-effective alternative to OB/OD for facilities that generate small or infrequent amounts of waste explosives. EPA proposes standardized permitting procedures that include a nationwide conditional approval and a location-by-location specific permit for MTUs.

Because of the need for national consistency related to permitting of units that cross State boundaries, EPA would not authorize States to permit MTUs under this rulemaking. There are several reasons for this. First, EPA's proposed permitting process for MTUs consists of a nationwide conditional approval, which, because of its national impacts, could only be implemented by EPA as national authority. Second, EPA is proposing that the nationwide conditional approval could be modified as part of each location-specific permit, and EPA believes it would reduce administrative burden if the modifications as part of each permit were considered by the same authority (EPA) that issued the nationwide conditional approval. EPA is concerned that, should the barriers to obtaining an MTU permit be too high, it would effectively remove this option as an alternative, thereby delaying the benefits of reduced air emissions from treatment of explosive hazardous waste. Third, EPA is not expecting there to be a large number of MTUs that would be permitted to treat waste explosives. Consolidating the expertise and process with one permitting authority would be more efficient. Fourth, EPA expects the Agency would gain valuable experience and information from review of MTU permit applications that may affect future OB/OD or MTU rulemakings. EPA could consider, after some time in implementing the MTU permitting program, whether authorization of states for certain aspects of the program could make sense in the future.

EPA requests comment on two alternative approaches to State authorization specific to permitting MTUs. The first alternative approach would be to allow States to be authorized to issue the location-specific permits (with EPA issuing nationwide conditional approvals). Under such an approach, EPA would issue nationwide conditional approvals to MTUs as described in the proposed approach, and then EPA or the State, if authorized, would issue the location-specific RCRA permit to the MTU. This approach has the benefit of leveraging the experience and expertise in RCRA permitting that exists in the States; however, it may result an in a less efficient approach to permitting MTUs. As noted above, because each issuance of a location-specific permit is an opportunity to modify conditions of the EPA-issued nationwide conditional approval, EPA believes it would reduce administrative burden if both the nationwide conditional approval and location-specific permit were considered by the same authority (EPA). Moreover, the approach could result in inconsistencies in the location-specific permitting approaches and requirements state-to-state, that may add greater uncertainty into the permitting process. Finally, the financial assurance requirements for MTUs would either need to be restructured or an MTU may need to make separate financial assurance demonstrations in each State in which they seek to operate. EPA would, under this approach, still issue nationwide conditional approvals and location-specific permits to allow MTUs to operate in States until States become authorized.

The second alternative approach would be to allow States to become authorized to issue both statewide conditional approvals (in lieu of EPA issuing a nationwide conditional approval) and also location-specific permits in their State. EPA would, under this approach, still issue nationwide conditional approvals and location-specific permits to allow MTUs to operate in States until States become authorized. Similar to the first alternative, this approach also has the benefit of leveraging the experience and expertise in RCRA permitting that exists in the States. This approach would also

allow the same authority that issued the conditional approval to issue the location-specific permit resulting in some efficiency. However, this approach would require MTUs to obtain a statewide conditional approval in each State they sought to operate as well as a nationwide conditional approval to operate in unauthorized States. In some large States, this may not be as consequential, however, given that there are only 67 TSDFs with operating OB/OD units (and 2 corrective action facilities), EPA believes this approach may be significantly more administratively burdensome nationwide. EPA notes that this approach is most similar to the 1987 proposed approach for RCRA MTUs that was never finalized due to the administrative burden it entailed.

While EPA is not proposing either of these two approaches, EPA is requesting comment on the approaches and may finalize either of the options. Additionally, should EPA consider finalizing one of the two alternative approaches, EPA is requesting comment on whether it should provide an option for States to become authorized to permit MTUs. For example, if EPA did finalize an alternative to allow States to become authorized for MTUs, some authorized States could choose not to become authorized thereby allowing EPA to permit MTUs within their State. Were either of these approaches to be finalized, most of the proposed approach (*e.g.,* the technical standards applicable to MTUs, permitting procedures) would remain intact. However, EPA expects the financial assurance requirements would need to be restructured to reflect the fact that the MTU may be issued RCRA permits from multiple permitting authorities. This may entail requiring the owner/operator to make multiple financial assurance demonstrations.

B. Summary and Request for Comment

EPA proposes that this rule would take effect in authorized States at the same time it takes effect in unauthorized States. Interim status facility owners/operators would be required to modify their part B applications to incorporate the Parts 264 and 270 requirements of the final rule into their permit applications. With respect to implementing the proposed part 264, subpart Y standards for OB/OD units and new provisions related to emergency responses exempt from RCRA permitting and for emergency permits, State permit administration would continue as described above, provided authorized State permits are as stringent as the new requirements. Additionally, under EPA's proposed approach, EPA would not authorize States to permit MTUs for the reasons stated above.

EPA requests comment on how it should implement the proposed rules in authorized States, including both on its proposed approach and alternative approaches with respect to authorizing States to permit MTUs.

IV. Statutory and Executive Order (E.O.) Reviews

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

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a ''significant regulatory action'' as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The EPA prepared an economic analysis of the potential impacts associated with this action. This analysis, ''Regulatory Impact Analysis for the Revisions to Standards for the Open Burning/Open Detonation of Explosive Waste Materials Proposed Rule,'' and is also available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2769.01. You can find a copy of the ICR in the docket for this proposed rule, and it is briefly summarized here.

This proposed rule imposes new information collection requirements on the facilities subject to the proposed rule's new operating, monitoring, and reporting requirements. The new provisions would specify how and when owners/operators and permit authorities are to evaluate alternative treatment technologies for OB/OD, including specific information that would be required for facilities to demonstrate whether safe alternative modes of treatment are available for specific waste streams.

EPA must obtain sufficient information to assess whether safe alternatives are available in lieu of OB/OD. In addition, for instances where OB/OD remains the only treatment method for waste explosives, the Agency requires sufficient information to ensure that permitting requirements are being met and properly implemented. The goal of the reporting requirements is to support improved protection of human health and the environment by reducing the amount of waste explosives currently being open burned and open detonated and, where OB/OD remains the only available treatment method, by strengthening protections for OB/OD activities. EPA will use the collected information to ensure that alternatives to OB/OD of waste explosives are being identified and implemented, when possible, confirm permitting requirements are being met, and monitor any potential harms to human health and the environment.

Respondents/affected entities: Entities potentially affected by this action are private sector and State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA section 3004).

Estimated number of respondents: 24.

Frequency of response: Every five years or as specified in permit.

Total estimated burden: 27,557 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $2,763,449, includes $207,600 annualized capital or operation & maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this proposed rule. The EPA will respond to any ICR-related comments in the final rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *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. OMB must receive comments no later than May 20, 2024.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities

under the RFA. The small entities subject to the requirements of this action are small businesses from the following NAICS code industries: Other Basic Inorganic Chemical Manufacturing; All Other Basic Organic Chemical Manufacturing; Explosives Manufacturing; All Other Miscellaneous Chemical Product and Preparation Manufacturing; Ammunition (except Small Arms) Manufacturing; Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing; and Marketing Research and Public Opinion Polling. The Agency has determined that eight small entities (12% of the universe) may experience an impact of 0.02% and 0.7% of revenues. Details of this analysis are presented in the Regulatory Impact Analysis for the Revisions to Standards for the Open Burning/Open Detonation of Explosive Waste Materials Proposed Rule.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

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

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

This action has Tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt Tribal law. Some facilities affected by this law are near federally recognized Tribes.

The EPA invited Tribes located near OB/OD facilities to consult with EPA on the proposed rulemaking under the EPA Policy on Consultation and Coordination with Indian Tribes so they would have opportunity to provide meaningful and timely input into its development. One Tribe formally consulted with EPA on this proposed rule; a summary of that consultation is provided in the docket of this proposed rule.

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

Executive Order 13045 directs Federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in Federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. This action is not subject to E.O. 13045 because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, EPA's *Policy on Children's Health* applies to this action.[113] EPA finds that this proposal, through clarifying a previously promulgated Federal standard, would improve protection of human health, including children's health, in communities located near OB/OD facilities.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The scope of this rulemaking does not impact the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking involves environmental monitoring or measurement. Consistent with the Agency's Performance Based Measurement System (PBMS), the EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. The EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

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

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on communities with environmental justice concerns. The demographic analysis in the Regulatory Impact Analysis for the Revisions to Standards for the Open Burning/Open Detonation of Explosive Waste Materials Proposed Rule, indicates that, in aggregate, current conditions may disproportionately impact potentially vulnerable communities near operating OB/OD facilities. Some demographic and socioeconomic indicators are higher than national averages in the above analyses.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. More frequent alternative technology reevaluations and new technical permitting standards may accelerate the identification and implementation of cleaner, safer alternative technologies.

The EPA additionally identified and addressed EJ concerns by conducting informational webinars. EPA recognizes that communities are concerned about emissions of contaminants from OB/OD. The treatment of waste explosives conducted in the open can expose communities to hazardous substances through air emissions and deposition onto the ground that can contaminate the soil, surface water, sediments, and groundwater. Leading up to, and during development of this proposed rulemaking, EPA has taken actions to involve communities. During several separate webinars, communities were invited to provide their input on proposed changes to the existing OB/OD regulations that would help strengthen the existing regulations, as well as clarify when facilities are eligible to conduct OB/OD.[114]

First, EPA held an informational webinar on February 23, 2022, for Tribes located near OB/OD facilities, in support of EPA's consultation and coordination regarding the proposed

[113] *https://www.epa.gov/system/files/documents/2021-10/2021-policy-on-childrens-health.pdf.*

[114] Tribal coordination and consultation materials and webinar meeting summaries are in the docket for this rulemaking, Docket ID No. EPA–HQ–OLEM–2021–0397 (*http://www.regulations.gov*).

rulemaking.[115] EPA identified four OB/OD facilities located in close proximity to or on Tribal lands and presented information about the proposed rule to assist Tribes in determining whether they would like to formally consult with EPA. One Tribe subsequently requested formal consultation with EPA, which occurred on March 28, 2022. During this consultation, the Choctaw Nation of Oklahoma raised several concerns ranging from air emissions, contaminants spread through ''kickout'' of unreacted waste explosives, ground vibration causing structural damage to residences, and impairment of local water bodies. EPA provided responses to the Choctaw Nation of Oklahoma during the consultation meeting and committed to coordination with other program areas in EPA, as well as the State permitting agency, to address their concerns. In addition, EPA has considered ways in which the OB/OD regulations could be improved via this proposed rulemaking and has included new provisions and clarifications of existing requirements to strengthen the regulations.

Second, EPA held an informational webinar on March 10, 2022, for interested communities and environmental groups (see footnote 24). This early engagement sought input for EPA to consider prior to development of the proposed rulemaking. Representatives from a variety of community and environmental groups and one Tribe were in attendance:

- Louisiana Environmental Action Network
- Center for Progressive Reform
- Tulane Law School
- Public citizens
- Earthjustice
- Citizens for Safe Water Around Badger
- Prutehi Litekyan/Save Ritidian
- California Communities Against Toxics
- Central Louisiana Coalition for a Clean and Healthy Environment
- Vidas Viequenses Valen
- Concerned Citizens for Nuclear Safety
- San Ildefonso Pueblo

Topics addressed included:

- Alternative treatment technologies and adding an explicit regulatory requirement to evaluate available alternative treatment technologies and to implement identified alternatives in place of OB/OD.
- Scope of applicability for who the rule should include/exclude.
- Timing for rule compliance to determine how soon the new/revised requirements should go into effect.
- New technical standards for OB/OD units to better control emissions and contamination.

As a result of this webinar, EPA heard accounts of how communities located near OB/OD facilities are negatively impacted by air emissions and noise and vibration impacts from the treatment events. In addition, some community and environmental members indicated environmental justice concerns for certain locations.

Last, EPA held an informational public webinar on December 5, 2022, which was open to all groups, to provide opportunity for public input during the drafting phase of the proposed rule. This webinar presented the same topics as the March 10, 2022, webinar, with more specific approaches under consideration by EPA. Community and environmental members, and several Tribes provided additional input related to their concerns. Input provided to EPA included establishing in the rule: prohibition OB/OD of certain wastes, provisions for air monitoring in communities, and requirements for better communication between the OB/OD facilities and the communities.

Through the webinars, EPA gained valuable insight and information from community and environmental groups that led to the incorporation of additional proposed requirements to further strengthen OB/OD regulatory requirements.

List of Subjects in 40 CFR Parts 124, 260, 264, 265, 270, and 271

Environmental protection, Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Insurance, Intergovernmental relations, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water pollution control, Water supply.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR parts 124, 260, 264, 265, 270, and 271 as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

■ 1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* Clean Water Act, 33 U.S.C. 1251 *et seq.;* Clean Air Act, 42 U.S.C. 7401 *et seq.*

Subpart A—General Program Requirements

■ 2. Amend § 124.1 by revising paragraph (a) to read as follows:

§ 124.1 Purpose and scope.

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES ''permits'' (including ''sludge-only'' permits issued pursuant to § 122.1(b)(2) of this chapter. The latter kinds of permits are governed by part 270 of this chapter. RCRA interim status and UIC authorization by rule are not ''permits'' and are covered by specific provisions in parts 144, subpart C and 270 of this chapter. This part also does not apply to permits issued, modified, revoked and reissued or terminated by the U.S. Army Corps of Engineers. Those procedures are specified in 33 CFR parts 320 through 327. This part also does not apply to the issuance of RCRA permits for Mobile Treatment Units except as specified in part 270, subpart K of this chapter. The procedures of this part also apply to denial of a permit for the active life of a RCRA hazardous waste management facility or unit under § 270.29 of this chapter.

* * * * *

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927,6930, 6934, 6935, 6937, 6938, 6939, 6939(g), and 6974.

Subpart B—Definitions

■ 4. Amend § 260.10 by:
■ a. Adding the definitions in alphabetical order for ''Detonation'',
■ b. Revising the definition for ''Explosives or munitions emergency'';
■ c. Adding the definitions in alphabetical order for ''Mobile treatment unit or MTU'', ''MTU location-specific permit'', ''MTU nationwide conditional approval'';
■ d. Removing the definition for ''Open burning''; and
■ e. Adding the definitions in alphabetical order for ''Open burning (OB)'', ''Open burning/open detonation (OB/OD) unit'', ''Open detonation'', and ''Waste explosives''.

The additions and revision read as follows:

[115] EPA Policy on Consultation and Coordination with Indian Tribes. *https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes.*

§ 260.10 Definitions.

* * * * *

Detonation means the explosive process in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level).

Explosives or munitions emergency means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential immediate threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

* * * * *

Mobile treatment unit or *MTU* means a facility comprised of a device and any ancillary equipment that is designed and used to treat waste explosives on a temporary basis and be transported for use at multiple locations. An MTU may not operate at a location for more than 180 consecutive days at any time. For the purposes of calculation, days of consecutive operation begins with the date on which start-up of the unit occurs and concludes with the date on which interim closure is completed and includes every calendar day in between those dates. An MTU unit must satisfy the closure requirements at § 264.1(k)(5) of this chapter. A unit that operates at a location for more than 180 consecutive days at any time and/or does not satisfy the closure requirement in § 264.1(k)(5) of this chapter at any site is not a mobile treatment unit.

MTU location-specific permit means the RCRA permit issued to an MTU seeking to treat waste explosives under part 270, subpart K of this chapter. To qualify as an MTU location-specific permit, the permit shall have a term length of five years or less and also restrict operation of the MTU at any location to 180 consecutive days or less. For the purposes of calculation, days of consecutive operation begins with the date on which start-up of the unit occurs and concludes with the date on which interim closure is completed and includes every calendar day in between those dates.

MTU nationwide conditional approval means the nationwide conditional approval, with a term of five years, issued to an MTU seeking to treat waste explosives under part 270, subpart K of this chapter.

* * * * *

Open burning (*OB*) means the combustion of any material without the following:

(1) Control of combustion air to maintain adequate temperature for efficient combustion,

(2) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of emission of the combustion products.

(4) (See also ''Incineration,'' ''Thermal treatment,'' and ''Detonation.'')

Open burning/open detonation (OB/OD) unit is any unit used in the OB or OD treatment of waste explosives. These units include but are not limited to detonation pit, burn pile, burn cage, burn trenches, and burn pan units. The permitted unit boundary includes the associated kickout area within the facility, where dispersed metal fragments, unreacted explosives contaminants, and other waste items are deposited onto the land from the operation of the OB/OD unit.

Open detonation (OD) means the detonation of any material without containment in an enclosed device and control of the emission products, causing any unreacted material to be dispersed into the environment. OD refers to both detonation that is not covered and detonation that is covered by soil (buried detonation).

* * * * *

Waste explosives are hazardous wastes that exhibit the reactivity characteristic (D003) and are capable of detonation or explosive chemical reaction as defined in § 261.23(a)(6) through (8) of this chapter and include propellants, explosives, pyrotechnics, munitions, military munitions as defined in this section, and unexploded ordnance.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C 6905, 6912(a), 6924, 6925, and 6939g.

Subpart A—General

■ 6. Amend § 264.1 by adding paragraph (k) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(k) The requirements of this part do not apply to Mobile Treatment Units as defined in § 260.10 of this chapter that have been permitted to treat waste explosives under subpart K of part 270 of this chapter, except as provided below. An owner/operator of an MTU must comply with:

(1) Sections 264.11, 264.13, 264.16, and 264.17 of subpart B of this part;

(2) Subpart C of this part;

(3) Subpart D of this part;

(4) Sections 264.70, 274.71(c), 264.73, 264.74, 264.75, and 264.77 of subpart E of this part;

(5) Sections 264.111 through 264.115 of subpart G of this part except that:

(i) The MTU must close in a manner that completely decontaminates the MTU and removes any contaminated environmental media, residuals or debris resulting from the MTU's operation; and

(ii) The MTU, after completing treatment at each location must conduct an interim closure in a manner specified in an interim closure plan referenced in the nationwide conditional approval that completely decontaminates the MTU and removes any contaminated media, residuals or debris resulting from the MTU's operation;

(6) Sections 264.140 through 264.143, 264.147, 264.148, and 264.151 of subpart H of this part. The Director may accept or require variations to the required instrument wording in § 264.151 of subpart H of this part necessary to effectuate the financial assurance requirement for mobile units;

(7) Subpart X of this part except that the nationwide conditional approval issued must include requirements for responses to releases of hazardous waste or hazardous constituents from the unit. Additionally, for the purposes of complying with § 264.602 of subpart X of this part, references to §§ 264.15, 264.76, and 264.101 are not applicable for MTUs; and

(8) Section 264.706 of subpart Y of this part.

Subpart G—Closure and Post-Closure

■ 7. Amend § 264.111 by revising paragraph (c) to read as follows:

§ 264.111 Closure performance standard.

* * * * *

(c) Complies with the closure requirements of this part, including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, 264.713, and 264.1102.

■ 8. Amend § 264.112 by revising paragraph (d)(1) to read as follows:

§ 264.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(1) The owner/operator must notify the Director in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, land treatment or landfill unit, open burn or open detonation unit, or final closure of a facility with such a unit. The owner/operator must notify the Director in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only treatment or storage tanks, container storage, or incinerator units to be closed. The owner/operator must notify the Director in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace, whichever is earlier.

* * * * *

■ 9. Amend § 264.113 by revising paragraph (b) introductory text to read as follows:

§ 264.113 Closure; time allowed for closure.

* * * * *

(b) Except as provided in § 264.713, the owner/operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of non-hazardous wastes if the owner/operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility. The Director may approve an extension to the closure period if the owner/operator complies with all applicable requirements for requesting a modification to the permit and demonstrates that:

* * * * *

Subpart X—Miscellaneous Units

■ 10. Amend § 264.601 by revising paragraph (b) introductory text and paragraph (b)(3) to read as follows:

§ 264.601 Environmental performance standards.

* * * * *

(b) Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in stormwater, surface water, or wetlands or on the soil surface considering:

* * * * *

(3) The hydrologic characteristics of the unit and the surrounding area, including the topography of the land around the unit, and the stormwater run-on and run-off patterns around the unit;

* * * * *

■ 11. Revise § 264.603 to read as follows:

§ 264.603 Post-closure care.

A miscellaneous unit that is a disposal unit must be maintained in a manner that complies with § 264.601 during the post-closure care period. In addition, if a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated at the time of certification of closure, then that unit must also meet the requirements of § 264.601 during post-closure care. The post-closure plan under § 264.118 must specify the procedures that will be used to satisfy this requirement.

■ 12. Amend part 264 by adding subpart Y to read as follows:

Subpart Y—Open Burning and Open Detonation Units

Sec.

§ 264.704 Applicability.

(a) Open burning and open detonation of hazardous waste is prohibited except for the open burning and/or open detonation of waste explosives (as those terms are defined in § 260.10 of this chapter) that cannot be safely treated or disposed of through other modes.

(b) To be eligible to open burn or open detonate waste explosives, owners/operators must submit documentation of waste analysis required under § 264.706 and an alternative technology evaluation required under § 264.707(b)(3) to the Director in accordance with the time frames established under § 264.707(c). During the evaluation period for the alternative technology and during the implementation period for the alternative technology, the owner/operator can continue the use of OB/OD as a treatment method for the subject wastes. If the owner/operator is eligible to open burn or open detonate any waste explosives, they must conduct the open burning or open detonation in accordance with §§ 264.708 and 264.710 and in a manner that is protective of human health and the environment.

(c) The requirements of this subpart apply to owners/operators that treat or intend to treat waste explosives in open burning and open detonation (OB/OD) units as defined in § 260.10 of this chapter, except as § 264.1 provides otherwise.

(d) Explosives and munitions emergency responses as defined in § 260.10 of this chapter are exempt from the requirements of this subpart, except as indicated in § 264.715(a).

(e) *De minimis* quantities.

(1) Owners and operators of a facility that generates up to 15,000 lbs NEW of waste explosives annually may treat by OB/OD up to the amount of waste explosives generated without complying with § 264.707 provided that they make, to the Director's satisfaction, the demonstrations in paragraphs (e)(1)(i) through (iii) of this section.

(i) A demonstration that the proposed *de minimis* treatment by OB/OD would contribute negligible contamination and potential for exposure. This demonstration must address, at a minimum, the following components:

(A) The quantity of generated waste explosives proposed to be treated annually by OB/OD under this de minimis exemption. Under no circumstances will the Director approve a *de minimis* exemption for waste explosives treatment by OB/OD that exceeds 15,000 lbs NEW annually.

(B) The waste stream(s) to be treated and their known or anticipated toxicity and byproducts from OB/OD treatment.

(C) The location of the OB/OD treatment and potential to impact nearby receptors, resources, and sensitive environments.

(D) Permit conditions and other controls that are in place and would inform the potential for contamination onsite and offsite.

(ii) A demonstration that treatment by an MTU, treatment off-site by an alternative technology, and treatment by an existing on-site alternative technology, if applicable, are not safe and available.

(iii) A demonstration that the facility does not have any unresolved compliance or enforcement actions and does not have a history of significant noncompliance.

(2) The Director shall deny the request for this de minimis exemption when the demonstrations required by (e)(1)(i) through (iii) of this section cannot be satisfactorily met.

(3) To remain eligible for the exemption from the requirements of § 264.707, the owner/operator must

submit this demonstration on the same schedule as they would have submitted alternative technology evaluations for the subject wastes under § 264.707(c) and (d).

(4) If at any time, the continued treatment of waste explosives by OB/OD under this exemption would present a threat to human health and the environment, the owner/operator must notify the Director within five days.

(5) The Director may, based on reasonable belief that the continued treatment of waste explosives by OB/OD under this exemption would present a threat to human health and the environment, request additional information from the owner/operator to determine if the OB/OD activities still meet the *de minimis* criteria of paragraph (e)(1) of this section.

(6) If a determination is made under paragraph (e)(4) or (5) of this section that the continued treatment of waste explosives by OB/OD under this exemption would present a threat to human health and the environment, the exemption will be withdrawn. If the exemption is withdrawn, § 264.707 becomes applicable and the owner/operator must submit to the Director an alternative technology evaluation for the subject waste streams in accordance with § 264.707 within one year.

§ 264.705 Definitions applicable to this subpart.

The following definitions apply to this subpart:

Chemical weapon means a Chemical Warfare Materiel (CWM) as defined in 32 CFR 179.3.

Debris means solid material exceeding a 60 mm particle size that is intended for treatment or disposal and that is: a manufactured object; or plant or animal matter; or natural geologic material.

Hazardous debris means debris (*e.g.,* wood, plastic, concrete, personal protective equipment) that contains a hazardous waste listed in subpart D of part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Any deliberate mixing of hazardous waste with debris or hazardous debris with other debris that changes its treatment classification (*i.e.,* from waste to hazardous debris) is not allowed under the dilution prohibition in § 268.3 of this chapter.

Insensitive munition means a munition that reliably fulfills its performance, readiness and operational requirements on demand and that minimizes the probability of inadvertent initiation and severity of subsequent collateral damage to weapon platforms, logistic systems and personnel when subjected to specified accidental and combat threats.

Surface water means all water which is open to the atmosphere and subject to surface runoff.

§ 264.706 Waste analysis.

(a) Owners or operators that seek to use OB and/or OD (OB/OD) for treatment of waste explosive as defined in § 260.10 of this chapter must conduct and provide to the Director a detailed physical and chemical waste analysis for each explosive waste per § 270.14(b)(2) and (3) of this chapter, § 264.13, and the requirements in this section.

(b) Documentation of waste analysis must include:

(1) *Identification of each waste stream.* Identify each waste stream by name and type. Munitions, explosive wastes, and explosive-contaminated waste materials of the same specifications, design, and purpose may be grouped together. Propellants may only be considered a single waste stream if the propellant has the same mixtures and compounds, are from the same manufacturing process and has the same degradation status and tolerances, based in part on lot/batch and expiration date. Similarly, if the owners/operators must handle or treat any explosive differently due to degradation or being off-specification for that explosive, a new waste analysis must be done for each batch of munition that has degraded or is off-specification. Explosives-contaminated hazardous debris or material may be grouped together if containing the same explosive contaminant and the debris or material is of similar composition.

(2) *Physical description.* For each waste stream, a physical description of the waste. For munitions, or any material that is not bulk explosive waste, waste analysis must include design, dimensions, mass, main component features, and casing thickness. For bulk explosive wastes, energetics, and propellants, waste analysis must describe at a minimum the phase, color, packaging, mass, and density. Explosives-contaminated hazardous debris or material must include a physical description of all debris/material in the waste stream.

(3) *Chemical constituent analysis.* For each waste stream, a complete description of the chemical constituents and average percent composition, and an assessment of potential contaminants. Safety Data Sheet (SDS) for each chemical constituent must accompany this analysis (where available). Munitions and multi-component wastes must have chemical constituent analysis for each component of the waste. For example, the casing component should be analyzed separately from the filler and energetic component. Hazardous debris or material must include an analysis for all contaminants. The debris or material (*e.g.,* wood, plastic, concrete, personal protective equipment) may be excluded from the chemical analysis unless there is potential it includes wastes listed under § 264.708(b)(11) or the Director determines an analysis of debris or material is needed. The chemical constituent analysis must include the NEW for each waste stream.

(4) *Chemical properties analysis.* For each waste stream, a description of the explosive properties of each mixture or component. At a minimum, the properties must include insensitivity (to impact, friction, and electrostatic discharge), flash point, pH, and free liquid determination. For each waste stream, all test methods, test results, and documentation of analyses conducted to comply with this section must be included.

(c) The owner/operator may use pre-determined information or knowledge of a specific waste stream or constituent in lieu of conducting chemical and physical analysis. The information must still be submitted as part of the waste analysis, and the source of that information must be clearly marked. Where applicable, the alternate source of information must be included. Acceptable sources of information for each waste or waste stream include the following:

(1) Process knowledge when raw materials and reagents are combined and react in a known manner.

(2) Generator knowledge and manufacturer published specifications of chemicals or components.

(d) The Director may request further information, as needed, to substantiate the determination that explosive wastes exhibit the characteristic of reactivity under § 261.23 of this chapter or cannot be treated by another safe mode of treatment or to substantiate conditions established by an explosives safety specialist to safely treat, store, or dispose the waste properly in accordance with this part.

(e) Owners or operators must submit all components of the waste analysis to the Director electronically. If there are information sensitivity concerns (information may include, but is not limited to: confidential business information, controlled unclassified information, and classified information), the owner/operator must make reasonable accommodations for the Director to have access to the

information contained in a waste analysis unless prohibited by applicable Federal law or regulation, including prohibition or restriction for national security reasons. This information may be withheld from the public and summarily referenced in the waste analysis as part of the public RCRA permit application without disclosing sensitive information.

(f) The Director may accept a waste analysis without all prescribed analysis as described in this section if there are safety concerns that cannot be mitigated/prevented in conducting the analysis, there is no process or generator knowledge applicable, and the owners/operators provide information describing the safety concerns related to testing.

§ 264.707 Alternative technology evaluation and implementation.

(a) *Requirement for an alternative technology evaluation.* Owners or operators that seek to use OB and/or OD (OB/OD) for treatment of waste explosives as defined in § 260.10 of this chapter must demonstrate through an evaluation that there are no safe and available alternative treatment technologies, except as § 264.704 provides otherwise, according to the requirements of this section. During the evaluation period for the alternative technology and during the implementation period for the alternative technology, the owner/operator may continue the use of OB/OD as a treatment method for the subject wastes.

(b) *Criteria and contents of alterative technology evaluation.* The demonstration must be an evaluation of alternative treatment technologies for each waste explosive stream requiring treatment. The evaluation must be conducted using the following specified criteria and the evaluation report must include the following specified content:

(1) Criteria that each technology must be evaluated against are:

(i) *Safe.* Technology must be determined to be safe for the specific waste explosives by an explosives or munitions specialist; designed, constructed, and operated in a manner that is safe and protective of human health and the environment; and uses appropriate procedures and technologies to ensure safe handling and treatment, as determined by an explosives or munitions specialist; and

(ii) *Available.* Technology is available when it can be used on-site or off-site, rented, leased, or purchased from a qualified vendor or entity, or custom designed and constructed by a qualified vendor or entity and has been determined through a technical evaluation, such as a demonstration at full-scale, to consistently perform the functions necessary to be effective.

(2) Evaluation content must include:

(i) A description of the facility operations that generate waste explosives and of any alternative treatment technologies in use and the waste streams treated;

(ii) A characterization of the waste explosives according to both the physical and chemical aspects as required under § 264.706;

(iii) An initial screening of available alternative treatment technologies according to the criteria in paragraph (b)(1) of this section for each explosive waste stream and the rationale to support removal of technologies from further consideration;

(A) If an owner/operator plans to conduct a treatability study in accordance with § 264.1(e) and/or (f), a description of the proposed study and the timing for conducting study must be submitted to the Director.

(B) If an owner/operator is in the process of conducting or has conducted a treatability study in accordance with § 264.1(e) and/or (f), documentation of the study, including anticipated timing for completion or the completion date, and any conclusions reached, must be submitted to the Director.

(C) If an owner/operator plans to apply for a research, development, and demonstration (RD&D) permit under § 270.65 of this chapter, all available information that will accompany a permit application, including anticipated timing for initiating and completing the RD&D activities, must be submitted to the Director.

(D) If an owner/operator is conducting RD&D activities under a § 270.65 permit, or has concluded RD&D activities, a copy of the permit or any conclusions reached after conclusion of the RD&D activities, must be submitted to the Director.

(iv) An analysis of alternative treatment technologies that pass the initial screening for each explosive waste stream to include any pre-treatment technologies and the waste streams and the percentage of the waste streams capable of being treated by the technologies;

(v) Identification of selected alternative treatment technology or combination of technologies;

(vi) Evaluation of off-site and mobile unit treatment options using alternative treatment technologies.

(A) For waste streams that cannot be shipped off-site, documentation must be submitted indicating that the waste explosive is a forbidden explosive, DoD or DOE explosives safety specialists have determined that the waste cannot be shipped according to the DoD Explosives Hazard Classification Procedures, or a Department of Transportation competent authority approval or special permit has been requested and denied. For the Department of Transportation permit denial, documentation must include the denial correspondence and the tracking number assigned to the request for a competent authority approval or special permit.

(B) For the mobile treatment unit alternative technology evaluation, it must be conducted according to the criteria in paragraph (b)(1) of this section and accompanied by a rationale when a decision is made to not use a mobile treatment unit.

(vii) Identification of each explosive waste stream proposed for treatment by OB/OD and its:

(A) Net explosive weight;

(B) Physical and chemical aspects according to § 264.706(b)(1);

(C) Treatment method as either OB or OD; and

(D) Rationale for OB/OD.

(3) A complete evaluation must be submitted, as a written report, to the Director for approval in accordance with the time frames established under paragraph (c) of this section.

(4) The Director shall approve the evaluation after a completeness determination is made. An evaluation is complete when:

(i) Every component of the required content according to (b)(2) of this section is fully addressed; and

(ii) The rationale, where required by (b)(2) of this section, is provided to support the decisions.

(c) *Timing of initial alternative technology evaluations.* (1) The initial alternative technology evaluation must be prepared and submitted to the Director as part of the next permit application supporting any of the following permit actions.

(i) Application for a new OB/OD unit;

(ii) Renewal application of an existing OB/OD unit;

(iii) Permit application for an interim status OB/OB unit; or

(iv) Class 2 or Class 3 permit modification associated with an OB/OD unit.

(2) An owner/operator that conducted an alternative technology evaluation within three years prior to [EFFECTIVE DATE OF THE FINAL RULE] may use that evaluation in lieu of conducting another alternative technology evaluation provided that:

(i) The alternative technology evaluation assessed all waste streams

currently or proposed to be treated by OB/OD by the facility; and

(ii) The alternative technology evaluation meets or exceeds the requirements for an alternative technology evaluation at § 264.707(b).

(d) *Timing of alternative technology reevaluations.* To continue OB/OD, the owner/operator must conduct an alternative technology reevaluation every five years following the initial alternative technology evaluation.

(e) *Implementation of alternative technologies.* (1) Within 180 days of the completion of an alternative technology evaluation and a determination that a safe alternative technology is available, the owner/operator must submit a schedule for implementation of the identified safe alternative technology. The schedule must include all significant milestones including:

(i) Vendor procurement;

(ii) Submittal of a permit application to add the alternative technology unit;

(iii) Construction start and completion dates, if applicable;

(iv) Testing and results of testing of the alternative technology; and

(v) Operation of the alternative technology.

(2) The schedule of implementation must be incorporated by reference into the facility's RCRA permit.

(3) Thereafter, the schedule for implementation may be amended through a Class 1 permit modification with prior Director approval as provided by § 270.42 of this chapter.

(4) The owner/operator must comply with the schedule of implementation of the alternative technology.

§ 264.708 Operating requirements.

(a) The owner/operator of an OB/OD unit may only treat waste explosives as specified and according to the conditions of the permit.

(b) An OB/OD unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. The permit must contain any conditions necessary to protect human health and the environment. Permit conditions and terms for OB/OD units must be established that are specific to the unit and type of explosive waste and which address the following parameters:

(1) *Meteorological conditions.* Allowable wind conditions including a minimum and maximum speed and direction; acceptable minimum and maximum air temperature; acceptable minimum and maximum humidity; restrictions on OB/OD activities in the event of precipitation or a high probability of precipitation; acceptable cloud conditions including overall cloud cover and cloud ceiling height; and, as appropriate, restriction on OB/OD for different air pollution statuses (*e.g.,* air quality index).

(2) *Explosive waste processing limits.* Limits on duration of OB/OD events; maximum net explosive weight per OB/OD event, day, and year.

(3) *Noise and ground vibration control.* Threshold levels and mitigation measures to minimize noise and ground vibration that affects areas outside the facility boundary. Controls or changes in operating parameters or unit design may be necessary to comply with this provision. If measures to control noise and ground vibration are not possible, the unit may need to be relocated.

(4) *Removal of excess material.* Requirements to remove excess material (such as foils and casings) if it is possible to do so safely.

(5) *Timing of OB/OD events.* Requirements on time of day for OB/OD events and duration of events. OB/OD should only occur during daylight hours and should not be allowed to continue after dark.

(6) *Engineering controls and measures.* Appropriate engineering controls and measures to prevent/minimize surface, subsurface, and groundwater contamination and aerial dispersion and release and/or migration of residues, kickout and contaminants into the environment and off-site. Engineering controls include surface water/storm water run-on and run-off controls, concrete pads with integrated curbs and sump pumps, lined drainage ditches, collection basins, blast barriers/shields/blankets, berms, metal cages, metal lids or covers for burn pans, soil covers for OD, and routine operation and maintenance measures including removal of residues, kickout, and visible surface contamination (*e.g.,* black soot, staining, ejecta) from the unit and surrounding area.

(7) *Location.* Location considerations including depth to groundwater, distance to surface water, distance to the property boundary, and distance to the nearest residence, school, or daycare; and location considerations for units in 100-year floodplains as required under § 264.18(b).

(8) *Safe distance.* Safe distance plan including safe distance calculation. The safe distances calculation must include to the property boundary and to the nearest public access point. If the waste stream does not have known safe distances, or the waste characterization is unavailable due to safety concerns, a plan for determining the safe distance must be included.

(9) *Security.* Security plan and controls to ensure unauthorized access by the public to the OB/OD units including surrounding kickout area is minimized.

(10) *Public notice and outreach plan.* Public notice and outreach plan must include notice to the surrounding community of OB/OD activities and events, method of notice distribution, required content of the notice, method(s) for community members to contact the facility with questions or concerns, and timeframe for notifications. The content of the plan must include how information will be made available to the public regarding contaminants emitted or released from OB/OD operations, environmental monitoring data/results, and, if applicable, locations of off-site contamination including kickout and groundwater contamination.

(11) *Prohibited wastes.* Owners or operators must not treat by OB/OD any of the following wastes:

(i) Mixed wastes containing more than trace amounts of depleted uranium (DU);

(ii) White and red phosphorus;

(iii) Picatinny Arsenal Explosive 21 (PAX–21);

(iv) Any materials containing polychlorinated biphenyls (PCBs) as defined in § 761.3 of this chapter;

(v) Munitions characterized by the delivery of two or more antipersonnel, anti-material, or anti-armor submunitions (also known as bomblets) by a parent munition, such as improved conventional munitions (ICMs) or cluster bombs;

(vi) Chemical weapons as defined in § 264.705; and

(vii) Any other wastes the Director determines should be banned from OB/OD as necessary to protect human health and the environment.

§ 264.710 Monitoring requirements.

(a) Owners/operators of OB/OD units must develop monitoring plans for groundwater, soil and residues, air, kickout, storm water, and if present, surface water and sediments, and submit these plans to the Director for approval under § 270.23 of this chapter. The Director must make the determination whether the proposed monitoring plans are sufficient for the specific facility and include the approved monitoring plans for the permit. In all cases where the owner/operator proposes that a specific media monitoring is not needed, the rationale for such proposal must be included in the monitoring plan. Owners/operators must implement the monitoring plans to monitor for releases and contamination

from the OB/OD units including the surrounding kickout areas as specified in paragraphs (a)(1) through (6) of this section. The monitoring must test for any potential constituents related to the treatment of the wastes by OB/OD including any combustion products and byproducts, that have the potential to adversely affect human health and the environment. For all media types, monitoring frequencies may be reduced from the minimum monitoring outlined in paragraphs (a)(1) through (7) of this section, if the permit limits the OB/OD treatment activity in the unit to ensure that the unit is not used frequently enough to warrant the monitoring frequency outlined in paragraphs (a)(1) through (7) of this section, and the Director makes the determination that a reduced monitoring plan is acceptable for the site. For each monitored constituent and environmental media type, the monitoring plans must include an action level, a concentration or amount where the owner/operator must take action to mitigate and manage the release of the constituent based on best available science. The plans must also include analysis and evaluation of the data, procedures for notifications to the Director, and all appropriate response actions. The monitoring must include:

(1) Groundwater monitoring to detect any potential releases from the OB/OD units. Groundwater monitoring must include at least one upgradient background well in addition to downgradient wells. Wells must be located and screened to detect potential releases of contaminants to the uppermost flow zones and any preferential flow paths (subsurface pathways that allow more rapid transport of water and solutes in the soil and groundwater). Groundwater monitoring must include routine depth to water. Nested piezometers where needed to chart groundwater flow and measurements to identify and track any fluctuations in the direction of groundwater flow are required, unless the Director determines they are not needed due to hydrogeologic conditions. Sampling and testing must be conducted in accordance with an approved RCRA groundwater monitoring plan at least until the unit completes RCRA closure (soils and groundwater) and is under a post-closure permit as applicable. If, based on site-specific conditions, there is no pathway for constituents to enter groundwater from OB/OD, the Director may determine that groundwater monitoring is not necessary.

(2) Stormwater monitoring to detect any potential releases. Stormwater monitoring must be conducted in accordance with an approved RCRA stormwater monitoring plan until the unit completes RCRA closure and is under a post-closure permit as applicable.

(3) Surface water monitoring of nearby surface water bodies to detect potential releases from the OB/OD unit. Surface water monitoring must be conducted in accordance with an approved RCRA surface water monitoring plan until the unit completes RCRA closure and is under a post-closure permit as applicable. Sediments in the surface water must be monitored according to the sediments sampling plan. If, based on site-specific conditions, there is no pathway for constituents to enter surface water from OB/OD, the Director may determine that surface water monitoring is not necessary.

(4) Soil must be monitored monthly around the unit (*e.g.,* burn pans, cages, piles, and detonation sites) to detect potential releases into the environment. This soil does not include any soil or environmental media used as engineering control such as soil cover for detonation events.

(5) Air monitoring to detect potential releases from the OB/OD unit. Air monitoring is required downwind of the OB/OD unit and at or near the facility boundary. Downwind monitoring must be located in the direction most likely to be downwind at the time of OB/OD. If there is no single most likely direction, multiple downwind monitoring locations may be needed. The direction must be determined in accordance with § 264.708(b)(1). At least one air monitoring station must be located downwind of the OB/OD unit and as close to the unit as possible, in accordance with an approved air monitoring plan. Air monitoring must be conducted upwind of the facility, where they would not be impacted by facility operations including any other open burning or open detonation (*e.g.,* OB/OD conducted related to product testing or training or explosives or munitions activities), to establish background or ambient concentrations unless the owner/operator makes the assumption there is zero background contamination. If, based on site-specific conditions, the owner/operator can demonstrate that air monitoring is not necessary to protect human health and the environment, the Director may determine that air monitoring is not necessary.

(6) Air smoke plumes must be visually monitored and recorded (*e.g.,* in a log) during each OB/OD event: the direction, duration, extent, and opacity of smoke plumes, and whether the plume goes off facility.

(7) Kickout must be visually monitored and recorded after each OB/OD event conducted at the OB/OD unit. The operator/operator must monitor and record the following information: the extent (distance from OB/OD unit), description, and location of all kickout that goes off facility. On a weekly basis, the owner/operator must find, retrieve, and treat all kickout that goes off-site unless the landowner refuses entry for this purpose. The owner/operator must maintain an electronic record on-site for any kickout that is known to migrate off-site but not found during the operating life of the unit, and this record must be maintained on-site until all remaining kickout is found and treated, such as during closure of the unit. If kickout is regularly discovered or found outside the unit boundary, the owner/operator should reduce the NEW per event or request a permit modification to adjust the unit boundary.

(b) Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies must ensure compliance with §§ 264.15, 264.33, 264.75, 264.76, 264.77, and 264.101 as well as meet any additional requirements needed to protect human health and the environment as specified in the permit.

§ 264.712 Recordkeeping, inspections, training, and reporting requirements.

All facilities must comply with §§ 264.15, 264.16, subparts C and D, and 264.73. The contents of this section clarify and add additional provisions applicable to OB/OD units.

(a) The owner/operator is required to keep electronic records of all OB/OD unit activity. This information must be maintained in the operating record and accessible on-site five (5) years after closure of the entire Resource Conservation and Recovery Act (RCRA) facility in the event of clean closure. If an OB/OD unit enters post-closure, the records must be maintained through the entire post-closure period. The records must contain the following for each treatment event:

(1) A detailed description of each waste stream treated in each unit including the type, chemical composition, and percentage of energetic and inert chemicals, materials, and binders; physical form/dimensions/composition; description of casing if any; number/amount of items; total weight; and net explosive weight (NEW). The waste analysis of the waste stream may be referenced if the waste analysis includes this information.

(2) Time and date of OB/OD treatment.

(3) A record of the atmospheric conditions at the time of treatment to document compliance with the criteria set forth in the permit.

(4) A detailed description of any non-conformance issues or events, including incomplete treatment that required collection and re-treatment of partially treated waste; periods of smoldering or incomplete combustion; black smoke plumes migrating beyond the facility boundary, releases of ejecta or kickout from the unit boundary or facility boundary. Details of actions taken to remedy the non-conformance issues or events. Actions taken to prevent non-conformance issues or events in the future.

(b) The owner/operator of any OB/OD units must conduct regular inspections as specified in the permit. A schedule and example inspection sheet must be included in the permit application. The schedule and example inspection sheet must account for the maximum OB/OD operations NEW and frequency limits set forth in the permit application. The permit may have any additional inspection requirements to remain protective of human health and the environment as determined by the Director. All inspection records and recordkeeping must be kept electronically and must be accessible on-site for at least five (5) years. At a minimum, the inspection schedule must include the schedule outlined by paragraphs (b)(1) and (2) of this section unless the unit is used for treatment less than the frequency specified in paragraphs (b)(1) and (2) of this section, the owner/operator notifies the Director of the reduction in unit monitoring and the rationale based on site-specific conditions:

(1) Inspections after the last treatment event per day to look for untreated waste, debris, shrapnel, burn residues, and obvious damage to the treatment unit that would affect unit performance.

(2) Monthly inspections to verify the structural integrity of any structures built or used to treat hazardous waste. If any problems affecting performance or protectiveness of the unit are found, they must be fixed before the unit is used for any treatment activity.

(c) The owner/operator must design and administer personnel training in accordance with § 264.16. All personnel involved in the handling, treatment, or management of hazardous waste must attend training tailored to the OB/OD unit and the explosive wastes treated. Training must be updated whenever there is a new waste stream and whenever operations change the way treatment is conducted for the unit. This information must be maintained in the electronic operating record until closure of the facility.

(d) The owner/operator must report the following to the Director electronically:

(1) Any unit failure event where the unit is damaged, or treatment does not occur in the OB/OD unit as intended by the permit seven (7) days of the initial failure. The unit failure cause and potential correction for the unit must be submitted within 30 days of the initial failure.

(2) An annual summary report of all documented untreated waste beyond the OB/OD unit from the kickout monitoring described in § 264.712(c)(6).

(3) All hazardous constituents and treatment byproducts in the air, soil, groundwater, or surface water at or above the levels set forth in the monitoring plan. All findings must be reported immediately.

(4) Any records requested by the Director.

§ 264.713 Closure; time allowed for closure for certain activities.

Open burn and open detonation units are subject to the requirements of § 264.113, except when the units are used for activities in which military munitions are used as intended or the units have the potential to be impacted by munitions constituents or explosive waste contaminants from adjacent activities. When used for these activities, the owner/operator must demonstrate that:

(a) The following activities will occur or are occurring:

(1) The open burn or open detonation unit is used for activities in which military munitions are used as intended; or

(2) The open burn or open detonation unit has the potential to be impacted by munitions constituents or explosive waste contaminants from the active military range the unit is located on or from adjacent open burn or open detonation units. The owner/operator must demonstrate that contaminants from the active range or adjacent operating units have the potential to contribute contaminants within the inactive unit boundary. This demonstration must be made by providing:

(i) Maps showing all impacted open burn and open detonation units, kickout areas, and their boundaries and the locations of the activities that will occur or are occurring; and

(ii) A description of all activities that will contribute contaminants;

(iii) Meteorological conditions that may cause deposition of contaminants within the inactive unit boundary; and

(b) Has taken and will continue to take all steps to prevent releases and threats to human health and the environment from the unclosed but not operating OB/OD unit, including compliance with all applicable permit requirements. Monitoring requirements of § 264.710 may be modified in the permit as appropriate to the location and circumstances of use of the unit, until closure activities have been completed for the units requesting delayed closure under the listed circumstances in paragraph (a) of this section.

§ 264.714 Closure and post-closure care.

OB/OD units must comply with the closure requirements of subpart G of part 264 except as specified in § 264.713. In addition:

(a) If after removing or decontaminating all residues and making all reasonable efforts to remove or decontaminate any contaminated components, soils, subsoils, structures, and equipment, the owner/operator finds that not all contaminated soils and subsoils can be practicably removed or decontaminated, the owner/operator must close the unit and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills at § 264.310.

(b) If an OB/OD unit is closed as a landfill, any remaining waste explosives and residues must be remediated to levels such that the explosives concentration in the soil and subsoils no longer present an explosive safety hazard as confirmed by testing before a cap or cover may be put in place.

§ 264.715 Emergency provisions.

(a) *Emergency responses.* An explosives or munitions emergency response, as defined in § 260.10 of this chapter, is exempt from RCRA treatment, storage, and disposal standards and permit requirements pursuant to §§ 262.10(i), 263.10(e), 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) of this chapter, including the requirement to conduct an alternative treatment technology evaluation per § 264.704, during a response. After the explosives or munitions emergency response specialist declares that the emergency response is complete,

(1) The response unit's base or facility of origin, based on information from an explosives or munitions emergency response specialist must submit the following information to the Director within five (5) days:

(i) The type of explosive or munition and its size and quantity;

(ii) Whether it is armed, primed, fused, had been fired and/or did not function, or if undeterminable, as applicable to the item type;

(iii) The condition and its stability, as applicable to the item type;

(iv) The location of discovery or generation and location and description of the storage area; and if applicable,

(v) Whether an alternative technology was immediately available and safe for use given the site-specific situation.

(b) *Emergency permits.* When an explosives or munitions emergency response as defined in § 260.10 of this chapter is not required, but temporary treatment of explosives or munitions is needed to address an imminent and substantial endangerment to human health and the environment, an emergency permit under § 270.61 of this chapter is required.

(1) The response unit's base or facility of origin, based on information from an explosives or munitions emergency response specialist must provide documentation to support a decision by the Director to issue an emergency permit under § 270.61 of this chapter. This documentation must include the following information:

(i) All information required by paragraphs (a)(1)(i) through (iv) of this section;

(ii) The anticipated or actual frequency and quantity of generation of explosive material;

(iii) The expected timeframe from discovery or generation to final treatment;

(iv) A list of existing available alternative technologies that are known to treat the waste explosive identified in paragraph (b)(1)(i) of this section and which can either be brought to the location for use or to which the wastes can be transported; and,

(v) Rationale to support a determination that no safe alternative technology is available for use within a reasonable time given the site-specific situation, or that the wastes cannot be shipped off-site.

(2) Documentation required in § 264.715(b)(1) must be submitted to the Director within five (5) days of beginning treatment and must be incorporated into the emergency permit.

(3) If the Director determines, based on the documentation submitted, that the treatment activity does not qualify for an emergency permit, then the treatment must cease until a permit application with an alternative technology evaluation is received pursuant to § 270.10 of this chapter and in accordance with the applicable standards in subpart Y of this part.

(4) Treatment by OB/OD must cease if and when an alternative technology is selected and implemented, in accordance with the revised emergency permit.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 13. The authority for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, 6937, and 6939g.

■ 14. Amend § 265.111 by revising paragraph (c) to read as follows:

§ 265.111 Closure performance standard.

* * * * *

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, 265.713, and 265.1102.

* * * * *

■ 15. Amend § 265.112 by revising paragraph (d)(1) to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(1) The owner/operator must submit the closure plan to the Director at least 180 days prior to the date on which he expects to begin closure of the first surface impoundment, waste pile, land treatment or landfill unit, or open burn or open detonation unit, or final closure if it involves such a unit, whichever is earlier. The owner/operator must submit the closure plan to the Director at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. The owner/operator must submit the closure plan to the Director at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units. Owners or operators with approved closure plans must notify the Director in writing at least 60 days prior to the date on which he expects to begin closure of a surface impoundment, waste pile, landfill, land treatment unit, open burn or open detonation unit or final closure of a facility involving such a unit. Owners or operators with approved closure plans must notify the Director in writing at least 45 days prior to the date on which he expects to begin partial or final closure of a boiler or industrial furnace. Owners or operators with approved closure plans must notify the Director in writing at least 45 days prior to the date on which he expects to begin final closure of a facility with only tanks, container storage, or incinerator units.

* * * * *

■ 16. Amend § 265.113 by revising paragraph (b) introductory text to read as follows:

§ 265.113 Closure; time allowed for closure.

* * * * *

(b) Except as provided in § 265.713, the owner/operator must complete partial and final closure activities in accordance with the approved closure plan and within 180 days after receiving the final volume of hazardous wastes, or the final volume of nonhazardous wastes if the owner/operator complies with all applicable requirements in paragraphs (d) and (e) of this section, at the hazardous waste management unit or facility, or 180 days after approval of the closure plan, if that is later. The Director may approve an extension to the closure period if the owner/operator demonstrates that:

* * * * *

Subpart P—Thermal Treatment

■ 17. Revise § 265.382 to read as follows:

§ 265.382 Open burning and open detonation; waste explosives.

Open burning and open detonation of hazardous waste is prohibited except for the open burning and/or open detonation of waste explosives (as those terms defined in § 260.10 of this chapter) cannot be safely treated through other modes of treatment. Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with subpart Y of this part and in accordance with the following table:

Pounds of waste explosives or propellants	Minimum distance from open burning or detonation to the property of others
0 to 100	204 meters (670 feet).
101 to 1,000	380 meters (1,250 feet).
1,001 to 10,000	530 meters (1,730 feet).
10,001 to 30,000	690 meters (2,260 feet).

■ 18. Revise § 265.383 to read as follows:

§ 265.383 Interim status thermal treatment devices burning particular hazardous waste.

(a) Owners or operators of thermal treatment devices subject to this subpart may burn EPA Hazardous Wastes FO20, FO21, FO22, FO23, FO26, or FO27 if

they receive a certification from the Assistant Administrator for Land and Emergency Management that they can meet the performance standards of subpart O of part 264 of this chapter when they burn these wastes.

(b) The following standards and procedures will be used in determining whether to certify a thermal treatment unit:

(1) The owner/operator will submit an application to the Assistant Administrator for Land and Emergency Management containing the applicable information in §§ 270.19 and 270.62 of this chapter demonstrating that the thermal treatment unit can meet the performance standard in subpart O of part 264 of this chapter when they burn these wastes.

(2) The Assistant Administrator for Land and Emergency Management will issue a tentative decision as to whether the thermal treatment unit can meet the performance standards in subpart O of part 264 of this chapter. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the jurisdiction where the thermal treatment device is located. The Assistant Administrator for Land and Emergency Management will accept comment on the tentative decision for 60 days. The Assistant Administrator for Solid Waste and Emergency Response also may hold a public hearing upon request or at his discretion.

(3) After the close of the public comment period, the Assistant Administrator for Land and Emergency Management will issue a decision whether or not to certify the thermal treatment unit.

■ 19. Amend part 265 by adding subpart Y to read as follows:

Subpart Y—Open Burning and Open Detonation Units

Sec.

§ 265.704 Applicability.

(a) Open burning and open detonation of hazardous waste is prohibited except for the open burning and open detonation of waste explosives as defined in § 260.10 of this chapter and which cannot be safely treated of through other modes of treatment.

(b) To be eligible to open burn or open detonate waste explosives, owners/operators must submit documentation of waste analysis required under § 265.706 and an alternative technology evaluation required under § 265.707(b)(3) to the Director in accordance with the time frames established under § 265.707(c). During the evaluation period for the alternative technology and during the implementation period for the alternative technology, the owner/operator can continue the use of OB/OD as a treatment method for the subject wastes. If the owner/operator is eligible to open burn or open detonate any waste explosives, they must conduct the open burning or open detonation in accordance with §§ 265.708 and 265.710 and in a manner that is protective of human health and the environment.

(c) The requirements of this subpart apply to owners/operators that treat or intend to treat waste explosives in open burning and open detonation (OB/OD) units as defined in § 260.10 of this chapter, except as § 265.1 provides otherwise.

(d) Explosives and munitions emergency responses as defined in § 260.10 of this chapter are exempt from the requirements of this subpart, except as indicated in § 265.715(a).

(e) *De minimis* quantities.

(1) Owners and operators of a facility that generates up to 15,000 lbs NEW of waste explosives annually may treat by OB/OD up to the amount of waste explosives generated without complying with § 265.707 provided that they make, to the Director's satisfaction, the demonstrations in paragraphs (e)(1)(i) through (iii) of this section.

(i) A demonstration that the proposed de minimis treatment by OB/OD would contribute negligible contamination and potential for exposure. This demonstration must consider, at a minimum, the following criteria:

(A) The quantity of waste explosives proposed to be treated annually by OB/OD under this de minimis exemption. Under no circumstances will the Director approve a de minimis exemption for waste explosives treatment by OB/OD that exceeds 15,000 lbs NEW annually.

(B) The waste stream(s) to be treated and their known or anticipated toxicity and byproducts from OB/OD treatment.

(C) The location of the OB/OD treatment and potential to impact nearby receptors, resources, and sensitive environments.

(D) Controls and other protective measures that are in place and would inform the potential for contamination onsite and offsite.

(ii) A demonstration that treatment by an MTU, treatment off-site by an alternative technology, and treatment by an existing on-site alternative technology, if applicable, is not safe and available.

(iii) A demonstration that the facility does not have any unresolved compliance or enforcement actions and does not have a history of significant noncompliance.

(2) The Director shall deny the request for this de minimis exemption when the demonstrations required by (e)(1)(i) through (iii) of this section cannot be satisfactorily met.

(3) To remain eligible for the exemption from the requirements of § 265.707, the owner/operator must submit this demonstration on the same schedule as they would have submitted alternative technology evaluations for the subject wastes under § 265.707(c) and (d).

(4) If at any time, the continued treatment of waste explosives by OB/OD under this exemption would present a threat to human health and the environment, the owner/operator must notify the Director within five days.

(5) The Director may, based on reasonable belief that the continued treatment of waste explosives by OB/OD under this exemption would present a threat to human health and the environment, request additional information from the owner/operator to determine if the OB/OD activities still meet the de minimis criteria of paragraph (e)(1) of this section.

(6) If a determination is made under paragraph (e)(4) or (5) of this section that the continued treatment of waste explosives by OB/OD under this exemption would present a threat to human health and the environment, the exemption will be withdrawn. If the exemption is withdrawn, § 265.707 becomes applicable and the owner/operator must submit to the Director an alternative technology evaluation for the subject waste streams in accordance with § 265.707 within one year.

§ 265.705 Definitions applicable to this subpart.

The following definitions apply to this subpart.

Chemical weapon means a Chemical Warfare Materiel (CWM) as defined in 32 CFR 179.3.

Debris means solid material exceeding a 60 mm particle size that is intended for treatment or disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material.

Hazardous debris means debris (*e.g.,* wood, plastic, concrete, personal protective equipment) that contains a hazardous waste listed in subpart D of part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Any deliberate mixing of hazardous waste with debris or hazardous debris with other debris that changes its treatment classification (*i.e.,* from waste to hazardous debris) is not allowed under the dilution prohibition in § 268.3 of this chapter.

Insensitive munition means a munition that reliably fulfills its performance, readiness and operational requirements on demand and that minimizes the probability of inadvertent initiation and severity of subsequent collateral damage to weapon platforms, logistic systems and personnel when subjected to specified accidental and combat threats.

Surface water means all water which is open to the atmosphere and subject to surface runoff.

§ 265.706 Waste analysis.

(a) Owners or operators that seek to use OB and/or OD (OB/OD) for treatment of waste explosive as defined in § 260.10 of this chapter must conduct and provide to the Director a detailed physical and chemical waste analysis for each explosive waste per §§ 270.14(b)(2) and (3) of this chapter, 265.13, and the requirements in this section.

(b) Documentation of waste analysis must include:

(1) *Identification of each waste stream.* Identify each waste stream by name and type. Munitions, explosive wastes, and explosive-contaminated waste materials of the same specifications, design, and purpose may be grouped together. Propellants may only be considered a single waste stream if the propellant has the same mixtures and compounds, are from the same manufacturing process and has the same degradation status and tolerances, based in part on lot/batch and expiration date. Similarly, if the owners/operators must handle or treat any explosive differently due to degradation or being off-specification for that explosive, a new waste analysis must be done for each batch of munition that has degraded or is off-specification. Explosives-contaminated hazardous debris or material may be grouped together if containing the same explosive contaminant and the debris or material is of similar composition.

(2) *Physical description.* For each waste stream, a physical description of the waste. For munitions, or any material that is not bulk explosive waste, waste analysis must include design, dimensions, mass, main component features, and casing thickness. For bulk explosive wastes, energetics, and propellants, waste analysis must describe at a minimum the phase, color, packaging, mass, and density. Explosives-contaminated hazardous debris or material must include a physical description of all debris or material in the waste stream.

(3) *Chemical constituent analysis.* For each waste stream, a complete description of the chemical constituents and average percent composition, and an assessment of potential contaminants. Safety Data Sheet (SDS) for each chemical constituent must accompany this analysis (where available). Munitions and multi-component wastes must have chemical constituent analysis for each component of the waste. For example, the casing component should be analyzed separately from the filler and energetic component. Hazardous debris or material must include an analysis for all contaminants. The debris or material (*e.g.,* wood, plastic, concrete, personal protective equipment) may be excluded from the chemical analysis unless there is potential it includes wastes listed under § 265.708(b)(11) or the Director determines an analysis of debris or material is needed. The chemical constituent analysis must include the net explosive weight (NEW) for each waste stream.

(4) *Chemical properties analysis.* For each waste stream, a description of the explosive properties of each mixture or component. At a minimum, the properties must include insensitivity (to impact, friction, and electrostatic discharge), flash point, pH, and free liquid determination. For each waste stream, all test methods, test results, and documentation of analyses conducted to comply with this section must be included.

(c) The owner/operator may use pre-determined information or knowledge of a specific waste stream or constituent in lieu of conducting chemical and physical analysis. The information must still be included as part of the waste analysis, and the source of that information must be clearly marked. Where applicable, the alternate source of information must be included. Acceptable sources of information for each waste or waste stream include the following:

(1) Process knowledge when raw materials and reagents are combined and react in a known manner.

(2) Generator knowledge and manufacturer published specifications of chemicals or components.

(d) The Director may request further information, as needed, to substantiate the determination of explosive wastes as having characteristic for reactivity under § 261.23 of this chapter or cannot be treated by another safe mode of treatment, or to substantiate conditions established by an explosives safety specialist to safely treat, store, or dispose the waste properly in accordance with this part.

(e) Owners or operators must submit all components of the waste analysis to the Director electronically. If there are information sensitivity concerns (information may include, but is not limited to: confidential business information, controlled unclassified information, and classified information), the owner/operator must make reasonable accommodations for the Director to have access to the information contained in a waste analysis unless prohibited by applicable Federal law or regulation, including prohibition or restriction for national security reasons. This information may be withheld from the public and summarily referenced in the waste analysis as part of the public proposed site plan without disclosing sensitive information.

(f) The Director may accept a waste analysis without all prescribed analysis as described in this section if there are safety concerns that cannot be mitigated/prevented in conducting the analysis, there is no process or generator knowledge applicable, and the owners/operators provide information describing the safety concerns related to testing.

§ 265.707 Alternative technology evaluation and implementation.

(a) *Requirement for an alternative technology evaluation.* Owners or operators that seek to use OB and/or OD (OB/OD) for treatment of waste explosives as defined in § 260.10 of this chapter must demonstrate through an evaluation that there are no safe and available alternative treatment technologies, except as § 265.704 provides otherwise, according to the requirements of this section. During the evaluation period for the alternative technology and during the implementation period for the alternative technology, the owner/operator may continue the use of OB/OD as a treatment method for the subject wastes.

(b) *Criteria and contents of alterative technology evaluation.* The demonstration must be an evaluation of

alternative treatment technologies for each waste explosive stream requiring treatment. The evaluation must be conducted using the following specified criteria and the evaluation report must include the following specified content:

(1) Criteria that each technology must be evaluated against are:

(i) *Safe.* Technology must be determined to be safe for the specific waste explosives by an explosives or munitions specialist, designed, constructed, and operated in a manner that is safe and protective of human health and the environment, and uses appropriate procedures and technologies to ensure safe handling and treatment, as determined by an explosives or munitions specialist; and

(ii) *Available.* Technology is available when it can be used on-site or off-site, rented, leased, or purchased from a qualified vendor or entity, or custom designed and constructed by a qualified vendor or entity and has been determined through a technical evaluation, such as a demonstration at full-scale, to consistently perform the functions necessary to be effective.

(2) Evaluation content must include:

(i) A description of the facility operations that generate waste explosives and of any alternative treatment technologies in use and the waste streams treated;

(ii) A characterization of the waste explosives according to both the physical and chemical aspects as required under § 265.706;

(iii) An initial screening of available alternative treatment technologies according to the criteria in paragraph (b)(1) of this section;

(iv) An analysis on of alternative treatment technologies that pass the initial screening for each explosive waste stream;

(A) If an owner/operator plans to conduct a treatability study in accordance with § 264.1(e) and/or (f) of this chapter, a description of the proposed study and the timing for conducting study must be provided.

(B) If an owner/operator is in the process of conducting or has conducted a treatability study in accordance with § 264.1(e) and/or (f) of this chapter, documentation of the study, including anticipated timing for completion or the completion date, and any conclusions reached, must be provided.

(C) If an owner/operator plans to apply for a research, development, and demonstration (RD&D) permit under § 270.65 of this chapter, all available information that will accompany a permit application, including anticipated timing for initiating and completing the RD&D activities, must be submitted to the Director.

(D) If an owner/operator is conducting RD&D activities under § 270.65 permit, or has concluded RD&D activities, a copy of the permit or any conclusions reached after conclusion of the RD&D activities, must be submitted to the Director.

(v) Identification of selected alternative treatment technologies;

(vi) Evaluation of off-site and mobile unit treatment options using alternative treatment technologies.

(A) For waste streams that cannot be shipped off-site, documentation must be submitted indicating that the waste explosive is a forbidden explosive, DoD or DOE explosives safety specialists have determined that the waste cannot be shipped according to the DOD Explosives Hazard Classification Procedures, or a Department of Transportation competent authority approval or special permit has been requested and denied. For the Department of Transportation permit denial, documentation must include the denial correspondence and the tracking number assigned to the request for a competent authority approval or special permit.

(B) For the mobile treatment unit alternative technology evaluation, it must be conducted according to the criteria in paragraph (b)(1) of this section and accompanied by a rationale when a decision is made to not use a mobile treatment unit.

(vii) Identification of each explosive waste stream proposed for treatment by OB/OD and its:

(A) Net explosive weight;

(B) Physical and chemical aspects according to § 265.706(b)(1); and

(C) Treatment method as either OB or OD.

(3) A complete evaluation must be submitted, as a written report, to the Director for approval in accordance with the time frames established under § 265.707(c).

(4) The Director shall approve the evaluation after a completeness determination is made. An evaluation is complete when:

(i) Every component of the required content according to paragraph (b)(2) of this section is fully addressed; and

(ii) The rationale, where required by paragraph (b)(2) of this section, is provided to support the decisions.

(c) *Timing of initial alternative technology evaluations and permit applications.* (1) The initial alternative technology evaluation must be prepared and submitted by [ONE YEAR AFTER THE EFFECTIVE DATE OF THE FINAL RULE].

(2) An owner/operator that conducted an alternative technology evaluation within three years prior to [EFFECTIVE DATE OF THE FINAL RULE] may use that evaluation in lieu of conducting another alternative technology evaluation provided that:

(i) That alternative technology evaluation assessed all waste streams currently or proposed to be treated by OB/OD by the facility; and

(ii) That alternative technology evaluation meets or exceeds the requirements for an alternative technology evaluation at § 265.707(b).

(3) Owners and operators who have previously submitted their part B permit applications for an OB/OD unit and who have not received their final permit as of [EFFECTIVE DATE OF THE FINAL RULE] would be required to modify their part B permit applications to incorporate the requirements of the final rule in parts 264, subpart Y of this chapter and/or apply for a permit for an alternative technology unit. A modified OB/OD unit permit application is due within one year of submitting the alternative technology evaluation or *de minimis* demonstration under § 265.704(e). The application for an alternative technology unit must be submitted in accordance with the schedule developed under paragraph (e) of this section.

(d) *Timing of alternative technology reevaluations.* To continue OB/OD, the owner/operator must conduct an alternative technology reevaluation every five years following the initial alternative technology evaluation.

(e) *Implementation of alternative technologies.* (1) Within 180 days of the completion of an alternative technology evaluation and a determination that a safe alternative technology is available, the owner/operator must complete a schedule for implementation of the identified safe alternative technology. The schedule must include all significant milestones including:

(i) Vendor procurement;

(ii) Submittal of a permit application to add the alternative technology unit;

(iii) Construction start and completion dates, if applicable;

(iv) Testing and results of testing of the alternative technology; and

(v) Operation of the alternative technology.

(2) The schedule of implementation must be incorporated by reference into the facility's hazardous waste management plan.

(3) Thereafter, the schedule for implementation may be amended upon mutual written agreement of the owner/operator and the Director.

(4) The owner/operator must comply with the schedule of implementation of the alternative technology.

§ 265.708 Operating requirements.

(a) The owner/operator may only treat waste explosives as specified and according to the conditions of the operating plan.

(b) An OB/OD unit must be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. The plan must contain any conditions necessary to protect human health and the environment. Plan conditions and terms for OB/OD units must be established that are specific to the unit and type of explosive waste and which address the following parameters:

(1) *Meteorological conditions.* Allowable wind conditions including a minimum and maximum speed and direction; acceptable minimum and maximum air temperature; acceptable minimum and maximum humidity; restrictions on OB/OD activities in the event of precipitation or a high probability of precipitation; acceptable cloud conditions including overall cloud cover and cloud ceiling height; and, as appropriate, restriction on OB/OD for different air pollution statuses (*e.g.,* air quality index).

(2) *Explosive waste processing limits.* Limits on duration of OB/OD events; maximum net explosive weight per OB/OD event, day, and year.

(3) *Noise and ground vibration control.* Threshold levels and mitigation measures to minimize noise and ground vibration that affects areas outside the facility boundary. Controls or changes in operating parameters or unit design may be necessary to comply with this provision. If measures to control noise and ground vibration are not possible, the unit may need to be relocated.

(4) *Removal of excess material.* Requirements to remove excess material (such as foils and casings) if it is possible to do so safely.

(5) *Timing of OB/OD events.* Requirements on time of day for OB/OD events and duration of events. OB/OD should only occur during daylight hours and should not be allowed to continue after dark.

(6) *Engineering controls and measures.* Appropriate engineering controls and measures to prevent/minimize surface, subsurface, and groundwater contamination and aerial dispersion and release and/or migration of residues, kickout and contaminants into the environment and off-site. Engineering controls include surface water/storm water run-on and run-off controls, concrete pads with integrated curbs and sump pumps, lined drainage ditches, collection basins, blast barriers/shields/blankets, berms, metal cages, metal lids or covers for burn pans, soil covers for OD, and routine operation and maintenance measures including removal of residues, kickout, and visible surface contamination (*e.g.,* black soot, staining, ejecta) from the unit and surrounding area.

(7) *Location.* Location considerations including depth to groundwater, distance to surface water, distance to the property boundary, and distance to the nearest residence, school, or daycare; and location considerations for units in 100-year floodplains as required under § 265.18(b).

(8) *Safe distance.* Safe distance plan including safe distance calculation. The safe distances calculation must include to the property boundary and to the nearest public access point. If the waste stream does not have known safe distances, or the waste characterization is unavailable due to safety concerns, a plan for determining the safe distance must be included.

(9) *Security.* Security plan and controls to ensure unauthorized access by the public to the OB/OD units including surrounding kickout area is minimized.

(10) *Public notice and outreach plan.* Public notice and outreach plan must include notice to the surrounding community of OB/OD activities and events, method of notice distribution, required content of the notice, method(s) for community members to contact the facility with questions or concerns, and timeframe for notifications. The content of the plan must include how information will be made available to the public regarding contaminants emitted or released from OB/OD operations, environmental monitoring data/results, and, in applicable, locations of off-site contamination including kickout and groundwater contamination.

(11) *Prohibited wastes.* Owners or operators must not treat by OB/OD any of the following wastes:

(i) Mixed wastes containing more than trace amounts of depleted uranium (DU);

(ii) White and red phosphorus;

(iii) Picatinny Arsenal Explosive 21 (PAX–21);

(iv) Any materials containing polychlorinated biphenyls (PCBs) as defined in § 761.3 of this chapter;

(v) Munitions characterized by the delivery of two or more antipersonnel, anti-material, or anti-armor submunitions (also known as bomblets) by a parent munition, such as improved conventional munitions (ICMs) or cluster bombs; and

(vi) Chemical weapons as defined in § 265.705.

§ 265.710 Monitoring requirements.

(a) Owners/operators of OB/OD units must develop monitoring plans for groundwater, soil and residues, air, kickout, storm water, and if present, surface water and sediments, and submit these plans to the Director. The Director must make the determination whether the proposed monitoring plans are sufficient for the specific facility. In all cases where the owner/operator proposes that a specific media monitoring is not needed, the rationale for such proposal must be included in the monitoring plan. Owners/operators must implement the monitoring plans to monitor for releases and contamination from the OB/OD units including the surrounding kickout areas as specified in paragraphs (a)(1) through (6) of this section. The monitoring must test for any potential constituents related to the treatment of the wastes by OB/OD including any potential products and byproducts, that have the potential to adversely affect human health and the environment. For all media types, monitoring frequencies may be reduced from the minimum monitoring outlined in paragraphs (a)(1) through (7) of this section, if the unit is not used frequently enough to warrant the monitoring frequency outlined in paragraphs (a)(1) through (7) of this section, and the Director makes the determination that a reduced monitoring plan is acceptable for the site. For each monitored constituent and environmental media type, the monitoring plans must include an action level, a concentration or amount where the owner/operator must take action to mitigate and manage the release of the constituent based on best available science. The plan must also include analysis and evaluation of the data, procedures for notifications to the Director, and all appropriate response actions. The monitoring must include:

(1) Groundwater monitoring to detect any potential releases from the OB/OD units. Groundwater monitoring must include at least one upgradient background well in addition to downgradient wells. Wells must be located and screened to detect potential releases of contaminants to the uppermost flow zones and any preferential flow paths (subsurface pathways that allow more rapid transport of water and solutes in the soil and groundwater). Groundwater monitoring must include routine depth to water. Nested piezometers where needed to chart groundwater flow and

measurements to identify and track any fluctuations in the direction of groundwater flow are required, unless the Director determines they are not needed due to hydrogeologic conditions. Sampling and testing must be conducted in accordance with an approved RCRA groundwater monitoring plan at least until the unit completes RCRA closure (soils and groundwater) and is under an approved post-closure plan as applicable. If, based on site-specific conditions, there is no pathway for constituents to enter groundwater from OB/OD, the Director may determine that groundwater monitoring is not necessary.

(2) Stormwater monitoring to detect any potential releases. Stormwater monitoring must be conducted in accordance with an approved RCRA stormwater monitoring plan until the unit completes RCRA closure and is under an approved post-closure plan as applicable.

(3) Surface water monitoring of nearby surface water bodies to detect potential releases from the OB/OD unit. Surface water monitoring must be conducted in accordance with an approved RCRA surface water monitoring plan until the unit completes RCRA closure and is under an approved post-closure plan as applicable. Sediments in the surface water must be monitored according to the sediments sampling plan. If, based on site-specific conditions, there is no pathway for constituents to enter surface water from OB/OD, the Director may determine that surface water monitoring is not necessary.

(4) Soil must be monitored monthly around the unit (*e.g.,* burn pans, cages, piles, and detonation sites) to detect potential releases into the environment. This soil does not include any soil or environmental media used as engineering control such as soil cover for detonation events.

(5) Air monitoring to detect potential releases from the OB/OD unit. Air monitoring is required downwind of the OB/OD unit and at or near the facility boundary. Downwind monitoring must be located in the direction most likely to be downwind at the time of OB/OD. If there is no single most likely direction, multiple downwind monitoring locations may be needed. The direction must be determined in accordance with § 265.708(b)(1) of this subpart. At least one air monitoring station must be located downwind of the OB/OD unit and as close to the unit as possible, in accordance with an approved air monitoring plan. Air monitoring must be conducted upwind of the facility, where they would not be impacted by facility operations including any other open burning or open detonation (*e.g.,* OB/OD conducted related to product testing or training or explosives or munitions activities), to establish background or ambient concentrations unless the owner/operator makes the assumption there is zero background contamination. If, based on site-specific conditions, the owner/operator can demonstrate that air monitoring is not necessary to protect human health and the environment, the Director may determine that air monitoring is not necessary.

(6) Air smoke plumes must be visually monitored and recorded (*e.g.,* in a log) during each OB/OD event: the direction, duration, extent, and opacity of smoke plumes, and whether the plume goes off facility.

(7) Kickout must be visually monitored and recorded after each OB/OD event conducted at the OB/OD unit. The operator/operator must monitor and record the following information: the extent (distance from OB/OD unit), description, and location of all kickout that goes off facility. On a weekly basis, the owner/operator must find, retrieve, and treat all kickout that goes off-site unless the landowner refuses entry for this purpose. The owner/operator must maintain an electronic record on-site for any kickout that is known to migrate off-site but not found during the operating life of the unit, and this record must be maintained on-site until all remaining kickout is found and treated, such as during closure of the unit. If kickout is regularly discovered or found outside the unit boundary, the owner/operator should reduce the NEW per event or revise the unit boundary in the management plan.

(b) Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies must ensure compliance with §§ 265.15, 265.33, 265.75, 265.76, and 265.77 as well as meet any additional requirements needed to protect human health and the environment as specified in the site operating plan.

§ 265.712 Recordkeeping, inspections, training, and reporting requirements.

All facilities must comply with §§ 265.15, 265.16, subparts C and D, and 265.73. The contents of this section clarify and add additional provisions applicable to OB/OD units.

(a) The owner/operator is required to keep electronic records of all OB or OD unit activity. This information must be maintained in the operating record and accessible on-site five (5) years after closure of the entire RCRA facility in the event of clean closure. If an OB/OD unit enters post-closure, the records must be maintained through the entire post-closure period. The records must contain the following for each treatment event:

(1) A detailed description of each waste stream treated in each unit including the type, chemical composition, and percentage of energetic and inert chemicals, materials, and binders; physical form/dimensions/composition; description of casing if any; number/amount of items; total weight; and net explosive weight (NEW). The waste analysis of the waste stream may be referenced if the waste analysis includes this information.

(2) Time and date of OB/OD treatment.

(3) A record of the atmospheric conditions at the time of treatment to document compliance with the criteria set forth in the operating plan.

(4) A detailed description of any non-conformance issues or events, including incomplete treatment that required collection and re-treatment of partially treated waste; periods of smoldering or incomplete combustion; black smoke plumes migrating beyond the facility boundary, releases of ejecta or kickout from the unit boundary or facility boundary. Details of actions taken to remedy the non-conformance issues or events. Actions taken to prevent non-conformance issues or events in the future.

(b) The owner/operator of any OB/OD units must conduct regular inspections as specified in the permit. A schedule and example inspection sheet must be included in the permit application. The schedule and example inspection sheet must account for the maximum OB/OD operations NEW and frequency limits set forth in the permit application. The plan may have any additional inspection requirements to remain protective of human health and the environment as necessary. All inspection records and recordkeeping must be kept electronically and must be accessible on-site for at least five (5) years. At a minimum, the inspection schedule must include the schedule outlined by paragraphs (b)(1) and (2) of this section unless the unit is used for treatment less than the frequency specified in paragraphs (b)(1) and (2) of this section, the owner/operator notifies the Director of the reduction in unit monitoring and the rationale based on site-specific conditions:

(1) Inspections after the last treatment event per day to look for untreated waste, debris, shrapnel, burn residues, and obvious damage to the treatment unit that would affect unit performance.

(2) Monthly inspections to verify the structural integrity of any structures built or used to treat hazardous waste. If any problems affecting performance or protectiveness of the unit are found, they must be fixed before the unit is used for any treatment activity.

(c) The owner/operator must design and administer personnel training in accordance with § 265.16. All personnel involved in the handling, treatment, or management of hazardous waste must attend training tailored to the OB/OD unit and the explosive wastes treated. Training must be updated whenever there is a new waste stream and whenever operations change the way treatment is conducted for the unit. This information must be maintained in the electronic operating record until closure of the facility.

(d) The owner/operator must report the following to the Director electronically:

(1) Any unit failure event where the unit is damaged or treatment does not occur in the OB/OD unit as intended by the plan seven (7) days of the initial failure. The unit failure cause and potential correction for the unit must be submitted within 30 days of the initial failure.

(2) An annual summary report of all documented untreated waste beyond the OB/OD unit from the kickout monitoring described in § 265.712(c)(6).

(3) All hazardous constituents and treatment byproducts in the air, soil, groundwater, or surface water at or above the levels set forth in the monitoring plan. All findings must be reported immediately.

(4) Any records requested by the Director.

§ 265.713 Closure; time allowed for closure for certain activities.

Open burn and open detonation units are subject to the requirements of § 265.113, except when the units are used for activities in which military munitions are used as intended or the units have the potential to be impacted by munitions constituents or explosive waste contaminants from adjacent activities. When used for these activities, the owner/operator must demonstrate that:

(a) The following activities will occur or are occurring:

(1) The open burn or open detonation unit is used for activities in which military munitions are used as intended; or

(2) The open burn or open detonation unit has the potential to be impacted by munitions constituents or explosive waste contaminants from the active military range the unit is located on or from adjacent open burn or open detonation units. The owner/operator must demonstrate that contaminants from the active range or adjacent operating units have the potential to contribute contaminants within the inactive unit boundary. This demonstration must be made by providing:

(i) Maps showing all impacted open burn and open detonation units, kickout areas, and their boundaries and the locations of the activities that will occur or are occurring; and

(ii) A description of all activities that will contribute contaminants;

(iii) Meteorological conditions that may cause deposition of contaminants within the inactive unit boundary; and

(b) Has taken and will continue to take all steps to prevent releases and threats to human health and the environment from the unclosed but not operating OB/OD unit, including compliance with all applicable interim status requirements. Monitoring requirements of § 265.710 may be modified as appropriate to the location and circumstances for use of the unit, until closure activities have been completed for the units requesting delayed closure under the listed circumstances in paragraph (a) of this section.

§ 265.714 Closure and post-closure care.

OB/OD units must comply with the closure requirements of subpart G of this part except as specified in § 265.713. In addition:

(a) If after removing or decontaminating all residues and making all reasonable efforts to remove or decontaminate any contaminated components, soils, subsoils, structures, and equipment, the owner/operator finds that not all contaminated soils and subsoils can be practicably removed or decontaminated, the owner/operator must close the unit and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills at § 265.310.

(b) If an OB/OD unit is closed as a landfill, any remaining waste explosives and residues must be remediated to levels such that the explosives concentration in the soil and subsoils no longer present an explosive safety hazard as confirmed by testing before a cap or cover may be put in place.

§ 265.715 Emergency provisions.

(a) *Emergency responses.* An explosives or munitions emergency response, as defined in § 260.10 of this chapter, is exempt from RCRA treatment, storage, and disposal standards and requirements pursuant to §§ 262.10(i), 263.10(e), 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) of this chapter, including the requirement to conduct an alternative technology evaluation per § 265.704, during a response. After the explosives or munitions emergency response specialist declares that the emergency response is complete,

(1) The response unit's base or facility of origin, based on information from an explosives or munitions emergency response specialist, must submit the following information to the Director within five (5) days:

(i) The type of explosive or munition and its size and quantity;

(ii) Whether it is armed, primed, fused, had been fired and/or did not function, or if undeterminable, as applicable to the item type;

(iii) The condition and its stability, as applicable to the item type;

(iv) The location of discovery or generation and location and description of the storage area; and if applicable,

(v) Whether an alternative technology was immediately available and safe for use given the site-specific situation.

(b) *Emergency permits.* When an explosives or munitions emergency response as defined in § 260.10 of this chapter is not required but temporary treatment of explosives or munitions is needed to address an imminent and substantial endangerment to human health and the environment, an emergency permit under § 270.61 of this chapter is required.

(1) The response unit's base or facility of origin, based on information from an explosives or munitions emergency response specialist must provide documentation to support a decision by the Director to issue an emergency permit under § 270.61 of this chapter. This documentation must include the following information:

(i) All information required by paragraphs (a)(1)(i) through (iv) of this section;

(ii) The anticipated or actual frequency and quantity of generation of explosive material;

(iii) The expected timeframe from discovery or generation to final treatment;

(iv) A list of existing available alternative technologies that are known to treat the waste explosive identified in paragraph (b)(1)(i) of this section and which can either be brought to the location for use or to which the wastes can be transported; and,

(v) Rationale to support a determination that no safe alternative technology is available for use within a reasonable time given the site-specific

situation, or that the explosive material cannot be shipped off-site.

(2) Documentation required in § 265.715(b)(1) must be submitted to the Director within five (5) days of beginning treatment and must be incorporated into the emergency permit.

(3) If the Director determines, based on the documentation submitted, that the treatment activity does not qualify for an emergency permit, then the treatment must cease until a permit application with an alternative technology evaluation is received pursuant to § 270.10 of this chapter and in accordance with the applicable standards in subpart Y of this part.

(4) Treatment by OB/OD must cease if and when an alternative technology is selected and implemented, in accordance with the revised emergency permit.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 20. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

■ 21. Amend § 270.1 by adding paragraph (c)(3)(iv) to read as follows:

§ 270.1 Purpose and scope of these regulations.

(c) * * *

(3) * * *

(iv) Any person who responds to an explosives or munitions emergency must also comply with the reporting requirements of § 264.715(a)(1) or § 265.715(a)(1) of this chapter.

Subpart B—Permit Application

■ 22. Amend § 270.10 by adding paragraph (a)(7) to read as follows:

§ 270.10 General application requirements.

(a) * * *

(7) If you are seeking a permit for a Mobile Treatment Unit to treat waste explosives, the procedures for application and issuance are found in subpart K of this part.

* * * * *

■ 23. Amend § 270.23 by:

■ a. Revising the section heading, the introductory text, paragraphs (a)(2) and (3) and (b);

■ b. Redesignating paragraph (e) as paragraph (f); and

■ c. Adding a new paragraph (e).

The revisions and addition to read as follows:

§ 270.23 Specific part B information requirements for miscellaneous and open burn and open detonation units.

Except as otherwise provided in § 264.600 of this chapter, owners/operators of facilities that treat, store, or dispose of hazardous waste in miscellaneous units and open burn and open detonation units must provide the following additional information:

(a) * * *

(2) Detailed plans and engineering reports describing how the unit will be located, designed, constructed, operated, maintained, monitored, inspected, and closed to comply with the requirements of §§ 264.601 and 264.602 of this chapter for miscellaneous units, or §§ 264.708, 264.709, and 264.712 of this chapter for OB/OD units; and

(3) For disposal units and treatment units that cannot clean close, a detailed description of the plans to comply with the post-closure requirements of § 264.603 of this chapter for miscellaneous units or § 264.714 of this chapter for OB/OD units.

(b) Detailed hydrologic, geologic, and meteorologic assessments and land-use maps for the region surrounding the site that address and ensure compliance of the unit with each factor in the environmental performance standards of § 264.601 of this chapter for *miscellaneous units or technical standards of* §§ 264.708, 264.709, and 264.712 of this chapter for OB/OD units. If the applicant can demonstrate that he does not violate the environmental performance standards of § 264.601 of this chapter for miscellaneous units *or technical standards of* §§ 264.708, 264.709, and 264.712 of this chapter for OB/OD units and the Director agrees with such demonstration, preliminary hydrologic, geologic, and meteorologic assessments will suffice.

* * * * *

(e) For owners/operators of OB/OD units regulated under subpart Y of this part that identified alternatives to OB/OD, the required evaluation of alternative technologies, a schedule to implement the selected alternatives to be permitted under subpart X of this part.

* * * * *

Subpart D—Changes to Permit

■ 23. Amend § 270.42 by:

■ a. Adding paragraph (l); and

■ b. In Appendix 1 to § 270.42, adding the entry ''P. Mobile Treatment Units'' to the end of the appendix.

The additions read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(l) *Modification of RCRA Mobile Treatment Unit (MTU) Permits treating waste explosives.* All modifications to a permit for an MTU treating waste explosives shall adhere to the process for Class I permit modifications in § 270.42(a) and shall require the prior written approval of the Director.

Appendix 1 to § 270.42—Classification of Permit Modification

Modifications	Class
* * * * * * *	
P. Mobile Treatment Units:	
1. All modifications to a permit for an MTU treating waste explosives issued in accordance with subpart K of this part	[1] 1
Q. Open Burning and Open Detonation Units:	
1. Changes to alternative technology implementation schedule pursuant to § 264.707(e)(3)	[1] 1

Subpart F—Special Forms of Permits

■ 24. Amend § 270.61 by revising paragraph (b) to read as follows:

§ 270.61 Emergency permits.

* * * * *

(b) This emergency permit:

(1) May be oral or written. If oral, it must be followed in five days by a written emergency permit;

(2) Must not exceed 90 days in duration;

(3) Must clearly specify the hazardous wastes to be received, and the manner and location of their treatment, storage, or disposal;

(4) May be terminated by the Director at any time without process if he or she determines that termination is appropriate to protect human health and the environment;

(5) Must be accompanied by a public notice published under § 124.10(b) of this chapter including:

(i) Name and address of the office granting the emergency authorization;

(ii) Name and location of the permitted HWM facility;

(iii) A brief description of the wastes involved;

(iv) A brief description of the action authorized and reasons for authorizing it; and

(v) Duration of the emergency permit; and

(6) Must incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this part and parts 264 and 266 of this chapter, including for emergencies involving explosives and munitions an evaluation and implementation of alternative technologies to OB/OD as required by § 264.715(b)(1)(iv) and (v) of this chapter.

(7) In the case of an emergency situation that includes explosives and munitions, the permit may be renewed one time, for an additional 90 days, at the discretion of the Director. If additional time is needed to accommodate procurement and operation of an alternative technology for treatment at the response location, the Director may renew the permit for a total period not to exceed one year.

* * * * *

■ 25. Add § 270.69 to read as follows:

§ 270.69 Mobile Treatment Unit (MTU) permits.

Mobile Treatment Units permits are special forms of permits that are regulated under subpart K of this part.

■ 26. Amend part 270 by adding subpart K to read as follows:

Subpart K—RCRA Permits for Mobile Treatment Units (MTUs) To Treat Waste Explosives

Sec.

§ 270.330 Applicability.

(a) An owner/operator of an MTU, or group of identical MTUs, as defined in § 260.10 of this chapter, may obtain a RCRA MTU permit to treat only waste explosives as defined in § 260.10 of this chapter, by adhering to the procedures in this subpart.

(b) The owner/operator of an MTU, or group of identical MTUs, may not treat waste explosives until they have obtained a RCRA MTU permit as described in this subpart.

(c) This subpart does not apply to MTUs seeking to treat non-explosive hazardous wastes or to MTUs seeking to treat explosive hazardous waste in response to an emergency under §§ 264.1(g)(8)(i)(D), 265.1(c)(11)(i)(D), 270.1(c)(3)(D), and 270.61 of this chapter.

§ 270.331 Obtaining an MTU permit to treat only waste explosives.

An owner/operator of an MTU, or group of identical MTUs, seeking to treat waste explosives must first apply for and obtain a nationwide conditional approval in accordance with §§ 270.332 through 270.334. Upon receiving a nationwide conditional approval, the owner/operator is eligible to apply for a RCRA MTU permit in accordance with §§ 270.335 through 270.337 for each location at which the unit, or group of identical units, will treat waste explosives (location-specific permit).

§ 270.332 Application process for a nationwide conditional approval.

(a) An owner/operator of an MTU seeking a nationwide conditional approval to treat waste explosives must complete an application, sign it, and submit it to the Director according to the requirements in this section.

(b) Both the owner and the operator must sign the nationwide conditional approval application and any required reports according to § 270.11(a) through (c). In the application, both the owner and the operator must also make the certification required under § 270.11(d)(1).

(c) The application for a nationwide conditional approval must include all information required by § 270.333.

(d) If the Director tentatively finds that the application for a nationwide conditional approval includes all of the information required by § 270.333 and that the proposed design and operating standards meet the applicable regulatory standards in § 264.1(k) of this chapter, the Director will make a tentative decision to approve the nationwide conditional approval application. The Director will then prepare a draft nationwide conditional approval and provide an opportunity for public comment, in accordance with paragraph (g) of this section, before making a final decision on the nationwide conditional approval application.

(e) If the Director finds that the nationwide conditional approval application does not include all of the information required by § 270.333 or the proposed design and operating standards do not meet the applicable regulatory standards in § 264.1(k) of this chapter, the Director may request additional information from the applicant or ask the applicant to correct deficiencies in their application. If the applicant fails or refuses to provide any additional information the Director requests, or to correct any deficiencies in the nationwide conditional approval application, the Director may make a tentative decision to deny the nationwide conditional approval application. After making this tentative decision, the Director will prepare a notice of intent to deny the nationwide conditional approval application (''notice of intent to deny'') and provide an opportunity for public comment, in accordance with paragraph (g) of this section, before making a final decision on the nationwide conditional approval application. The Director may deny the nationwide conditional approval application either in its entirety or in part.

(f) The Director must also:

(1) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft nationwide conditional approval and the reasons for them, or the rationale for the notice of intent to deny;

(2) Compile an administrative record, including:

(i) The nationwide conditional approval application, and any supporting data furnished by the applicant;

(ii) The draft nationwide conditional approval or notice of intent to deny;

(iii) The statement of basis and all documents cited therein (material readily available online or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis);

(iv) Any other documents that support the decision to approve or deny the nationwide conditional approval; and

(v) A copy of the final nationwide conditional approval or notice of intent to deny, once issued.

(3) Make information contained in the administrative record available for review by the public.

(g) Prior to making a final determination, the Director must:

(1) Provide notice of the draft nationwide conditional approval or notice of intent to deny and the location

of the administrative record in the **Federal Register** to provide at least 30 days for public comment and make the draft available online.

(h)(1) The Director must consider and respond to any significant comments raised during the public comment period and may revise the draft nationwide conditional approval or notice of intent to deny based on those comments, as appropriate.

(2) If the Director determines that the nationwide conditional approval includes the information and terms and conditions required in § 270.334, then the Director will issue a final decision approving the nationwide conditional approval and, in writing, notify the applicant and all commenters (who provided contact information) on the draft nationwide conditional approval that the nationwide conditional approval application has been approved.

(3) If the Director determines that the nationwide conditional approval does not include the information and terms and conditions required in § 270.334, then the Director will issue a final decision denying the nationwide conditional approval and, in writing, notify the applicant and all commenters (who provided contact information) on the draft nationwide conditional approval that the nationwide conditional approval application has been denied.

(4) If the Director's final decision is that the tentative decision to deny the conditional approval application was incorrect, the Director will withdraw the notice of intent to deny and proceed to prepare a draft nationwide conditional approval, according to the requirements in this subpart.

(5) When the Director issues the final nationwide conditional approval decision, the Director must include reference to the procedures for appealing the decision under § 270.332(i).

(i)(1) Any commenter on the draft conditional approval or notice of intent to deny, may appeal the Director's decision to deny the conditional approval application to EPA's Environmental Appeals Board in accordance with § 124.19 of this chapter. Any person who did not file comments on the draft conditional approval or denial, may petition for administrative review only with respect to any changes from the draft to the final conditional approval decision. Appeals of conditional approvals may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit).

(2) This appeal is a prerequisite to seeking judicial review of these EPA actions.

§ 270.333 Application contents for a nationwide conditional approval.

(a) The application for a nationwide conditional approval for an MTU, or group of identical MTUs, must include the information required by § 270.13 except that the information required by § 270.13(b), (f) and (l) is not required.

(b) The application for a nationwide conditional approval for an MTU, or group of identical MTUs, must include sufficient information to demonstrate that design and operation of the MTU will ensure compliance with applicable requirements of part 264 of this chapter as specified by § 264.1(k). However, the following information is not required until the location-specific permit stage of the permitting process:

(1) The information on arrangements with local authorities required by § 264.37 of this chapter; and

(2) The information regarding arrangements with local authorities required to be in the MTU's contingency plan as per § 264.52(c) of this chapter;

(c) The application for a nationwide conditional approval for an MTU, or group of identical MTUs, must include the information required by § 270.23(a), (d) and (f);

(d) If the application for a nationwide conditional approval relates to a group of identical MTUs, the application must include a certification from a registered professional engineer that the units are identical; and

(e) For the purposes of complying with this section, references in §§ 270.13, 270.14, and 270.23 to ''permit'' should be read as ''nationwide conditional approval.''

§ 270.334 Nationwide conditional approval conditions.

If the Director prepares a nationwide conditional approval, it must include the:

(a) Information required under § 270.13(a), (d), (e), (i), and (j);

(b) The following terms and conditions:

(1) Terms and conditions necessary to ensure that the operating requirements specified in the nationwide conditional approval comply with the applicable part 264 of this chapter standards as described in § 264.1(k).

(2) Terms and conditions in §§ 270.30 and 270.31;

(3) A requirement to notify EPA each time an MTU treats waste explosives at a location, including the start and end dates of treatment and the quantity of wastes treated; and

(4) Terms and conditions for modifying, revoking and reissuing, and terminating the MTU nationwide conditional approval in accordance with §§ 270.41 through 270.43.

§ 270.335 Application process for a RCRA MTU permit.

(a) An owner/operator of an MTU seeking a permit to treat only waste explosives as defined in § 260.10 of this chapter, must complete an application, sign it, and submit it to the Director according to the requirements in this section.

(b) Both the owner and the operator must sign the permit application and any required reports according to § 270.11(a) through (c). In the application, both the owner and the operator must also make the certification required under § 270.11(d)(1).

(c) The application for a permit must include all information required by § 270.336.

(d) If the Director tentatively finds that the application for a permit includes all of the information required by § 270.336 and that the proposed design and operating standards meet the applicable regulatory standards of § 264.1(k) of this chapter and §§ 270.30 through 270.32, the Director will make a tentative decision to approve the permit application. The Director will then prepare a draft permit and provide an opportunity for public comment, in accordance with paragraph (g) of this section, before making a final decision on the permit application.

(e) If the Director tentatively finds that the permit application does not include all of the information required by § 270.336 or the proposed design and operating standards do not meet the applicable regulatory standards of § 264.1(k) of this chapter and §§ 270.30 through 270.32, the Director may request additional information from the applicant or ask the applicant to correct deficiencies in their application. If the applicant fails or refuses to provide any additional information the Director requests, or to correct any deficiencies in the permit application, the Director may make a tentative decision to deny the permit application. After making this tentative decision, the Director will prepare a notice of intent to deny the permit application (''notice of intent to deny'') and provide an opportunity for comment, in accordance with paragraph (g) of this section, before making a final decision on the permit application. The Director may deny the permit

application either in its entirety or in part.

(f) The Director must also:

(1) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft permit and the reasons for them, or the rationale for the notice of intent to deny;

(2) Compile an administrative record, including:

(i) The permit application and the nationwide conditional approval, and any supporting data furnished by the applicant;

(ii) The draft permit or notice of intent to deny;

(iii) The statement of basis and all documents cited therein (material readily available online or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis);

(iv) Any other documents that support the decision to approve or deny the permit; and

(v) A copy of the final permit or notice of intent to deny, once issued.

(3) Make information contained in the administrative record available for review by the public.

(g)(1) Prior to making a final determination, the Director must:

(i) Send notice to the applicant of their intention to approve or deny the permit application, and send the applicant a copy of the statement of basis;

(ii) Publish a notice of their intention to approve or deny the permit application in a major local newspaper of general circulation;

(iii) Broadcast their intention to approve or deny the permit application over a local radio station; and

(iv) Send a notice of their intention to approve or deny the permit application to each unit of local government having jurisdiction over the area in which the site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

(2) The notice required by paragraph (g)(1) of this section must provide an opportunity for the public to submit written comments on the draft permit or notice of intent to deny within at least 45 days.

(3) The notice required by paragraph (g)(1) of this section must include:

(i) The name and address of the office processing the permit application;

(ii) The name and address of the permit applicant, and if different, the site at which the permit would allow the treatment of waste explosives;

(iii) A brief description and expected duration of the activity the permit will regulate;

(iv) The name, address, and telephone number of a person, as well as an email address, from whom interested persons may obtain further information, including copies of the draft permit or notice of intent to deny, statement of basis, and the permit application;

(v) A brief description of the comment procedures in this section, and any other procedures by which the public may participate in the permit decision;

(vi) If a hearing is scheduled, the date, time, location, and purpose of the hearing;

(vii) If a hearing is not scheduled, a statement of procedures to request a hearing;

(viii) The location of the administrative record; and

(iv) Any additional information the Director considers necessary or proper.

(4) If, within the comment period, the Director receives written notice of opposition to their intention to approve or deny the permit application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of the application. The Director may also determine on their own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must schedule this hearing at a location convenient to the nearest population center to the site where waste explosives would be treated and give notice according to the requirements in paragraph (g)(1) of this section. This notice must, at a minimum, include the information required by paragraph (g)(3) of this section and:

(i) Reference to the date of any previous public notices relating to the permit application;

(ii) The date, time, and place of the hearing; and

(iii) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

(h)(1) The Director must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft permit or notice of intent to deny and may revise the draft permit based on those comments, as appropriate.

(2) If the Director determines that the permit includes the information and terms and conditions required in § 270.337, then the Director will issue a final decision approving the permit and, in writing, notify the applicant and all commenters (who provided contact information) on the draft permit that the permit application has been approved.

(3) If the Director determines that the permit does not include the information and terms and conditions required in § 270.337, then the Director will issue a final decision denying the permit and, in writing, notify the applicant and all commenters (who provided contact information) on the draft permit that the permit application has been denied.

(4) If the Director's final decision is that the tentative decision to deny the permit application was incorrect, the Director will withdraw the notice of intent to deny and proceed to prepare a draft permit, according to the requirements in this subpart.

(5) When the Director issues the final permit decision, the Director must refer to the procedures for appealing the decision under § 270.335(i).

(i)(1) Any commenter on the draft permit or notice of intent to deny, may appeal the Director's final decision to approve or deny the permit application to EPA's Environmental Appeals Board under § 124.19 of this chapter. Any person who did not file comments on the draft permit, may petition for administrative review only to the extent of the changes from the draft to the final permit decision. Appeals of permits may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit).

(2) This appeal is a prerequisite to seeking judicial review of these EPA actions.

§ 270.336 Application contents for a RCRA MTU permit.

(a) The application for a RCRA MTU permit for an MTU, or group of identical MTUs, must include:

(1) The nationwide conditional approval issued in accordance with § 270.332;

(2) The information required in § 270.13(b) and (f);

(3) The proposed start date of operation, expected duration of activities, and the proposed types and volumes of wastes to be treated; specification of the types and quantities of wastes to be treated at the site as well as the dates of operation of the MTU. The dates of operation must account for any time necessary to comply with the interim closure requirement of the MTU, and the start and end dates must be less than 180 days apart.

(4) The information required by § 270.23(f);

(5) Information demonstrating compliance with § 264.37 regarding arrangements with local authorities;

(6) An updated contingency plan required by subpart D of part 264 of this chapter including the information required by § 264.52(c) reflecting the arrangements with local authorities; and

(7) Evidence of an arrangement between the original generator of the waste explosives and the MTU owner/operator as to who will take the actions required to comply with the applicable part 262 of this chapter regulations related to any hazardous waste generated by the MTU's operations.

§ 270.337 RCRA MTU permit conditions.

If the Director prepares a draft permit, it must include the:

(a) Information and terms and conditions in the nationwide conditional approval issued in accordance with § 270.332;

(b) The proposed MTU location of operation information required by § 270.13(b);

(c) Specification of the types and quantities of wastes to be treated at the site as well as a permit term not to exceed five years and a limit on the consecutive days of operation of the MTU at the subject location consistent with definition of an MTU location-specific permit in § 260.10 of this chapter; and

(d) Any additional terms or conditions, including revisions to the conditional approval, that the Director determines are necessary to achieve the environmental performance standard in § 264.601 of this chapter and the applicable monitoring, analysis, inspection, response, and reporting requirements of § 264.602 of this chapter.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 27. The authority for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

■ 28. Amend § 271.1 by:

■ a. Revising paragraph (h); and

■ b. In table 1 to paragraph (j), adding an entry for ''Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives'' in chronological order by promulgation date.

The revision and addition read as follows:

Subpart A—Requirements for Final Authorization

§ 271.1 Purpose and scope.

* * * * *

(h) Partial State programs are not allowed for programs operating under RCRA final authorization. However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this subpart, *i.e.,* inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if the State does not seek this authority. Additionally, this paragraph does not apply to the authority to issue nationwide conditional approvals and RCRA permits to Mobile Treatment Units (MTUs) treating waste explosives under subpart K of part 270 of this chapter.

* * * * *

(j) * * *

TABLE 1 TO PARAGRAPH (j)

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
[Month, XX, XXXX]	Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.	[XXXX]	[Month, XX, XXXX.]

* * * * *

■ 29. Amend § 271.3 by adding paragraph (b)(5) to read as follows:

§ 271.3 Availability of final authorization.

* * * * *

(b) * * *

(5) Any requirement applicable to the permitting of Mobile Treatment Units to treat waste explosives:

(i) Shall take effect in each State having a finally authorized State program on the same date as such requirement takes effect in other States;

(ii) Shall supersede any less stringent or inconsistent provision of a State program, and

(iii) Shall be carried out by the Administrator in an authorized State except where, pursuant to section 3006(b) of RCRA, the State has received final authorization to carry out the requirement in lieu of the Administrator.

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Part III

Department of Housing and Urban Development

24 CFR Parts 58 and 1005

Strengthening the Section 184 Indian Housing Loan Guarantee Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 58 and 1005

[Docket No. FR–5593–F–02]

RIN 2577–AD01

Strengthening the Section 184 Indian Housing Loan Guarantee Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the Section 184 Indian Housing Loan Guarantee Program (''Section 184 Program'') to strengthen the program by clarifying rules for stakeholders. As the program has experienced an increase in demand, it is necessary that HUD update the Section 184 Program implementing regulations to minimize potential risk and increase program participation by financial institutions. This final rule adds participation and eligibility requirements for Lender Applicants, Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders and Servicers and other financial institutions. This final rule clarifies the rules governing Tribal participation in the program, establishes underwriting requirements, specifies rules on the closing and endorsement process, establishes stronger and clearer servicing requirements, establishes program rules governing claims submitted by Servicers and paid by HUD, and adds standards governing monitoring, reporting, sanctions, and appeals. This final rule adds new definitions and makes statutory conforming amendments, including the categorical exclusion of the Section 184 Program in HUD's environmental review regulations. Ultimately, the changes made by this final rule promote program sustainability, increase Borrower protections, and provide clarity for new and existing Lenders who participate in the program. This final rule follows the publication of a proposed rule on December 21, 2022, and takes into consideration the comments received in response to that proposed rule and during the Tribal consultations.

DATES: Effective June 18, 2024.

FOR FURTHER INFORMATION CONTACT: Krisa Johnson, Director, Office of Loan Guarantee, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 4108, Washington, DC 20410; telephone number 202–402–4978 (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:

I. Background

Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (12 U.S.C. 1715z–13a), as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104–330, approved October 26, 1996), the 2013 Consolidated and Further Continuing Appropriations Act (Pub. L. 113–6, approved March 26, 2013), the 2015 Consolidated and Further Continuing Appropriations Act (Pub. L. 113–235, approved December 16, 2014), and the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, approved December 27, 2020) (Section 184 statute), authorize the Section 184 Program to provide access to sources of private financing to Indian families, Tribes and tribally Designated Housing Entities (TDHEs) who otherwise could not acquire housing financing because of the unique legal status of Trust Land.

Native American households face a number of housing challenges, including overcrowding and a lack of affordable housing in Tribal areas.[1] These challenges stem in part from barriers to mortgage lending in these communities. There are several unique challenges to mortgage lending in Tribal areas, including their often-remote locations, the specialized situation of observing Tribal courts and laws, and the unique Trust Land status of much of the land in Tribal areas. Trust Land includes, but not is not limited to land where the Federal Government holds legal title for the benefit of a Tribe or individual Tribal member. Before a lien can be placed on a property, it must receive Federal approval through the U.S. Department of the Interior's Bureau of Indian Affairs. Consequently, financial institutions may struggle with utilizing the land interest as security in mortgage lending transactions. By mitigating risk to private lenders through the loan guarantee, the Section 184 Program addresses barriers to mortgage lending in Tribal areas, helping to increase housing supply, relieve overcrowding, and expand homeownership in these underserved communities.

A lack of access to mortgage credit also poses challenges to Native American households outside of Tribal areas, where they have historically experienced lower homeownership and higher home loan denial rates than other groups.[2] Like in other historically underserved markets, prospective borrowers are likely to have limited experience dealing with mainstream financial institutions and to have limited incomes, assets, and credit histories. The Section 184 Program is also available to members of federally recognized Tribes in many areas beyond Tribal areas, where it similarly promotes homeownership opportunities among this underserved community by mitigating risk to lenders.

Since its inception in 1994, the number of loans guaranteed under the Section 184 Program has significantly increased from an average of 105 loans per year the first five Fiscal Years (FYs 2994–1995) the program operated to an average of 2,531 loans per year for the past five fiscal years (FYs 2018–2023). In total, the Section 184 Program has guaranteed over 56,000 loans totaling over $10 billion. However, the program regulations have not been substantially revised since publication in 1996.

In 2015, the Office of Audit of the HUD Office of Inspector General (OIG) audited the Section 184 Program, Report Number 2015–LA–0002, and recommended that HUD develop and implement policies and procedures for monitoring, tracking, underwriting, and evaluating the Section 184 Program; standardize monthly delinquency reports; deny payments for claims on loans that have material underwriting deficiencies; take enforcement actions against certain Direct Guarantee and Non-Direct Guarantee Lenders; and ensure that only underwriters that are approved by HUD are underwriting Section 184 Guaranteed Loans. The corrective action plan proposed by OIG and agreed upon by HUD includes the development of new regulations to provide additional structure to the program and a platform for policies and procedures to manage the program and address these findings.

On December 21, 2022 (87 FR 78324), HUD published a proposed rule to strengthen the Section 184 Program by

[1] *Mortgage Lending on Tribal Land: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs.* HUD, Office of Policy Development and Research, January 2017, available at: *https://www.huduser.gov/portal/publications/NAHSC-Lending.html.*

[2] *Id.*

clarifying rules for program stakeholders. Specifically, the rule proposed revisions to minimize potential risk, increase program participation by financial institutions, and modernize and enhance the Section 184 Program by adding participation and eligibility requirements for Lenders and other financial institutions. The proposed rule also included revisions to the rules governing Tribal participation in the program, established underwriting requirements, specified rules on the closing and endorsement process, established stronger and clearer servicing requirements, established program rules governing claims submitted by Servicers and paid by HUD, and added standards governing monitoring, reporting, sanctions, and appeals. The proposed rule not only addressed the corrective actions proposed by OIG and agreed upon by HUD but set a regulatory foundation for the Section 184 Program to support the continued growth of the program, and more importantly, to ensure that it can positively impact the lives of Native Americans by providing an opportunity for homeownership. Additional details about the Section 184 Program may be found in the background of the December 21, 2022, proposed rule.

II. Changes Made at the Final Rule Stage

In consideration of the public comments, the Tribal consultations, and HUD's experience implementing the Section 184 Program, this section of the preamble lists some of the changes HUD made to the December 21, 2022, proposed rule. In general, the final rule revised the regulation to be more inclusive of Tribal land types, including allotted and other Tribal lands.

1. This final rule incorporates a new severability provision at § 1005.102. As described in § 1005.102, in the event that any portion of this final rule is declared invalid or stayed, it is HUD's intent that the remaining portions of the final rule be severable. If any provision of this regulation is held to be invalid or unenforceable, facially or as applied, the provision shall be severable from the remainder of the regulation, or such application shall be considered severable from any valid or enforceable application of such provision.

2. In § 1005.205(a)(9), HUD revised the minimum net worth Lender Applicants must have to obtain Secretarial approval to participate in the Section 184 Program. Specifically, HUD established a net worth of at least one million dollars, or amount as provided in Section 184 Program Guidance, for Lender Applicants to participate in the Section 184 Program. HUD made this revision to provide lenders a clear baseline for meeting this condition of approval and to ensure that Lender Applicants participating in the Section 184 Program are solvent.

3. In § 1005.217(a), HUD expanded the types of lenders subject to the Quality Control (QC) requirements to include Direct Guarantee Lenders and Non-Direct Guarantee Lenders because ensuring these lenders comply with the QC requirements is essential to mitigating risk to the Section 184 Program.

4. In § 1005.217(b)(8), HUD revised the requirements for the Lender Applicant's quality control plan. This final rule establishes that a quality control plan must require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to report all material deficiencies and submit a corrective action plan to HUD ''within 30 days.'' Additionally, HUD added § 1005.217(b)(8)(13) to require the Lender Applicant to comply with any other administrative requirement as may be prescribed by Section 184 Program Guidance. These revisions help to ensure that Section 184 Guaranteed Loans comply with the Section 184 Program requirements.

5. In § 1005.205(a)(4)(i), HUD removed the requirement that financial statements be audited as cost prohibitive and inconsistent with generally accepted industry standard financial documents. HUD will outline requirements for the financial statement in program guidance. While financial statements are still required, removing the ''audited'' requirement should assist lenders in submitting mandatory financial information.

6. In § 1005.301(a), HUD is clarifying in paragraph (a)(3) that Tribes are required to assist, where practical, in facilitating loss mitigation efforts when notified of the Borrower's default in accordance with § 1005.501(j) or when the Tribe receives notice pursuant to § 1005.759. Examples of a Tribe facilitating in loss mitigation efforts, where practical, could include the Tribe providing financial and/or non-financial assistance to Borrower. Non-financial assistance could be default counseling, budget counseling, helping Borrower identify potential purchasers, or encouraging the Borrower to execute a Lease-in-Lieu of foreclosure. HUD also added a new requirement in paragraph (a)(4) that Tribes report any unsecured vacant units to HUD. HUD clarified § 1005.737 to provide that the Servicer may be notified by HUD that the Tribe or TDHE has determined that a unit is vacant or abandoned, triggering the Servicer's responsibility to notify all Borrowers of the determination that the property is vacant or abandoned.

7. In § 1005.409(b), HUD established a 7-year waiting period for Borrowers who have previously defaulted on a Section 184 Guaranteed Loan which resulted in a Claim payment by HUD. This revision helps to minimize potential risk to the Section 184 Program.

8. In § 1005.419(a)(6)(v), HUD removed ''for properties on Trust Land'', which restricts minimum square footage waivers to properties on Trust Land. This revision expands the waiver to all types of properties, to account for various situations, including when a Tribe purchases fee simple property.

9. In § 1005.419(c), HUD added new property standard requirements for properties with multiple dwelling units to be consistent with the industry standard on how these units are financed.

10. In § 1005.427(c) ''General Requirements,'' HUD moved paragraphs (2) and (5) from paragraph (f) ''Cash-Out Refinance,'' because these requirements apply to all types of requirements. Further, in § 1005.427(d)(2) HUD added paragraph (iii) to further clarify that construction loans less than a year are considered ''rate and term'' construction loans.

11. In § 1005.437(g) HUD is clarifying that it is not guaranteeing each individual advance made by the Direct Guarantee Lender during construction and that the entire loan is being guaranteed by HUD once a Loan Guarantee Certificate is issued. In addition, at § 1005.437(h), HUD added a requirement that changes to the loan agreement must be approved and documented by the Direct Guarantee Lender before the construction advance, notwithstanding paragraph (g)(1)(ii) of this section.

12. In § 1005.439, HUD clarified that junior liens do not require the prior approval of HUD, and that the Direct Guarantee Lenders will evaluate a junior lien only when the lien is part of the Section 184 loan package.

13. In § 1005.447, HUD revised the maximum age of loan documents from 60 days to 120 days after closing to provide more flexibility to both the Direct Guarantee Lenders and the Borrowers. To further flexibility, HUD also removed the time limitation regarding the maximum age of documents whose validity for underwriting purposes is not affected by the passage of time.

14. In § 1005.457(b), HUD added a provision that allows HUD to establish guidance regarding the use of alternatives to appraisers identified on

the Federal Housing Administration Appraiser Roster. This change provides flexibility to obtain an appraisal from non-FHA certified appraisers in remote and rural areas, often attributable to Trust Lands.

15. In § 1005.511, HUD clarifies that the Servicer may collect from the Borrower a late fee of up to four percent of principal and interest for payments 15 days or more in arrears.

16. In § 1005.609(b), HUD clarifies that the annual fee stops when the loan to value ratio is less than 78 percent. HUD also clarified that the monthly annual fee charge will remain the same as reflected in the amortization schedule, even with prepayments, until the 78 percent threshold is reached.

17. In § 1005.609(d), HUD removed the 78 percent threshold, and retained the ability to establish the Annual Loan Guarantee Fee termination by notice in the **Federal Register**. This will provide flexibility to quickly respond to unforeseen circumstances.

18. In § 1005.709(f), HUD clarified the period by which servicers must respond to HUD's request for information regarding an individual account. Specifically, HUD revised the paragraph by setting a three-day time period floor in which Servicers must respond to HUD's written or electronic requests for information concerning individual accounts. HUD retains the ability to set other timeframes by Section 184 Program Guidance. This revision will improve the efficiency of the Section 184 Program.

19. In § 1005.729, HUD added that no Servicer shall commence foreclosure, or assignor acquire title to a property until the requirements of this subpart have been completed. The intent of this revision is to prevent the borrower from losing the asset until and unless the lender complies with all servicing requirements.

20. In § 1005.731, HUD significantly revised this section by removing default notice requirements from the rule. HUD took this action to align the Section 184 Program with Federal, State and Tribal laws concerning notice of default.

21. In § 1005.739, HUD added loss mitigation advances as a loss mitigation option. This will provide Borrowers with another option to remain in their homes. HUD also revised this section to provide that the servicer must conduct occupancy inspections in accordance with § 1005.735. If the property is confirmed to be vacant or abandoned, the servicer must conduct property preservation in accordance with § 1005.737.

22. In § 1005.745, HUD added paragraph (g) which provides that HUD may provide for a temporary special forbearance in response to a disaster or national emergency. This provision will add more flexibility and allow for HUD to respond to unforeseen events, such as national emergencies.

23. In § 1005.747, HUD clarified that assumptions associated with loss mitigation must result in the cure of the default and reinstatement of the Section 184 Guaranteed Loan.

24. In § 1005.749(c), HUD removed the loan modification eligibility requirement that 85 percent of a borrower's surplus income must be insufficient to cure arrears within six months. This allows for more Borrowers to be eligible for loan modification.

25. In § 1005.751, HUD established loss mitigation advance requirements, including borrower eligibility and the terms of the advances. For example, to be eligible for a loss mitigation advance, the Borrower's Section 184 Guaranteed Loan must be 90 days past due, the Property is owner occupied, and the Borrower has the ability to continue making on-time payments. Additionally, loss mitigation advances must include arrearages and cannot exceed 30 percent of the unpaid balance as of the date of default. These revisions help to provide loss mitigation options to Borrowers and ensure that the Section 184 Program is solvent.

26. 1005.753(d) Removed the cash reserve requirement to match FHA standards. FHA no longer imposes this requirement on borrowers participating in the Pre-foreclosure Sale loss mitigation option. HUD has chosen to consistently apply the Pre-foreclosure Sale requirements.

27. In § 1005.753(m), HUD established a 90-day pre-foreclosure sale marketing period for the sale of the property, with a maximum 120-day marketing period. This provides Borrowers with more clarity concerning pre-foreclosure sales.

28. In § 1005.759, HUD provided a definition Tribal First Right of Refusal and established a 60-day period for Tribes to respond to the Tribal First Right of Refusal.

29. In § 1005.809, HUD revised paragraph (a)(1) to match the industry standard of two days to submit a claim and clarified the delivery requirements for claims under § 1005.807(a)(4). Additionally, HUD revised the timeframes provided in paragraphs (c) and (d) to reflect industry standards. Specifically, a Servicer must submit a post-foreclosure claim to HUD 30 days from the date Property is conveyed to a third party to align with FHA standards. Similarly, when a property is sold or conveyed prior to foreclosure, the Servicer must submit a claim to HUD no later than 30 days from the date the sale or conveyance is executed.

30. In § 1005.909(a), HUD clarified that Lender Applicants that are denied participation in the Section 184 Program have 15 days to appeal the decision. This revision adds more certainty to the appeals process.

III. Summary of Public Comments

The public comment period for the December 22, 2022, proposed rule closed on March 17, 2023. HUD received 33 distinct comments relating to the proposed rule's request for public comments. The comments were from the lenders, Tribes, Tribally Designated Housing Entities (TDHEs), and housing and banking interest groups and associations. This summary of comments addresses the most significant issues raised by the commenters and HUD's response to those issues.

General Support

Several commenters expressed support for the Section 184 Program and HUD's rulemaking effort to meet increased programmatic and operational demands as utilization of the program increases. These commenters suggested that HUD prioritize program requirements that: facilitate expansion of the program, increase flexibility to accommodate the unique needs of the Native American community, and accommodate operational demands on lenders looking to close or securitize loans insured under the program.

HUD Response: HUD appreciates this positive feedback and the time taken by the commenters to review HUD's proposed rule. HUD does have a priority to expand the program, as shown in its recent Dear Lender Letter 2023–02 on Tribal expansion areas and the Biden Administration's proposal to expand eligibility of the program to the entire United States. HUD will also work to market the program and educate potential new lenders and Tribes on the program, as well as continue to work with the Bureau of Indian Affairs (BIA) and other Federal agencies to expand the program.

General Opposition

Several commenters expressed general opposition to HUD's proposed rule, stating concerns that the proposed rule comes with onerous requirements, sanctions, and penalties that would make it difficult for Tribes and lenders, especially Native CDFIs, to participate in the program, or could even weaken the program. One commenter expressed opposition out of concern for possible unintended negative effects on the

Tribal borrowers participating in the program.

HUD Response: HUD appreciates all the concerns raised by the commenters. HUD does not believe that the proposed rule will deter Tribes and Direct Guarantee and Non-Direct Guarantee Lenders from participating in the program. Most of HUD's proposed rule codified current program practices. New requirements such as §§ 1005.527 and 1005.529 are necessary based on program growth and to address concerns identified internally by the Office of Native American Programs (ONAP) and HUD's Office of Inspector General (OIG). Further, to the extent any entity participating in the Section 184 Program believes a regulatory waiver is needed, these entities have the option to submit a waiver request to HUD. HUD disagrees that this rule will have the effect of weakening the program, in particular the Loan Guarantee Certificate (LGCs). This rule codifies the practice where Direct Guarantee Lenders are fully accountable for any non-compliance with any Section 184 requirement, even after the LGCs are issued. Ensuring Direct Guarantee Lenders are accountable for their non-compliance with Section 184 requirements, even in cases when the non-compliance may not be initially detected by HUD, is fundamental to the program's integrity. The HUD remedy of seeking indemnification from originating Direct Guarantee when the non-compliance warrants it, serves not only to strengthen the program as a whole, but strengthens the value of the LGC for all Holders.

HUD understands the desire for more Native Community Development Financial Institution (CDFI) participation in lending as a Non-Direct Guarantee Lender. HUD's regulations explicitly list that CDFIs are eligible entities. Further, given that the rule codifies current program eligibility requirements and that several CDFIs already participate, HUD does not believe the regulation will make it impossible for small Native CDFIs to become Direct Guarantee or Non-Direct Guarantee Lenders. As these Native CDFIs grow and build capacity, they will have the ability to become Section 184 Direct Guarantee Lenders.

Negotiated Rulemaking and Tribal Engagement

A commenter stated that HUD's failure to establish a negotiated rulemaking committee to develop the Section 184 Program regulations is a violation of Federal law. Another strongly encouraged HUD to create a Tribal Workgroup for any future regulatory changes to the Section 184 Program, based on HUD's Tribal Consultation Policy. The commenter noted that a workgroup would allow for more detailed input over a longer period of time and would provide a format for Tribal leaders to work together to create mutually beneficial policy suggestions.

HUD Response: HUD disagrees with the commenter that negotiated rulemaking is required to issue Section 184 Program regulations since the program's authorizing legislation does not require negotiated rulemaking. The requirement for negotiated rulemaking only applies to the Indian Housing Block Grant program as authorized by Native American Housing Assistance and Self Determination Act of 1996, as amended (NAHASDA) (25 U.S.C. 4101). The 184 Program is authorized by Housing Community Development Act of 1992, as amended (42 U.S.C. 1715z–13a), not NAHASDA, therefore negotiated rulemaking is not required. HUD did conduct extensive Tribal consultation before drafting the proposed rule, however, holding over 21 consultation sessions over a period of 6 years and sending out draft versions of the proposed rule for Tribal comment and review prior to and in addition to the 60-day public comment period provided by the proposed rule. Based on these efforts, HUD believes that it has met its Tribal consultation obligations. HUD will continue to solicit feedback from all Section 184 stakeholders regarding the development of program policy, as appropriate.

Guidance Rather Than Regulations

Commenters stressed that HUD should utilize program guidance, including handbooks, to address issues that may need to follow market trends, rather than set requirements in regulations. Commenters explained that the program needs to have the flexibility to accommodate the diversity of the different Tribes and their needs, and the flexibility to quickly adjust guidance as market conditions change and operational constraints emerge. Commenters stated that HUD should preserve the ability to make programmatic changes in a manner where formal notice-and comment rulemaking is not required every time a slight change is needed.

HUD Response: HUD is committed to ensuring that the Section 184 Program has the flexibility to address market changes and other operational contingencies. Based on public comment, HUD has reviewed the rule and strengthened the program's flexibility by incorporating references to program guidance where appropriate, without losing the enforceability of the key provisions of the program.

Outreach, Training, and Homeownership Counseling

Commenters generally requested increased outreach and training for lenders and Native CDFIs. The commenters explained that they wanted to ensure that Native CDFIs are able to become approved lenders without too many hurdles and capacity restraints. The commenters also stated that loan volume on Tribal Trust and Restricted Lands would increase if CDFIs and Native CDFIs were provided training. Other commenters suggested educating Tribes and TDHEs about their potential role in facilitating homeownership opportunities in their communities to Tribes and offering homeownership counseling to borrowers residing on reservations.

HUD Response: HUD supports increased outreach and training to Direct Guarantee and Non-Direct Guarantee Lenders (including Native CDFIs) and Tribes to encourage participating in the program, as well as providing training to existing Direct Guarantee Lenders and Tribes on how to best navigate the program and comply with the new regulations. HUD has engaged specifically with CDFIs to become more involved in the program and will continue to explore ways to engage Native CDFIs. Once the final rule is published and effective, HUD intends to conduct a series of training and outreach sessions in different formats: virtual trainings, pre-recorded video trainings and in-person trainings.

HUD also supports homeownership counseling for borrowers; however, the Section 184 Program as authorized does not provide for homeownership counseling. Tribes may use their Indian Housing Development Block Grant (IHBG) funding for homeownership counseling. Additionally, HUD's Office of Housing Counseling can provide additional resources and connect Tribes with homeownership counseling partners.

Consumer Protection Law Applicability

One commenter recommended that specific consumer protection laws and regulations apply to mortgage lenders, servicers, and originators under the proposed rule: the Real Estate Settlement Procedures Act (RESPA), See, Title 12, Chapter 27 of the United States Code, 12 U.S.C. 2601–2617, and the Truth in Lending Act (TILA) 15 U.S.C. 1601 *et seq.,* as well as both those acts enabling regulations referred to as Regulation X (12 CFR part 1024) and Regulation Z (12 CFR 1026). (0015)

HUD Response: Based on public comments, HUD has revised the rule to state Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, and Servicers' compliance with all applicable Tribal, Federal, and State laws that impact mortgage-related activities are required. HUD plans to provide further guidance on the Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA) in Section 184 Program Guidance.

Section 184 Program Data

A commenter suggested that the proposed rule should require lenders and originators to be subject to the Home Mortgage Disclosure Act (or HMDA) (28 U.S.C. 2801 *et seq.*) and its enabling Regulation C, and to require data similar to what is collected under the Community Reinvestment Act (CRA). The commenter stated that this data would assist Tribal Nations better serve the housing needs of their citizen members and to better advocate for banks and lending institutions to invest in Tribal communities. Another commenter suggested that HUD should provide data about loan volume by State and reservation to better understand how the Section 184 Program is working.

HUD Response: HUD appreciates the comments regarding data collection and how data can be used to promote homeownership and investments in Indian Country. HUD does not have rulemaking authority over HMDA or CRA. However, HUD will explore the possibility of providing public data on the program's performance. Until such data is published, Tribes may request program data on as needed basis in support of their housing and homeownership programs.

Alignment With Federal Housing Administration (FHA) Single-Family Framework

Commenters suggested that the Section 184 requirements should closely align with those of the FHA single-family program where it would not result in negative impact to Tribal communities served by the program. Commenters explained that this may increase lender participation in the Section 184 Program, would enable borrowers to take advantage of benefits that FHA borrowers receive, and would allow for consistency within the industry. One commenter explained that for the Section 184 Program to remain a competitive choice for lenders, the program should not be dramatically different in a financially detrimental way to lenders and servicers which could result in offering more FHA and non-Section 184 loans.

Other commenters were opposed to directly aligning with FHA regulations out of concern that an FHA-type program is not appropriate for Tribes, Tribal nations, and related entities.

HUD Response: HUD appreciates the comments and understands lenders' desire to have uniformity with FHA and Tribes' desire to keep the program unique to address Tribal specific circumstances. HUD notes, however, that FHA's single-family mortgage programs and the Section 184 Program have separate statutory authorities, which means one program may have the authority to operate in a way that the other cannot. In fact, because FHA's Section 248 Mortgage Insurance Programs on Indian Reservations and Other Restricted Lands (12 U.S.C. 1715z–13) was and continues to be unpopular among Tribal borrowers, Congress established the Section 184 Program in 1992 to give HUD greater flexibilities to encourage lending to Native borrowers than what FHA's Section 248 program required and allowed (59 FR 42732 (August 18, 1994)).

As a result, there are areas where the two programs are similar and there are areas where they are deliberately dissimilar. In drafting the proposed rule, HUD took a balanced approach between the program's intent to serve Native American communities and providing consistency for Direct Guarantee and Non-Direct Guarantee Lenders. Specifically, HUD reviewed the FHA single family regulations and, where possible, adopted, or modified regulations as appropriate for the 184 Program, while still keeping the program's unique flexibilities and focus on serving Native American communities.

Automated Underwriting

Commenters suggested that HUD should adopt an automated underwriting system similar to FHA's system to modernize the program, increase consistency with other government programs, attract new lenders and comply with § 1005.451 regarding risk-based pricing.

HUD Response: HUD appreciates the commenters' suggestion to adopt an automated underwriting system similar to that used by FHA. However, manual underwriting is one of the cornerstones of the Section 184 Program to make the program more accessible to Native American borrowers. Manual underwriting allows the program to take into account the borrower's income and credit from non-traditional sources. HUD will consider future changes to permit automated underwriting when sufficient Section 184 programmatic and systems safeguards can be in place.

Evidence of Title

One commenter expressed concern that the current process does not adequately address the title process involving restricted fee land. The commenter states HUD's demand for New York based Land Title Searches, Land Title Abstracts, and Land Title Insurance is not a requirement to access the Section 184 Program.

HUD Response: HUD appreciates the comment regarding evidence of title for restricted fee land. HUD will provide administrative guidance on the title process involving restricted fee land and other types of trust land.

Evictions Following Foreclosure

One commenter suggested that the lender should be responsible for evicting a borrower after a foreclosure has occurred.

HUD Response: When Holders, Direct Guarantee Lenders or Servicers initiate and complete foreclosure, whether on fee simple or trust land, Holders, Direct Guarantee Lenders or Servicers are responsible for evicting the borrower when the borrower fails to vacate the property.

Default

One commenter recommended the Tribe or TDHE be the borrower if the loan goes into default. HUD would then be able to review the case and discuss with the Tribe or TDHE the loss mitigations options, and if they weren't practical within 90 days of default, then the file will be submitted to HUD. The commenter reasoned that HUD has always indicated that Tribal borrowers would be dealt with Government to Government, and that should be the case here.

HUD Response: HUD appreciates the commenter's input and support of Tribal engagement. However, there are Federal consumer protection laws protecting the borrower when a loan goes into default. These laws are designed to keep the borrower in the home, if possible, and the legal relationship at time of default is between the borrower and the lender. To achieve some of what the commenter proposed, the final rule allows for the Tribes to be notified of borrower default if the borrower chooses this option. Once notified of the borrower's default, the Tribe may choose how to assist the borrower during loss mitigation.

Specific Recommendations for Changes to the Proposed Rule

§ 58.35 Categorical Exclusions

A commenter sought clarification on whether the environmental review, under § 58.35(b)(8) would be required; and if it is required, whether it would be completed prior to the loan closing.

HUD Response: HUD appreciates the comment regarding the Categorical Exclusions. An environmental review is required prior to closing. Section 184 Program Guidance will provide information on how this will be implemented.

§ 1005.103 Definitions

Commenters expressed general support for the expansion of the term ''Lender.'' Commenters noted that it would encourage Tribes to build capacity internally and that HUD should focus on expanding capacity for Native lenders. However, one commenter requested clarification around the term noting its reference to a financial institution that has not yet been approved by HUD. The commenter noted that while the definition of ''Lender'' distinguishes it from direct and non-direct guarantee lenders, this defined term appears to be used inconsistently, applying to lenders approved under § 1005.207. Another commenter suggested that ''Default'' and ''Date of default'' should be capitalized throughout the proposed rule to show that they are being used as defined terms.

Other commenters stated that the definition of ''Tribal Land'' should be very broad, not limited to lands that are leased. The commenters explained that the 184 Program allows for Tribes, housing authorities, and TDHEs to borrow, but Tribes do not have leasehold ownership in their own lands held in trust by the BIA. Commenters stated that the proposed regulation needs to be inclusive of all Tribal land to allow new concepts to be developed. There are currently Tribes who have Land Use Deeds in lieu of leases that are allowed to use the 184 Program.

The commenters also noted that while allotted lands are included in the definition of ''Trust Lands'', they are missing from the specific paragraphs regulating the lending on Tribal lands. The commenters recommended that allotted lands should be included in the regulations everywhere the regulations mention fee simple and leasehold interests. The commenters further noted that allotted lands and other Tribal lands are missing in various parts of the regulation, including how to appraise allotted lands and the appropriate documents to mortgage.

Another commenter recommended that a clear definition of what Native American lands are eligible under the 184 Program should be included in the rule and that it be expansive enough to capture the congressional intent of the 184 Program. The commenter explained that without providing a clear definition as to what Native American lands are eligible, many Native Americans on reservations are going to continue to experience extreme difficulty with accessing the Section 184 Program which Congress intended to assist them.

One commenter noted that § 1005.203 paragraph (a)(1) uses ''mortgagee'' which should be replaced with the term ''Lender.'' The same is true for the term ''Mortgage'' which has been replaced by the term ''Loan.'' The commenter stated that the term ''mortgage'' is used throughout the entirety of the proposed rule; in most cases, this term should be replaced with the term ''Loan.''

HUD Response: HUD appreciates commenters' input but has not edited the final rule to capitalize defined terms. HUD has, however, reviewed the use of the defined term ''Lender'' and has replaced ''Lender'' with ''Lender Applicant'', ''Non-Direct Guarantee Lender,'' ''Direct Guarantee Lender'', or ''Servicer,'' as appropriate. HUD also revised the definition of ''Trust Land'' to be more expansive and inclusive of allotted lands throughout the final rule; HUD removed the term ''leasehold interest'' and replaced it with ''property interest.''

HUD disagrees with the commenter's suggestion to replace ''mortgagee'' with ''lender'' in § 1005.203(a)(1). The language in § 1005.203(a)(1) (paragraph (a) of this final rule) is verbatim from 12 U.S.C. 1715z–13a(b)(4)(A), which also uses the word ''mortgagee'' in the context of FHA's single family mortgage insurance program. Additionally, HUD disagrees with the commenter that the term ''mortgage'' should be replaced with the term ''loan'' wherever ''mortgage'' appears in the final rule. While HUD defined ''loan'' and ''Section 184 Guaranteed Loan'' in § 1005.103, there are instances where ''mortgage'' is properly used to reference another Federal program or requirement, or an industry-standard practice. Nevertheless, HUD reviewed the final rule to ensure ''loan'', ''Section 184 Guaranteed Loan'' and ''mortgage'' were properly used and made corrections where errors in usage appeared.

§ 1005.205 Lender Applicants Required To Obtain Secretarial Approval

Commenters stated that requiring sponsored entities to provide an audited financial statement, rather than the industry standard financial documents, is not prudent, is very cost prohibitive, and would deter lenders from offering Section 184 products. One commenter explained that this requirement would make access to qualified lenders more difficult, which would negatively impact Tribal members and communities.

One commenter suggested that the requirement in § 1005.205(a)(8) that a lender not have a licensed refused or received a government sanction should be limited to the lending practices of the lender.

HUD Response: HUD agrees with commenters that requiring ''audited'' financial statements may be a burden for some Lender Applicants and Direct Guarantee Lenders. As a result, HUD has revised § 1005.205(a)(4)(i) by removing the term ''audited.'' HUD has also provided that Section 184 Program Guidance will explain when audited and non-audited financial statements may be needed. HUD also agrees with the comment that the denial of a license or government sanctions of a lender should be limited to the Direct Guarantee Lender's lending practices. HUD has revised § 1005.205(a)(8) to limit the lender certification to issues related to lender's lending activity.

§ 1005.213 Non-Direct Guarantee Lender Application, Approval, and Direct Guarantee Lender Sponsorship

Commenters proposed that notification in § 1005.213(b)(3) and (8) be changed to ''within 30 days'' to conform to industry standard.

HUD Response: HUD appreciates the commenters' recommendation. However, to ensure HUD has up to date information on who Direct Guarantee Lenders are sponsoring and to protect Section 184 Program integrity, it is critical that lenders notify HUD within 10 days when there are changes to the lenders' sponsorship. Additionally, HUD deleted in this section paragraph (b)(8) because it is redundant and inconsistent with paragraph (b)(3).

§ 1005.217 Quality Control Plan

One commenter noted that the requirement to complete a monthly review of a sampling of rejected loan applications and a written report of the review would be onerous to lenders and may keep lenders from participating in the Program. Other commenters

objected to the proposed monthly reviews, reporting, and tracking requirements, explaining that these requirements will be burdensome to small Tribes and lenders.

HUD Response: Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders must have an effective quality control plan to ensure their Section 184 loans are compliant with Section 184 requirements and to protect HUD and Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders from unacceptable or unreasonable risks and the borrower from erroneous negative decisions. As provided for in § 1005.217(b)(8), one method HUD will use to detect issues or anomalies in Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders' Section 184 lending is by reviewing a random statistical sampling of the Lender Applicants, Direct Guarantee and Non-Direct Guarantee Lenders' rejected Section 184 loans. Having this data is essential to HUD maintaining Section 184 Program integrity.

§ 1005.219 Other Requirements

Several commenters supported establishing HUD's ability to set a trust land lending requirement for lenders as proposed in this section. One commenter recommended that HUD base this requirement on historic numbers of trust loans closed within each state. Commenters also recommended that the required percentage could be lower than the state average, but some requirement should be in place to prohibit lenders who have no interest in serving Tribal members and communities in a meaningful way. Another commenter stated that if imposed, the requirement should be reasonable and should not be imposed in a way that discourages lenders from participating and making loans under the Program. Another commenter suggested that lenders should be given an opportunity to submit a plan for originating a minimum level of loans on trust lands. Lastly, the commenter suggested that if HUD retains the requirement to originate loans on trust lands, HUD should provide a minimum one-year timeframe that will allow the lender time to market loans on trust lands and create relationships with relevant Tribal departments or staff on Tribal lands.

Some commenters opposed establishing HUD's ability to set trust lending requirements for lender participation. These commenters explained that many of their villages are on trust lands and do not have a local bank resulting in Tribal members having insufficient access to financial services. As an alternative to this requirement, commenters recommended that HUD work with Federal partner agencies such as the Bureau of Indian Affairs (BIA) to establish processes to make the Section 184 Program practical and accessible on Trust Lands, noting that the Program's focus and intent should be on developing homeownership opportunities to all Alaska Native and Native American families.

One commenter was concerned that there may be unintended consequences if lenders are subject to a required percentage of loans and recommended that HUD exercise caution. The commenter noted that it is an unfortunate reality that making loans on Tribal land is significantly more difficult than it is on fee simple lands. The commenter further explained that the number of lenders participating in the Section 184 Program is already small. If lenders that cannot meet the required percentage of loans on trust land are faced with the possibility of ''sanctions and civil money penalties'' under §§ 1005.905 and 1005.907 of the proposed Section 184 Program regulations, the commenter was concerned that they may simply stop participating in the Program.

Another commenter suggested, instead of establishing lending requirements, that HUD offer incentives to lenders who opt to take advantage of market opportunities on trust land. For example, the commenter suggested that if the property is located on trust land, this section could increase a lender's portion of the guaranteed fee or offer priority processing.

HUD Response: HUD appreciates the many comments, in support of and in opposition to, this section of the regulation concerning the minimum level of Trust Land lending. HUD acknowledges that Trust Land lending is a complex issue and there may not be a ''one size fits all'' approach to Trust Land lending. HUD intends on developing a minimum level of Trust Land lending policy that is reasonable, achievable, and serves to promote and not hinder Trust Land homeownership opportunities for Indian families. HUD anticipates seeking Tribal and Direct Guarantee Lender input as HUD researches the issue further prior to implementing the minimum level of trust land lending requirement.

§ 1005.223 Annual Recertification

One commenter proposed that § 1005.223(b)(2) be clarified to include good standing with the ONAP Office of Loan Guarantee rather than for problems outside of past due or default. One commenter stated the recertification requirements seem unrealistic given HUD's staffing levels. The commenter suggested that HUD should consider requiring recertification every five years.

HUD Response: HUD agrees with the comment that § 1005.223(b)(2) should be clarified and will provide further administrative guidance. However, HUD does not agree that the Direct Guarantee Lender recertification requirements are unrealistic and that the certifications should be every five years. HUD believes annual recertifications from Direct Guarantee Lenders are necessary for the proper administration of the Section 184 Program.

§ 1005.301 Tribal Legal and Administrative Framework

Several commenters suggested that the proposed rule exclude BIA involvement because some Tribes do not use the BIA for mortgageable land assignments. Rather, the commenters suggested that the guidelines should address Tribal Assignments for those Tribes that do have the mortgageable land assignments.

A commenter suggested giving lenders notice of all current HUD approved leases. The commenters noted that currently, there is no way for a lender to know which leases have been approved without submitting this to HUD for review.

Other commenters recommended that the assignment of lease provisions should include the lender in situations where the lender is unable to assign the loan to HUD and must pursue the foreclosure, eviction, and resale of the property to an eligible Tribal member.

HUD Response: HUD appreciates the extensive commenters received on this section. HUD recognizes not all Trust Land involves the BIA. Accordingly, HUD revised the regulations by inserting ''where applicable'' in provisions which references BIA involvement. With respect to the comment that there is no way for lenders to know which Tribal leases have been approved by HUD, HUD anticipates providing administrative guidance that will assist Direct Guarantee Lenders in verifying which Tribal leases are HUD approved.

With respect to the comments that the lease provision should include addressing situations where the lender is unable to assign the loan to HUD and must pursue foreclosure in Tribal court, HUD disagrees. Whether a Holder or Servicer must assign, could assign, or is unable to assign the loan to HUD is not an issue for the lease to address. When HUD exercises its discretion to accept the assignment, the requirements of

Holder or Servicer assignment of the loan can be found at § 1005.765. HUD notes that paragraph (b)(1) of this section is not intended to provide that all Trust land loans must be assigned to HUD. Under current policy, the Holder and Servicer always retains the option to not assign the mortgage to HUD and pursue foreclosure in Tribal court. HUD further notes that acceptance of loan assignment remains at HUD's discretion. HUD revised § 1005.765(b) to make this point clear. In cases where HUD does not accept assignment and the Holder or Servicer is otherwise unable to assign the loan or prefers not to assign, the Holder or Servicer would proceed with foreclosure in Tribal court.

§ 1005.301(b)(1)(i) Tribal Courts

Commenters recommended that HUD should recognize Tribal courts as the only legitimate court regarding foreclosures on trust land. One commenter stated that HUD lenders and servicers show proper respect and deference to Tribal courts during the foreclosure process, which includes having legal counsel appear in Tribal courts when necessary for foreclosure and eviction and adhering to applicable Tribal laws. Commenters also noted that paragraph § 1005.301(b)(1)(i) requires Tribes to grant Federal Court jurisdiction so that HUD can foreclose on a default of a Section 184 Guaranteed Loan, however, some Tribal leasehold mortgage codes do not allow recognition of Federal jurisdiction and conflict with this requirement.

HUD Response: HUD appreciates the commentor's input. HUD respects the sovereignty of Tribes and the jurisdiction of Tribal Courts as well as the ability to conduct business related to trust land in Tribal court. However, when a Trust Land loan is assigned to HUD, the Federal Government must be able to protect the Section 184 program and its Federal interest in Federal court. Therefore, the rule requires Tribes to allow for foreclosures to occur in Federal Court in cases where HUD must foreclose. Nevertheless, it is HUD's hope that with the expansive loss mitigation options available to defaulted borrowers, including incentive payments to Tribes, Holder or Servicers, and defaulted borrowers as established in § 1005.757, and a stronger partnership between Tribes, Holder and Servicer, and HUD to effectuate loss mitigation, trust land foreclosure referrals to DOJ will become increasingly rare. Accordingly, HUD makes no changes to paragraph (b)(1)(i) of this section.

§ 1005.301(b)(1)(ii) Foreclosure Ordinances

One commenter noted that § 1005.301(b)(1)(ii) requires that foreclosure ordinances allow for the reassignment of leases to HUD or the issuance of new leases to HUD and reassignment of leases to the Tribe. The commenter explained that for some Tribes, a significant amount of their Tribal trust land is allotted to individual Tribal members who may also wish to approve new leaseholders. The commenter asked how the proposed requirements incorporate or contemplate the rights of those who hold shares in allotted Tribal trust land. Another commenter recommended that the word ''lease'' in § 1005.301(b)(1)(ii) be changed to ''leasehold'' or ''leased property''. A third commenter inquired how individual allotted Trust Land would be treated under paragraph (b)(1)(ii) of this section.

HUD Response: Based on these comments, HUD revised § 1005.301(b)(1)(ii) and made a technical correction to state more generally the Tribe's legal ordinances must allow for the borrower's property interest (and not just leasehold interest) to be assigned to HUD or Holder. HUD will provide administrative guidance to address the rights of Tribal members who hold shares in allotted Tribal trust land.

§ 1005.301(b)(1)(iii) Lease Assignment

One commenter stated § 1005.301(b)(1)(iii), which allows a Tribe to assign a lease to HUD without the consent of the borrower and without foreclosure, ignores the contractual rights a borrower may have in the lease, the loan, and through the foreclosure process. The commenter recommended providing for assignment of a lease from a borrower to HUD within the terms of the lease.

HUD Response: HUD appreciates the comment but maintains that the Tribe should have the discretion to assign the lease to HUD when the Section 184 Loan has been assigned to HUD when the Section 184 Loan is in default. While § 1005.301(b)(5)(ii)(G) establishes a mandatory lease provision giving Tribes the ability to assign the lease to HUD, we emphasize Tribes have the discretion to assign the lease to HUD or not when the borrower defaults on the Section 184 Loan. To the extent a Tribe as the lessor of the leasehold interest, wishes to exercise this discretion to assign the lease to HUD, it would be pursuant to the mandatory lease terms. To address the commenter's concern that the proposed regulation enables Tribes to ignore the contractual rights a borrowers may have in a lease, HUD revised § 1005.301(b)(5)(ii)(G) (and § 1005.301(b)(1)(iii)) to expressly require Tribes provide due process to the lessees in accordance with Tribal laws if a Tribe intends to assign the lease to HUD.

§ 1005.301(b)(4) Lien Priority

A commenter stated that § 1005.301(b)(4)(ii), which requires any second lien on title to trust land be approved by the Tribe and BIA and recorded by BIA, makes sense for a second mortgage through a financial institution, but it is impractical when it is related to a contractor's liens and tribally funded liens. Another commenter stated that a Tribe should not be required under § 1005.301(b)(4) to apply state law to determine a mortgage as the priority lien. The commenter also noted that the requirement that a Section 184 loan be satisfied before all other obligations seems to prohibit full satisfaction on a secondary loan made for purposes of providing down payment assistance, inconsistent with § 1005.439. The commenter further noted that the majority of junior loans are for terms less than thirty years.

Another commenter stated that its code has an exception for allowing a Section 184 Guaranteed Loan to have first lien priority when there is a Tribal leasehold tax lien, which appears to conflict with § 1005.301(b)(4). A separate commenter stated that the purpose of HUD's proposal in paragraph (b)(4) appears to only be ensuring that the Section 184 mortgage becomes the first priority debt to be satisfied before any other debt, such as secondary liens. According to the commenter, on some Reservations the land cannot be pledged for any debts and thus raises questions regarding how the secondary lien holder can take ''possession'' of the home. Further, acquiring a home mortgage on a Tribal reservation is so rare that there are likely very few first priority loans. A commenter proposed, as an alternative for Tribal Nations that manage and control their own land systems, a certification process that confirms their legal system meets the proposed requirements contained in paragraph § 1005.301(b)(4).

Another commenter stated that if a contractor is not paid for a job completed on trust land, or any other land, it will secure its material and labor costs with a lien on the property. The commenter further stated that contractors will not go through the process of seeking approvals before pursuing their rights under the

contractor lien laws. The commenter stated that if this requirement remains part of the rule, it is inevitable that some contractors unfortunately learn that they do not have the right to an immediate lien on trust land, or perhaps any right to a lien should a Tribe refuse to approve these types of liens. The commenter further noted that once these incidents occur, there will be a threat of contractors' refusal to work on properties on trust land given the additional steps and risks should their bill remain unpaid should the trust land be secured by a Section 184 loan.

HUD Response: HUD appreciates the various comments on § 1005.301(b)(4) of the regulation. HUD agrees with the comment that BIA approval is not always required. HUD has revised paragraph (b)(4)(ii)(B) and elsewhere in the regulations to provide for ''BIA, as applicable''. HUD does not believe the lien provisions under § 1005.301(b)(4) are inconsistent with § 1005.439. Additionally, HUD intends on providing program guidance on lien priority as it relates to mechanics' liens, tribally funded liens, and Tribal leasehold tax liens.

§1005.301(b)(5) Lease Provisions for Trust Land

Several Commenters stated that § 1005.301(b)(5)(ii) be revised to recognize that other Federal and Tribal leasing regulations may apply, including, but not limited to those under 25 U.S.C. 415. Another commenter noted that this paragraph requires Tribes to draft their own lease in compliance with 25 CFR part 162. The commenter further noted that certain Tribes adopted their own leasing codes to regulate the leasing of Tribal lands in accordance with 25 U.S.C. 415.

Other commenters proposed removing ''property address'' from § 1005.301(b)(5)(ii)(C) or clarifying that it would only be required if applicable or assigned. The commenter explained that for new construction properties, the property address is not typically available at the time the lease is created and that it is not usually available until construction has started or until construction is fully completed. The commenters proposed moving the lease term in § 1005.301(b)(5)(ii)(D) from the regulation and making it part of the guidelines instead.

These commenters also proposed clarifying that refinances should be 50-year term with at least 10 years remaining after maturity of the loan. The commenters noted that the remaining term should be written to provide as much flexibility as necessary. A separate commenter asked whether the paragraph should require a ''maximum'' 50-year term, rather than a ''minimum'' 50-year term. The commenter explained that if a Tribal Nation member has the financial capabilities to meet a shorter loan term, they should be able to do so. Another commenter proposed the § 1005.301(b)(5)(ii)(E) and (H) should clearly state that a lease cannot be assigned without foreclosure or consent of the lessee.

HUD Response: HUD appreciates the numerous comments regarding the lease provisions under § 1005.301(b)(5). HUD agrees with the comment that Tribal leases must be in compliance with all applicable Federal requirements and not just 25 CFR part 162, where applicable. HUD has revised § 1005.301(b)(5)(ii) and removed the citation to the BIA regulation and in its place inserted ''Federal requirements''. HUD disagrees with the comment to remove ''property address'' from paragraph (b)(5)(ii)(C). HUD will provide administrative guidance on this paragraph when a property address is not available in the context of new construction.

HUD also appreciates the comments regarding providing the borrower with 10 additional years beyond the payoff of the mortgage to enjoy the property. This regulation codifies current practice. HUD has this policy as a protection for the borrower for their quiet enjoyment to ensure after loan maturity the borrower has some meaningful years left to remain in the property. HUD will continue this policy for the benefit of the borrower.

Finally, HUD has not removed the lease term in the regulation from § 1005.301(b)(5)(ii)(D). However, HUD agrees that flexibility in the lease term provisions would be beneficial to HUD. HUD revised this paragraph to by inserting the clause ''unless another term is approved by the Secretary'' so HUD will have the administrative ability to require a different minimum lease term.

§ 1005.303 Tribal Application

One commenter asked if the proposed rule provided an allowance (*e.g.,* grandfathering) for Tribal Nations who already participate in the Section 184 Program and may already have Section 184 loans on their reservations.

HUD Response: HUD does not intend for Tribes currently approved for the Section 184 Program to reapply to participate in the Section 184 Program when the final rule goes into effect. However, Tribes currently approved to participate may still be required to provide copies of the current ordinances and lease under § 1005.301 and show all requirements in §§ 1005.307 through 313 are being met. HUD will provide guidance on what Tribes may need to do to ensure their transition into the final rule.

§ 1005.307 Tribal Recertification

One commenter stated that the certification requirements for Tribes are burdensome and should be removed because they place a hinderance on Tribes' and members' ability to qualify for the Section 184 Program. Other commenters objected to an annual recertification, stating that an annual recertification can be administratively burdensome and can potentially limit growth among our small Tribes with limited resources. These commenters recommended that Tribes have a 3-year recertification process under this section. Other commenters recommended that the Tribal recertification process should be a simple process of the Tribe certifying no changes to their previously approved legal structures. Commenters also suggested that HUD maintain an Approved Lease Database that lenders and Tribes could reference to make sure the correct format is being used prior to closing.

HUD Response: HUD appreciates the commenters' concern that an annual recertification may be burdensome to Tribes. HUD agrees with the commenters' suggestion that the Tribal recertification be a simple process for Tribes to inform HUD that there have been no changes to the Tribes' legal and administrative framework and contact information. HUD made no changes to this regulation in response to the public comments. HUD appreciates the commenters' suggestion that HUD maintain a database of approved Section 184 Tribal leases. HUD will explore the viability of this suggestion further.

§ 1005.309 Duty To Report Changes

One commenter stated that this section needs to be specific as to which entity this written notification will be provided. Another commenter noted that many Tribes have no one designated to carry out Section 184 duties, and that this proposed rule makes it hard for Tribes to carry out the program.

HUD Response: The purpose of this regulation is to enable HUD to be timely informed of any proposed changes to the Tribe's foreclosure, eviction, lease, and lien priority ordinances and contact information. To provide clarity to the regulation, HUD revised the last sentence of the § 1005.309 to make clear HUD will provide notification to the Tribe regarding whether the proposed

ordinance changes meet Section 184 requirements.

§ 1005.311 HUD Notification of Any Lease Default

Commenters noted that instances where a borrower is current with their loan but delinquent on their land lease has caused situations where the Tribe has attempted to cancel the lease thereby endangering the loan collateral. These commenters recommended that HUD consider requiring that lease payments be handled through a borrower's escrow account with the servicer in the same way that property taxes and hazard insurance are handled.

Other commenters stated that the proposed rule only requires a Tribe to notify HUD of lease default within 30 days of default and proposed that HUD should provide written notification to the lender after receiving the Tribe's notice of lease default. Other than defaults unrelated to the loan, Tribes are not aware of a default on the loan until a lender sends a notice of the right of first refusal. The commenters stated that, in many cases, notice is received at the same time a lender files a foreclosure action, and that a Tribe is not aware of the default until the lender or borrower requests an assignment of the lease. The commenter recommended that HUD be required to notify a Tribe once HUD acts on its guarantee. This will, according to the commenters, allow the Tribe and HUD to work in a coordinated effort on loss mitigation actions.

HUD Response: HUD appreciates the comments regarding this section of the regulation. The comment recommending that lease payments be handled through a borrower's escrow account has already been addressed in § 1005.507. Under that section, borrower's monthly payment must include, among other things, ''ground rents'', which includes lease payments from the Tribal member to the Tribe.

Regarding the comment that HUD should notify the Tribe of the borrower's default on the loan once HUD pays out a claim to the Holder or Servicer, under § 1005.759 the regulation establishes a timeframe for when the Tribe receives the right of first refusal. However, the Tribe could potentially receive notice of the borrower's default even sooner than the Holder or Servicer's issuance of the Right of First Refusal if the borrower elects to provide consent for the Holder or Servicer to disclose to the Tribe his or her default under § 1005.501(j). HUD intends on providing training to Holder and Servicer and outreach to borrowers to encourage borrowers to consent to Tribal notifications so that Tribal interventions can occur sooner when Tribal borrowers are in trouble.

§1005.313 Tribal Reporting Requirements

Commenters recommended that HUD seek feedback from Tribal entities on the impact of additional review reporting requirements, stating that quarterly or semiannually, may be just as effective and less burdensome. Commenters also recommended that although additional reporting and program data requests will be posted through guidance and will go through the necessary Paperwork Reduction Act process, HUD should receive feedback from Tribal entities on the impact of additional reporting requirements or on what type of data HUD might request from Tribes. Another commenter questioned what the requirements would entail and who within the Tribe would be responsible for these reports.

HUD Response: HUD appreciates the commenters' recommendation that HUD obtain feedback from Tribes before implementing this regulation. The regulation does not specify the frequency of the Tribal reporting requirement. HUD will provide administrative guidance on what information will be collected and how often. Prior to implementing this regulation, HUD intends to seek feedback from Tribes on the Tribal reporting requirement and on whether an equally effective and less burdensome information collection process could be achieved.

§ 1005.401 Eligible Borrowers

A commenter suggested that either § 1005.401(a) or (c) should be amended to clarify that eligible Borrowers with a Section 184 loan on their principal residence may sign as a non-occupant, co-Borrower on a separate Section 184 loan, provided they meet all loan qualifications with the additional loan. The commenter noted that § 1005.401(a) only limits eligible Borrowers to one Section 184 loan at a time, and that paragraph (c) of this section allows a non-occupant co-Borrower on Section 184 loans. The commenter further noted that often, when a non-occupant co-Borrower is included on a mortgage loan, it is a parent of a child making one of their first purchases of real estate.

Commenters also suggested allowing second homes on Tribal trust land, noting that Tribal borrowers would like to have a presence on their Tribal homeland but primarily live on non-Tribal lands for work or other reasons. These commenters also noted situations of a family home where the occupant dies, and the heirs would like to retain the property. In this situation, commenters explained that under the proposed rule the heirs' only option would be to move into the house, which may not be practicable for their current life situation.

HUD Response: HUD acknowledges there can be a need for a family member to assist another family member as they embark on the path to homeownership and supports the recommendation to allow an individual with an existing Section 184 Guaranteed Loan to be a non-occupying co-borrower in accordance with the Section 184 Program Guidance. This shift will provide wealth building opportunities for more Native families. Accordingly, HUD revised § 1005.401(c) to provide an exception to the rule that an Indian Family is limited to one Section 184 Guaranteed Loan at a time. The exception will provide that an existing Section 184 borrower may be a non-occupant co-borrower on only one other Section 184 loan, so long as the non-occupant co-borrower loan also meets § 1005.403. Relatedly, HUD has made conforming technical changes to § 1005.403 to provide greater clarity on the non-occupant co-borrower requirements.

Lastly, HUD appreciates the commenters' suggestion to allow a borrower to have multiple Section 184 Guaranteed Loans which would include second homes. HUD believes, however, that the mission of the Section 184 Program is to increase homeownership for Native American borrowers. As a result, HUD is not making this change.

§ 1005.405 Borrower Residency Status

A commenter noted that ''U.S. Citizen, or lawful permanent resident, or non-permanent resident'' does not appear to describe Native Americans consistent with 8 U.S.C. 1359, which provides that: ''Nothing in this subchapter shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.''

HUD Response: HUD appreciates the commenters suggestion but notes that 8 U.S.C. 1359 governs movement across borders and not permanent residency status. As a result, HUD has not revised § 1005.405 in response to this comment.

§ 1005.407 Relationship of Income to Loan Payments

A commenter recommended that the terms ''age'' and ''sexual orientation'' be added to the nondiscrimination provision in § 1005.407(b). Other

commenters expressed support for the addition the nondiscrimination provision in § 1005.407(b). One stated that this provision advances not just the statutory purpose of the Program to provide access to sources of financing to Native American families, housing authorities and Tribes, but it is also consistent with fair lending provisions which seek to root out discrimination in credit markets.

Other commenters recommended that the provisions prohibiting discrimination based on income stream should also include Tribal sources of income. These commenters explained that HUD currently requires two years of receipt and averages the last two years instead of using the current amount. According to the commenters, this is discriminatory towards Tribal governments and members and should be changed.

One commenter noted that without including some type of 'test' with respect to mortgage underwriters automated or electronic underwriting that the rule will fall far short of detecting and stopping such discrimination. The commenter recommended that the proposed rule require lenders and originators to attest that their automated underwriter software meets the requirements needed to originate loans under the Section 184 Program including the prohibition against Native income and loan location discrimination. The commenter further recommended that HUD develop an automated underwriting program to use with the Section 184 Program (*e.g.,* Scorecard or Native Advantage), particularly with the data HUD is about to receive under the Section 184 Program, and to make that available to lenders, originators, and Native Housing Counselors or Agencies located on Tribal reservations who are trying to assist Native American participation in the Section 184 Program.

Other commenters objected to this section's requirement that the occupying borrower meet a minimum qualifying threshold when there is a co-borrower that will not occupy the home. These commenters reasoned this could have a negative impact for protected classes and first-time homebuyers. Finally, one commenter stated that under § 1005.407(a)(2), requiring the occupying borrower to meet a minimum qualifying threshold when a non-occupying borrower is on the loan could result in disparate impact for protected classes and first-time homebuyers.

HUD Response: HUD appreciates the extensive comments received on this section of the regulation. HUD agrees with the comment that ''age'' should be added to the non-discrimination provision in paragraph (b) of the section as ''age'' is a protected class under the Equal Credit Opportunity Act. HUD has inserted ''age'' into the list of protected categories. With regards to the comment suggesting the non-discrimination provision in § 1005.407(b) expressly reference ''Tribal sources of income'', HUD believes this is unnecessary. This paragraph states more broadly there can be no discrimination based on the ''source of income of the borrower'', which would naturally include Tribal sources of income. With regards to the comment that ''sexual orientation'' should be added, this protected class is already referenced in the regulation, and has been maintained in this final rule in accordance with Executive Order 13988, ''Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation'' [3] and HUD's February 2021 implementation memorandum.[4]

With regards to the comments suggesting HUD develop a test to detect discrimination in the lenders' automated underwriting of Section 184 borrowers, HUD disagrees with the comment. The Section 184 Program currently does not allow automated underwriting and, as a result, there would be no test to develop to detect discrimination. HUD will consider future changes to permit automated underwriting when sufficient Section 184 programmatic and systems safeguards can be in place.

With regards to the commenters' recommendation that the occupying borrower meet minimum qualifying threshold when there is a non-occupant co-borrower under paragraph (a)(2) of this section, HUD appreciates the commenters' concerns. However, when an occupying borrower and a non-occupant co-borrower are on the same loan, it is critical that the occupying borrower meet a minimum qualifying threshold to avoid the situation where as soon as the other non-occupant co-borrower no longer can contribute towards the mortgage, the occupying co-borrower faces default. Exempting the occupying borrower from meeting a minimum qualifying threshold will cause undue and unnecessary risks to the Section 184 Program.

§1005.409 Credit Standing

Commenters recommended a default waiting period of 36 months which is consistent with other loan programs. Other commenters stated that this section codifies a current practice of not having a credit score that impacts the borrower's ability to qualify for a Section 184 Loan. The commenters suggested that this section continue to be a guideline/policy and not set in stone in the regulations. Another commenter stated that prohibiting the use of credit scores to measure a borrower's creditworthiness is contrary to their use by the lending industry. The commenter recommended that a Section 184 lender should have the discretion to use credit scores, along with credit history and payment patterns, to evaluate credit worthiness.

HUD Response: HUD appreciates the commenters recommendations for a 36-month waiting period for borrowers who previously defaulted on a Section 184 loan. As mentioned above, HUD considered the comments and has adopted a seven-year waiting period, or other period as may be prescribed by Section 184 Program Guidance, to minimize risk to the program. The seven-year waiting period only applies when the borrower defaults on the Section 184 Loan and there is claim payment by HUD. HUD has a long-standing prohibition of the use of credit scores for the Section 184 Program. As a result, HUD has not revised this section to provide Direct Guarantee Lenders the discretion to use credit scores. Direct Guarantee Lenders are able to evaluate the credit worthiness of Native borrowers without using credit scores. HUD will continue this time-tested successful practice for the benefit of Native borrowers.

§ 1005.413 Acceptable Title

Commenters expressed concern that this requirement does not provide any risk mitigation to HUD due to the unique status and marketability issues of trust land properties. The commenters explained that this requirement would cause issues for borrowers with trust loans in having to redo leases and eliminating it would benefit borrowers. Commenters requested that HUD consider instead the necessity of having a lease on trust property that exceeds the mortgage term by ten years, which is standard in the industry. One commenter also suggested adding to this section ''including but not limited to leasehold, Allotted and Land Use Deed''. The commenter explained that this language currently permits land types and would include other land types that evolve over time and need to be permitted.

Another commenter proposed that that Tribal Nations be recognized as being able to provide both Acceptable Title and Property Ownership Report for

[3] 86 FR 7023, January 25, 2021.

[4] Available at *https://www.hud.gov/sites/dfiles/PA/documents/HUD_Memo_EO13988.pdf.*

Section 184 Program purposes, thereby reducing delays in the loan approval process.

HUD Response: HUD does not believe that this provision will cause issues for borrowers with Trust Land loans, possibly requiring these borrowers to redo leases. Tribes approved to participate in the Section 184 Program are required to have their Section 184 Tribal leases approved by HUD prior to any mortgage lending on Tribal Trust Land. As a result, it is highly unlikely a Section 184 lease would ever need to be redone solely because of the requirement under § 1005.413.

HUD also appreciates the comment that Tribal Nations be permitted provide acceptable title and property ownership reports for the Section 184 Program. HUD will explore further the feasibility of this proposal and what safeguards, if any, HUD must adopt to ensure there are no increased risks to the program should this proposal be implemented.

§ 1005.415 Sale of Property

One commenter recommended that § 1005.415(c) be revised to provide that all sales occurring within 180 days of acquisition require additional documentation, such as a second appraisal. The commenter further recommended that the additional documentation should be described in these paragraphs because they are vague as written. The commenter noted that restrictions on eligible borrowers' ability to purchase flipped or remodeled homes reduces their opportunities to purchase. The commenter also stated that the use of ''property flipping'' in the title of paragraph (c)(4) of § 1005.415 is misplaced and unnecessary. Specifically, the commenter noted that § 1005.415(c)(2) and (3) do not include the term ''property flipping'' and the fact that a home is sold for a higher price within 12 months of purchase does not unequivocally mean it was flipped. The commenter stated that if the goal of this section is to require additional documentation for properties that were flipped, then there must be a definition for the same that involves construction.

HUD Response: HUD appreciates the numerous comments received regarding this section of the regulation. This section is vital to ensure that Holder and Servicers understand the legal requirements regarding sales of a home involving a Section 184 borrower. HUD disagrees with the comment to revise § 1005.415(c). Paragraph (c) relates to time restrictions on resale and is divided into paragraphs (c)(1) through (3). Each of these paragraphs properly lay out an important component of this section. HUD agrees that the term ''property flipping'' should not be used in paragraph (c)(4). HUD disagrees that there should be definition for the same that involves construction. This section equally applies to new construction.

§ 1005.419 Requirements for Standard Housing

One commenter stated that § 1005.419(a) provides that heating, plumbing, and electrical systems must conform with any applicable Tribal code, and if there is no applicable Tribal code, an appropriate local, state, or national code. The commenter recommended that conformance with an international code be included alongside the other types of codes to use in place of an applicable Tribal code.

Other commenters recommended that paragraph (a)(6) of this section should allow for a minimum square footage of ''not less than 200 square feet in size, if designed for a family of not more than 2 persons.'' These commenters explained that ''tiny homes'' provides affordable housing options to Tribes faced with skyrocketing home costs on reservations and have been shown to be successful on reservations. Other commenters proposed moving this paragraph from this final rule and making it part of the guidelines instead.

One commenter proposed removing ''for properties on Trust Land'' from paragraph (a)(6)(v) as Tribes can have Fee Simple and Restricted Fee on and off the reservations. The commenter explained that removing this would allow Tribes with all land types to be able to request the waiver of the square footage requirement.

Other commenters proposed that the requirements of paragraph (e) of § 1005.419 be rewritten to allow a property to be eligible for a Section 184 loan guarantee if the building located with a Special Flood Hazard Area (SFHA) is insurable by any flood insurance. These commenters stated that Tribes should not be subject to flood insurance under the National Flood Insurance Program (NFIP), as States are exempt from this requirement. The commenter also explained that Letters of Map Amendments (LOMAs), Letters of Map Revision (LOMRs), and NFIP Elevation Certificates are not available to communities, including Tribes, that are not a part of the NFIP. The commenters recommended that the rule be written to allow a property on a SFHA to be eligible so long as the flood risks are mitigated, and flood insurance is obtained. These commenters stated that the majority of Tribes in the U.S. are not participants of the NFIP but are able to mitigate their flood risks and obtain flood insurance from reputable insurance companies outside the NFIP. Finally, another commenter noted that the environmental review process is often a burden to lenders, with HUD and the BIA having separate requirements. The commenter recommended that a streamlined process and single form should be agreed to for a consolidated environmental review process that is completed by the Tribe or its assignee at the time of the lease.

HUD Response: HUD appreciates the numerous comments regarding this section of the proposed rule. HUD has considered the suggestion to reference international codes in paragraph (a) in this section and has accepted the suggestion to utilize the International Building Code.

HUD also appreciates the comments suggesting a lower minimum square footage requirement for paragraph (a)(6) of § 1005.419. However, this section derives from section 184(j)(6) of the Act and HUD has no ability to on its own waive this statutory provision. However, as discussed above, the Act provides that upon the request of a Tribe or a TDHE, HUD may waive the minimum square footage requirements.

HUD appreciates the comment regarding paragraph (d)(4), but HUD has decided to adopt the same standard as used by the FHA-family forward mortgage program. HUD agrees with the comment regarding private flood insurance and has revised the provision to allow for private flood insurance.

§ 1005.421 Certification of Appraisal Amount

One commenter noted that there are few, if any, qualified Native American restricted land appraisers, and that determining the market comparison is extremely difficult. The commenter stated that the current option of utilizing replacement cost or actual cost for new units in lieu of an appraisal continues to be the most practical method of determining value. The commenter also stated that in most real estate transactions, the buyer and or his bank is responsible for determining (appraisal) value, and not the seller.

Another commenter recommended that HUD provide a fuller definition of the term ''appraisal,'' similar to requirements in other HUD and Fannie Mae contexts where opportunities for alternative appraisal methods are provided. Furthermore, the commenter, citing a Brookings Institution report, noted concerns about discrimination in the home mortgage process for Native Americans, as there is potential bias in home appraisals occurring on Tribal

reservations. The commenter recommended that the requirements should require lenders and originators to attest that appraisals used come from competent appraisers, and who, like the Consumer Financial Protection Bureau (CFPB) requires appraisers to attest that the appraisal conforms with ''the Fair Housing Act and Equal Credit Opportunity Act.''

HUD Response: HUD appreciates the comments regarding the challenges of appraising property located on restricted lands and the request for a definition of appraisal. This section requires an appraisal to be completed, which would require the seller to allow an appraiser to access the property, to inspect the subject property, and prepare an appraisal report. HUD has addressed the concerns of the commenters regarding Fair Housing Act and the Equal Credit Opportunity Act in § 1005.457. As a result, HUD is revising this section by referencing the Fair Housing Act and the Equal Credit Opportunity Act, along with revising the language for clarity regarding HUD's ability to provide for appraisal alternative requirements.

§ 1005.423 Legal Restrictions on Conveyance

One commenter suggested that this section should be updated to allow for leases and sales with third party consent from a governmental entity or agency, master lessee, and planned community authorities. Another commenter suggested that paragraph (b)(4) of this section be revised to clarify that restrictions which do not restrict conveyance are not impacted by this rule, *i.e.,* covenants on a subdivision continue to apply.

HUD Response: HUD appreciates commenters' input and recognizes the concerns raised regarding third party consent and clarification of restrictions on conveyance. HUD will provide further administrative guidance to address commenters' concerns.

§ 1005.425 Rental Properties

A commenter recommended that paragraph (b) of § 1005.425, which contains the phrase ''one- to four-unit properties'', should be changed to ''properties'' since that term defines the phrase. Additionally, the commenter stated ''Property'' or ''Properties'' should be capitalized throughout the proposed rule since they are being used to describe the dwellings identified under the definition of ''Property''.

HUD Response: As discussed previously, HUD defined ''property'' in § 1005.103 to mean one to four-family dwellings and is consistent with current policy. HUD has not capitalized the term throughout the regulations. HUD made further changes to § 1005.425 to clarify that there is one Section 184 Guaranteed Loan per ''property,'' and a ''property'' may be one to four-family dwellings.

§ 1005.427 Refinancing

One commenter recommended moving this entire section to guidance, with a reference to new construction financing, whether it be refinancing the construction loan, reimbursement of funds spent or a combination.

HUD Response: HUD appreciates the comment but has not moved the entire section to guidance. However, HUD did add paragraph (d) to this section to clarify that construction loans less than one year old are included under rate and term refinance.

§ 1005.429 Eligibility of Loans Covering Manufactured Homes

Several commenters sought clarity concerning the standards for manufactured homes, including a time frame for Tribal Nations to come into compliance with this section, and whether this section applies to existing homes and 184 Program loans located on Tribal reservations.

HUD Response: With respect to manufactured homes located on fee simple properties, HUD is not changing the standards for manufactured homes. These manufactured homes must continue to conform to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (HUD Standards). Under § 1005.429(b), this section applies to manufactured homes on Trust Land, HUD revised this section to clarify in the absence of Tribal laws addressing installation standards, provisions of § 1005.429(a)(1), (3), and (4), and any applicable Section 184 Program Guidance shall apply. HUD will provide an effective date and compliance date for the final rule, allowing Tribes ample time to review and implement the new regulations.

§ 1005.431 Acceptance of Individual Residential Water Purification

One commenter stated that paragraph (c)(1) of § 1005.431 should be revised since it is not within the control of the lender when a borrower receives notice of the need for water purification or when the borrower signs a sales contract, and that this should be stated in the real estate law and stricken from regulations. The commenter also stated that § 1005.431(c)(2)(ii) provides that the lender would be responsible for providing a Good Faith Estimate of the ongoing maintenance and replacement costs of the equipment and that this would not be within the lender's scope of knowledge. Another commenter recommended that the proposed rule clarify the type of proof required to show compliance under this section.

HUD Response: HUD appreciates this comment but does not believe that § 1005.431(c)(1) should be revised. While it is true that a Direct Guarantee Lender may not have control of the timing of when a borrower receives the notice under § 1005.431(c)(1), HUD requires the borrower to receive the notice under (c)(1) of this section as one of the conditions of loan eligibility under the Section 184 Program. Therefore, Direct Guarantee Lenders must ensure that the notification occurred before the signing of the contract for the loan to be eligible under the program. HUD agrees that the lender is not responsible for providing the borrower a Good Faith Estimate as required under paragraph (c)(2)(ii) of this section. To clarify, this is a transaction between the seller of the property and the borrower. However, HUD is requiring the lender to obtain a copy of the document from the borrower and submit it with the loan package.

§ 1005.435 Eligible Collateral

One commenter suggested that the proposed rule expand the amount constituting the collateral amount to all costs that have been expended by the borrower, or on behalf of the borrower, including water, sewage, or driveway installation, similar to § 1005.443. Another commenter recommended that the proposed rule clarify whether a leasehold interest on trust land can be considered part of the eligible collateral.

HUD Response: HUD appreciates commenters' input. As a program and industry practice, all costs paid by the borrower are not factored into the value of the collateral. The value of the collateral is determined by a property appraisal which includes all eligible improvements. Further clarification will be provided in Section 184 Program Guidance. Additionally, this section specifically states that the Trust Land, which is secured by the leasehold interest, is not considered eligible collateral. HUD will provide additional clarity on what constitutes eligible collateral in administrative guidance.

§ 1005.437 Loan Provisions

One commenter proposed that paragraph (g) of this section be revised to reflect the current process for guarantee and construction. The commenters noted that the proposed rule does not mirror the current process

and does not provide lenders with certainty that HUD will guarantee the loan because that determination will be made at closing. The commenter further stated that the proposed rule indicates HUD may guarantee advances as they happen. However, according to the commenter, the loan is fully funded at closing, as the construction funds are deposited into a construction account and the advances are paid out of that account. Currently, the loan is guaranteed just like any other loan with the same documentation and is typically in place prior to the construction being finished. The proposed requirements will cause delays with construction if each advance must wait to be guaranteed, and the current language indicates the advance ''may'' be guaranteed, indicating that some draws could be denied a guarantee, which will put undue risk or burden on the Tribal borrower, Tribes, TDHEs, and the lenders. The commenter opined that if the guarantee is no longer going to be done after closing when the funds are put into the construction account and done only with each advance it will have a major negative impact on the borrowers and reservations.

HUD Response: HUD appreciates the extensive comments received on the topic of the Single-Close construction program. Based on commenters' suggestion regarding § 1005.437(g), HUD has revised this paragraph to make clear that HUD is not guaranteeing each individual advance made by the Direct Guarantee Lender during construction. Further, HUD added paragraphs (h) that changes to the building Loan Agreement must be approved and documented by the Direct Guarantee Lender prior to the construction advance and (i), which requires the Direct Guarantee Lender to submit a construction completion package to HUD, as prescribed in Section 184 Program Guidance. HUD revised paragraph (g) by removing paragraph (g)(2) to remove any requirements for HUD to approve construction advances. HUD inserted paragraph (h) to address changes to the Loan Agreement and paragraph (i) to address the documentation HUD shall require upon construction completion. HUD intends on providing administrative guidance and future training on the Single-Close Construction program.

§ 1005.439 Loan Lien

Several commenters noted that the requirement for prior approval by HUD of second mortgage liens will primarily affect tribally sponsored homeownership assistance programs and stated that HUD already has well defined rules around second liens and there is no need to change them. These commenters explained that this proposal will add to the closing timeframes and negatively impact Native borrowers. Some commenters noted that contractors' and tribally funded liens must be considered, and if a contractor or Tribe properly or improperly records a junior lien on the property's title, it should not invalidate the senior lien and should not accelerate the payment for the borrower. Other commenters noted that the proposal to prohibit interest and principal payments and require loan forgiveness conflicts with many of the homeownership assistance programs. Commenters provided a list of Tribes, TDHEs, and Tribal communities that would be negatively affected.

Another commenter sought clarification regarding whether the proposed requirements would limit the Tribal down payment assistance (DPA) as a second mortgage. The commenter explained that many DPA grants are awarded as second forgivable mortgages. The commenter noted concern that if DPA was limited, borrowers might be likely to use other programs. A separate commenter stated that, as written, § 1005.439(b) is contrary to the original intentions of the Section 184 Program, which are to provide more flexibility and opportunities for eligible borrowers. The commenter contended that HUD's proposals would reduce the options eligible borrowers have because it allows junior liens to only come from Direct Guarantee Lenders. Eligible borrowers can only receive one Section 184 loan on their principal residence, which must come from a Direct Guarantee Lender, and limiting their options for a separate junior lien ''is futile.'' The commenter also stated that there is nothing in this section or the proposed rule allowing for a junior lien to be placed on the property's title by a contractor or the member's Tribe.

HUD Response: HUD appreciates the numerous comments received on the loan lien section. It was not HUD's intention that Direct Guarantee Lenders seek HUD approval when there will be a junior lien on the property or to change existing HUD policies on junior liens. Rather, it is HUD's intention that where there will be a junior lien, the junior lien conditions must satisfy the requirements outlined in § 1005.439 (b) through (d), where applicable, and to continue to allow junior liens from Tribes, TDHEs and downpayment assistance programs. HUD revised paragraph (b) of this section to provide greater clarity as to HUD's intent. HUD will provide administrative guidance on the commonly acceptable junior liens held by Section 184 borrowers, such as liens by Tribes, TDHEs and contractor's liens and liens related to downpayment assistance programs.

§ 1005.443 Loan Amount

One commenter noted a technical change stating that ''lessor'' in paragraph (b)(ii) should be ''lesser''.

HUD Response: HUD has corrected this typographical error.

§ 1005.445 Case Numbers

Several commenters stated that case numbers may only be obtained by lender or Sponsored Entity, but paragraph (b) of this section specifically identifies the Direct Guarantee Lender. The commenters recommended that HUD clarify whether a sponsored broker is allowed to order their own case number or if their sponsoring lender is required to request a case number.

HUD Response: HUD appreciates commentors' input. Under § 1005.445 a sponsored broker is not allowed to order their own case number. HUD has revised the regulation to clarify that only the Direct Guarantee Lender can request a case number.

§ 1005.447 Maximum Age of Loan Documents

Commenters suggested that this section should require review and revision at minimum on an annual basis. One commenter also proposed adding title commitments to adhere to state expirations. The commenter noted that Tribal Resolutions are typically accepted based on number units or maximum dollar and typically expire based on their content, not based on a date. Another commenter noted that administrative difficulties and delays cause borrowers to not meet deadlines related to the maximum age of loan documents. One commenter stated that this section does not consider the impacts of BIA rules and processes.

HUD Response: HUD agrees with the commenters' that title documents should be included in this section and has revised the language to include title documents reviewed at closing in addition to documents reviewed at underwriting. Additionally, HUD agrees that the section should be more flexible regarding the maximum age of these documents and has revised this section so that the age of the documents will be described by Section 184 Program Guidance.

§ 1005.451 Agreed Interest Rate

Several commenters opposed the prohibition on risk-based pricing. They explained that risk-based pricing is an

accepted practice in the mortgage industry, including the Government Sponsored Entities, and that it benefits some borrowers based upon their personal credit history and loan size and negatively impacts others. The commenters further noted that risk-based pricing reflects the added costs of servicing smaller loans and loans with a higher risk of default; however, in practice, the 100 percent loan guarantee rarely reimburses the servicer for 100 percent of their losses from a default.

HUD Response: HUD disagrees with the comments regarding risk-based pricing. The Section 184 Program offers up to 100 percent reimbursement for the unpaid principal balance and interest, along with reimbursement of Holders and Servicers eligible costs in the case of borrower's default on the Section 184 Loan when Holders and Servicers comply with all applicable Section 184 requirements. Therefore, HUD does not permit risk-based pricing on Section 184 Loans. The major secondary market organizations, such as Freddie Mac and Fannie Mae, have specifically exempted risk-based pricing for Section 184 Loans.

§ 1005.457 Appraisal

A number of commenters stated that the appraisal requirements would eliminate the ability of lenders to select a non-FHA certified appraiser in cases where there is no FHA-certified appraiser available. These commenters explained that many Tribal borrowers and Tribal reservations are in very rural and remote areas where it is difficult and expensive to find an appraiser. According to the commenters, limiting lenders to the FHA Appraiser Roster will prevent some Tribes and Tribal homebuyers from receiving Section 184 loans and will dramatically raise the cost for others. Additionally, the commenters stated that there are not many cost comparison properties on the market and recommended allowing cost-based appraisals for new construction as well.

One commenter recommended broadening the pool of eligible appraisers. The commenter noted that the current proposal states, ''The appraiser must be knowledgeable in the market where the property is located''. According to the commenter, this requires upfront competency leading into the assignment, which could be rather limited in certain markets. The commenter explained that a broader approach would allow appraisers to gain competency during the assignment, which would maintain consistency with the Uniform Standards of Professional Appraisal Practice (USPAP). The commenter further explained that this approach would allow appraisers to ''acquire the necessary competency to perform the assignment'' even after accepting the assignment.

Another commenter recommended, for Native American borrowers purchasing properties in less remote areas, the lenders serving those borrowers should be able to use Automated Valuation Model (''AVM'') systems that have a proven track record of being accurate and non-discriminatory. The commenter stated that by embracing this technology HUD can save these Tribal borrowers significant costs while ensuring that they are not subject to discriminatory appraisal practices, among many other benefits.

Separate commenters sought clarification on whether the age of the appraisals should be 120 or 180 days to align with recent Mortgagee Letter 2022–11. Further, the commenter proposed additional language to allow for cost-basis appraisal and allowing Tribes and TDHEs to utilize master appraisals for the same floor plan on a similar site or for leaseholds where there is no land value included. Finally, a commenter proposed amending § 1005.457(a), which reads ''HUD may establish alternative requirements,'' to read instead, ''HUD has established alternative requirements,'' which would reflect current policy. The commenter stated that without such guidance Native American borrowers located on-reservation will continue to experience delay, if not outright discrimination, guised as a requirement if the language is not amended.

HUD Response: HUD recognizes the challenge remote locations can present when appraising real estate. To address this, the regulation provides HUD with discretion to establish alternative requirements when necessitated by the location of the property and availability of appraisers in the area. HUD agrees with the comment regarding the validity period for an appraisal and has revised the regulation to provide for a validity period to 180 days or any other period as may be prescribed by Section 184 Program Guidance.

§ 1005.501 Direct Guarantee Lender Closing Requirements

One commenter asked why ''Trust Land'' in paragraph (a)(2) of this section receives its own special guidance in a document outside the proposed rule. The commenter stated there is no language in the statute limiting the Section 184 Program to just Trust lands, and in fact the statute provides for eligibility for Native Americans living on ''otherwise restricted land;'' the commenter cited 12 U.S.C. 1715z–13 and 1715z–13a. The commenter explained that without addressing or providing additional guidance for Native American borrowers who reside on ''otherwise restricted land'' over which their Nation has ''governmental jurisdiction'', and such lands are not held in trust, they will continue to experience significant barriers in trying to obtain on-reservation home financing.

Several commenters recommended this section better align with current guidance, noting that that § 1005.501(d), requiring the Direct Guarantee Lender to close the loan will cause major issues with correspondent lenders who do not have underwriting staff. The commenters further stated that this will lead those lenders to use another program, such as FHA, instead of the Section 184 Program. Other commenters stated that closing in the Direct Guarantee Lender's name may deter new lenders from the Section 184 Program. These commenters also noted that the requirement to have a Section-184 certified underwriter on staff may deter many lenders from entering the Program.

Another commenter referencing § 1005.501(e) and (f) stated that this program was created with an understanding that Congress through HUD might have some ongoing subsidy requirements to make the Program viable. The commenter further stated that it would be appropriate for HUD to confer with Tribes and Congress to identify how that appropriation would be decreasing over the years as Tribes learn how to encourage lending through expedited leasing (Hearth Act), Tribal court training, and focused Tribal code.

One commenter identified an incorrect cross-reference to § 1005.713 in paragraph (f), which provides for establishment of an escrow account and repair completion escrow account in accordance with § 1005.713—but that section pertains to a Due-on-Sale provision that must be contained in a Section 184 Guaranteed Loan. Another commenter recommended that § 1005.501(j) be revised so that Tribes can receive notice of a member's default so they can assist with loss mitigation, as it does under the current rules. The commenter explained that allowing Tribes the opportunity to assist with loss mitigation will further satisfy the purpose of the rule because it will add protections against the loss of the underlying security for loan servicers and encourage more servicers to participate in the Section 184 Program.

Another commenter expressed concerns with § 1005.501(j), which

provides that Tribes are the beneficiary owners of Tribal trust lands. The commenter noted that for all practical purposes, Tribes own the land being leased to the Tribal member and are entitled to notice upon default. According to the commenter, many Tribal mortgage laws require the lender to send a notice of the right of first refusal at some time after default. Requiring a borrower's consent prior to providing notice of default to a Tribe is contrary to many Tribal mortgage laws, and is contrary to proposed § 1005.311, which requires a Tribe to notify HUD of lease violations regardless of a borrower's consent. The commenter recommended that the requirements clearly state that a Section 184 lender will notify the borrower that a Tribe may be notified of default regardless of whether a borrower consents.

Other commenters recommended that the release form provided by HUD to the borrower at closing allow the lender and HUD ''to notify the Tribe [or another entity as designated by the borrower] in the event of default.'' The commenter noted that this would allow the borrower to designate the entity that assisted them to qualify for the mortgage, such as a nonprofit, Native CDFI, or TDHE, and would help ensure that early intervention and foreclosure prevention education occur early enough to avoid foreclosure. The commenter suggested that, at closing, the Tribe and homebuyers should be able to choose if a HUD Housing Counseling Agency should be contacted for assistance.)

Other commenters stated that paragraph (a)(3) of the section does not conform with the flexibility provided to borrowers in § 1005.501(j). The commenter explained that if a borrower elects not to give notice to its Tribe pursuant to § 1005.501(j), then a Tribe will not receive notice under § 1005.741(a)(2) and will not be able to fulfill its requirements under paragraph § 1005.501(a)(3). Another commenter asked how HUD planned to implement the requirement that Tribes assist in facilitating loss mitigation efforts and in the disposition of defaulted properties. The commenter noted that many Tribes have decided to stay out of the default process and let lenders perform their jobs.

HUD Response: HUD appreciates the extensive comments on this section of the regulation. With regards to the comment asking HUD why Trust Land has its own provisions under § 1005.501(a)(2), it is because Trust Land encompasses more than one land status type, and each land status type may have its own distinct requirements and challenges. HUD considered the many comments received suggesting HUD incorporate as much flexibility as possible in this section so that the many nuances of Trust Land lending can be addressed. HUD believes that the flexibility provided by this regulation allows it to address the nuances of Trust Land lending. HUD appreciates the comment regarding ''otherwise restricted fee'' language that commenter quoted from the Housing Act of 1992, as amended, and incorporated the term ''restricted fee'' into the definition of ''Trust Land'' in this regulation.

Regarding the comments received concerning paragraph (d) of this section, which requires Direct Guarantee Lenders to close the loan in the Direct Guarantee Lender's name, HUD disagrees that this provision will negatively impact the program. Because HUD will only be working directly with Direct Guarantee Lenders in all aspects related to loan origination, underwriting, and closing, naturally then the loan must close in the Direct Guarantee Lender's name. HUD has corrected the incorrect cross-reference in paragraph (f) of this section to properly cite to § 1005.717.

With respect to the comment regarding § 1005.501(j), HUD does not agree that Tribes should automatically receive notice of borrower's default. It is important that borrowers have the option whether to disclose the default to the Tribe or not early in the process. Borrowers may have privacy concerns regarding sharing default information with the Tribe. Through outreach or marketing of Tribal assistance programs, Tribes should encourage Tribal borrowers to elect disclosure so that help can be provided to defaulted borrowers as early as possible in the process. HUD also does not agree that paragraph (j) be revised to allow the borrower to elect to disclose to another third-party, which may include the TDHE, nonprofit, or housing counseling agencies, as examples. However, the borrower can reach out to a third party directly if the borrower chooses to.

HUD does not agree with the comment that paragraph § 1005.501(a)(3) does not conform with the flexibility provided to borrowers in § 1005.501(j). While a borrower may elect to not provide notice to his or her Tribe pursuant to § 1005.501(j), it does not mean the Tribe would not receive the notice of borrower's default, thereby making it impossible for a Tribe to comply with paragraph (a)(3). When a borrower elects not notify the Tribe under § 1005.501(j), a Tribe will still receive a first right of refusal under § 1005.759. Nevertheless, HUD revised paragraph (a)(3) to make it clear that when Tribes receive notice of borrower's default under §§ 1005.501(j) or 1005.759, Tribes shall assist in facilitating loss mitigation efforts and in the disposition of Trust Land properties.

HUD believes that Tribes are a vital partner in the Section 184 Program, especially in cases involving defaulted borrowers on Trust Land. It is critical that Tribes engage the borrower and Holder and/or Servicer and assist in loss mitigation and disposition wherever possible. HUD will provide further guidance on what ''assist, where practical, in facilitating loss mitigation and disposition'' (§ 1005.501(a)(3)) of the property means for Tribes in administrative guidance.

§ 1005.507 Borrower's Payments To Include Other Charges and Escrow Payments

Commenters recommended that the proposed rule clarify whether there is reimbursement for force placed insurance when a Borrower lets their policy lapse. The commenters also recommended adding an option to escrow for annual lease payments on Tribal leaseholds to avoid default and complications associated with the notice to HUD and lender.

HUD Response: HUD will provide administrative guidance pursuant to § 1005.507(a)(7) regarding Holder or Servicer's purchase of force placed insurance when borrowers let their policy lapse. Regarding the comment on annual lease payments, under this section borrower's monthly payment must include, among other things, ''ground rents'', which includes lease payments from the Tribal member to the Tribe. HUD had provided additional language at § 1005.507(a)(1) and will provide administrative guidance on the collection of Tribal leasehold payments for escrow under this regulation.

§ 1005.517 Certificate of Nondiscrimination by the Direct Guarantee Lender

One commenter stated that § 1005.517(a)(1) and (2) list several items regarding nondiscrimination including race, sex, and handicap. The commenter recommended that the terms ''age'' and ''sexual orientation'' be added to these lists.

HUD Response: HUD agrees in part with the commentor. HUD has included ''gender identity'' and ''sexual orientation'' in both paragraphs (a)(1) and (2), in accordance with Executive Order 13988, ''Preventing and Combatting Discrimination on the Basis of Gender Identity or Sexual Orientation'' and HUD's February 2021

implementing memorandum and included ''age'' in paragraph (a)(1). The Equal Credit Opportunity Act provides for the prohibition based on ''age'' in the context of making a loan, but there is no Federal statute providing for ''age'' as a protected class with regards to restrictive covenants.

§ 1005.527 Post-Endorsement review

Commenters stated that if a loan guarantee certificate can be revoked after endorsement, then it is not a guarantee but instead insured like FHA. The commenters strongly stated that this weakens the guarantee and may cause lenders to lose faith in the benefits of this 100 percent guarantee loan.

HUD Response: Commenters misunderstand this regulation. This regulation is not stating the Loan Guarantee Certificate can be revoked after endorsement. Rather, HUD may request indemnification from the originating Direct Guarantee Lender and impose sanctions on the Direct Guarantee Lender and Sponsored Entity in the event of noncompliance, pursuant to §§ 1005.905 and 1005.907.

§ 1005.529 Indemnification

A commenter recommended that indemnification should only be required when it is proven that the originating Direct Guarantee Lenders had a deficiency in underwriting or due to fraud or misrepresentation.

HUD Response: HUD appreciates the commenter's input; however, HUD has determined that this regulation may require that the originating Direct Guarantee Lender indemnify any Section 184 Guaranteed Loan where it finds an underwriting deficiency and the Section 184 Guaranteed Loan should not have been approved.

§ 1005.603 Upfront Loan Guarantee Fee

Commenters objected to the maximum 3 percent Upfront Loan Guarantee Fee. Commenters stated that the market has stabilized since the 2008 foreclosure crisis, HUD has not provided sufficient justification for the high fees, and that the high fees negatively impact affordability for Tribal borrowers. Another commenter recommended a 1 percent upfront fee model as an alternative (and 0 percent for the monthly premium, see § 1005.607 in this summary). Another commenter noted that many Tribes and TDHEs were unaware of the Upfront Loan Guarantee Fee.

Commenters recommended that Section 184 refinance borrowers should get a credit against their new Guarantee Fee. Commenters explained that a Tribe or native borrower that chooses to refinance a Section 184 loan is charged a loan guarantee fee of up to 3 percent of the loan balance of the new loan even though they previously paid HUD to guarantee the virtually identical loan. In addition, commenters stated that new loan represents a lower risk to HUD due to a lower loan-to-value and interest rate in most cases.

Another commenter stated that these fees would counteract the reduced rates by adding as much as 4 percent of the principal obligation each year. The commenter further stated that the fees would eliminate the competitive nature of Section 184 loans, and that the fees serve only the financial institutions, not Tribal members and communities. The commenter also recommended that the existing loan guarantee fee should not be increased from its current maximum.

HUD Response: Under 12 U.S.C. 1715z-13a(d), the Section 184 Program is authorized to charge ''an amount not exceeding 3 percent of the principal obligation of the loan.'' This section codifies that authority and restates that any ''Up-front Loan Guarantee Fee'' set by HUD will first be published in the **Federal Register**. Pursuant to 12 U.S.C. 1715z-13a(i), the Up-front Loan Guarantee Fee funds, in part, the Indian Housing Loan Guarantee Fund (Fund). The Fund pays for, among other things, claim payments to Holders and expenses incurred by HUD in the disposition of HUD foreclosed properties. The Fund may not be used for crediting borrowers as doing so would violate the statutory requirements of the Section 184 Program.

In 2022, HUD conducted an analysis of the program's portfolio, including default rate and credit subsidy data, and determined the program could support a reduction in the loan guarantee fees charged on new loans. Subsequently on May 4, 2023, HUD published a **Federal Register** Notice (88 FR 28598), informing the public it would be exercising its legal authority to decrease the ''Upfront Loan Guarantee Fee'' from 1.50 to 1.00 percent and the ''Annual Loan Guarantee Fee'' from 0.25 to 0.00 percent for all new or updated Section 184 firm commitments after July 1, 2023.

§ 1005.605 Remittance of Upfront Loan Guarantee Fee

Several commenters objected to the 15-day timeline for lenders to remit the ''Upfront Loan Guarantee Fee'' stating that it would be administratively burdensome to small Tribes and lenders.

HUD Response: HUD appreciates the comments and understands the commenters' concerns. Small Tribes and Direct Guarantee Lenders will not be impacted by this timeline. This section codifies current program practice and applies only to Direct Guarantee Lenders closing Section 184 guaranteed loans.

§ 1005.607 Annual Loan Guarantee Fee

Commenters objected to the ''Annual Loan Guarantee Fee's'' maximum of 1 percent of the principal obligation of the loan. Commenters stated that the market has long since stabilized since the 2008 foreclosure crisis and HUD has not justified the need for these high fees which negatively impact affordability for Tribal borrowers. One commenter recommended a 0 percent monthly premium model (and 1 percent upfront, see § 1005.603 in this summary).

HUD Response: HUD appreciates the commenter's input. Similar to the response for § 1005.603, the program is authorized by statute to charge up to a one percent ''Annual Loan Guarantee Fee.'' This section codifies that authority and restates that any ''Annual Loan Guarantee Fee'' set by HUD will first be published in the **Federal Register**. When collected, the purpose of this fee is to pay for certain programmatic expenses, such as claim payments to Holders and to fund expenses HUD incurs in the disposition of HUD foreclosed properties. Additionally, as previously stated in § 1005.603, effective July 1, 2023, HUD has eliminated this fee by reducing it to 0.00 percent.

§ 1005.609 Remittance of Annual Loan Guarantee Fee

One commenter recommended that HUD cease collecting the monthly installment of the Annual Loan Guarantee Fee when the amortized loan-to-value ratio equals an amount less than 80 percent, instead of the 78 percent published in the proposed rule. The commenter stated that this small increase in percentage will bring the Section 184 Program in line with the standard found in the Homeowners Protection Act of 1998 for Private Mortgage Insurance and would equate to approximately a year's worth of annual fee payments, providing a small benefit to Tribal borrowers.

HUD Response: In consideration of this comment, HUD removed the specific requirement of 78 percent loan to value ratio and provided HUD the ability to establish the Annual Loan Guarantee Fee termination threshold by notice in the **Federal Register**. This will

provide flexibility to quickly respond to unforeseen economic conditions.

§ 1005.611 HUD Imposed Penalties

One commenter proposed removing the monetary penalties on lenders and servicers related to the collection and submission of loan guarantee fees, stating that sanctioning lenders for not meeting HUD timelines would discourage lenders from participating in the Section 184 Program.

HUD Response: HUD disagrees with the commenter's statement. This regulation codifies current program practice, and the program has not observed any negative impacts from this practice which has been in place for over a decade.

§ 1005.703 Servicer Eligibility and Application Process

One commenter stated that requiring servicers to submit an application for participation and recertify annually would discourage servicers from participating in Section 184 Program.

HUD Response: HUD is requiring servicers to submit applications for participation to make sure servicers have the experience and qualifications necessary to best serve Native American borrowers and successfully service Section 184 Guaranteed Loans. Annual recertification is not intended to be a cumbersome process and is necessary to make sure the servicers retain their capability to service Section 184 Guaranteed Loans and to notify HUD of any staffing or contact changes.

One commenter suggested that in light of the ''unique legal status of Indian lands . . .'' (see 12 U.S.C. 1715z–13a) no servicer should be permitted to waive into becoming a servicer under the Section 184 Program. The commenter further stated that all entities wishing to become servicers under the Section 184 Program should be required to undergo mandatory training for not only the Section 184 Program, but also be knowledgeable regarding the legal systems of the Tribal Nations of the on-reservation Section 184 Programs loans they will be servicing.

HUD Response: To clarify, HUD's intention under § 1005.703(c) is to allow qualified servicers that are currently participating in the program but are not a Federally approved mortgage servicers to submit a request to be considered a servicer without other Federal agency approval. HUD will provide guidance regarding the exception in the Section 184 Program Guidance. HUD anticipates training servicers once the final rule is published and intends to include a section on Tribal Nation legal systems as part of that training. HUD made minor technical corrections to § 1005.703(c) for greater clarity.

§ 1005.711 Assumption and Release of Personal Liability

A commenter stated that if the assuming borrower has been assigned the leasehold and, in the end, does not move forward with the assumption, then the existing borrower no longer has rights to the subject property. The same commenter noted that under paragraph (a) of this section, requiring approval from HUD and other parties would likely cause extreme delays in the process and reduce the effectiveness of the ability to assume a loan.

HUD Response: HUD agrees with the commenter and clarifies that the assignment of leasehold interest or property interest occurs at closing. Further, HUD agrees that requiring HUD approval of assumptions could reduce the effectiveness of the process and has removed this requirement from the section, except in cases where the Holder or Servicer is not a Direct Guarantee Lender and would not be able to underwrite the assuming borrower.

§ 1005.713 Due-on-Sale Provision

One commenter stated that it is unclear why a servicer would be required to seek HUD approval to accelerate a loan. Another commenter stated that under § 1005.713(a), requiring the servicer to advise HUD of any sale or other transfer that occurs without the approval of the lender, and to seek HUD's approval to enforce the Due on Sale provision, can create delays which prevent timely resolution of the issue.

HUD Response: HUD appreciates the comments on the due-on-sale provision. HUD has revised the language to clarify the HUD approval to accelerate is required when ''any prohibited sale or transfer occurs.''

§ 1005.729 Section 184 Guaranteed Loan Collection Action

One commenter suggested adding the following to the end of the paragraph: ''It is the intent of the Department that no mortgagee shall commence foreclosure or acquire title to a property until the requirements of this subpart have been followed.'' The commenter explained that servicers should not proceed with foreclosure unless they have complied with the servicing framework that the regulations create and have fully evaluated borrowers for alternatives to foreclosure. The commenter further explained that to ensure compliance, HUD should incorporate language from FHA's default servicing regulation, 24 CFR 203.500. The commenter noted that its proposed language has been in force for FHA-insured servicers since 1997 and has provided important clarity on servicer obligations.)

HUD Response: HUD agrees with the commenter and has revised this section to provide that a servicer cannot commence foreclosure or acquire title to a property until the requirements of the subpart have been followed.

§ 1005.733 Loss Mitigation Application, Timelines, and Appeals

Commenters expressed concerns with the proposed timelines in § 1005.733(a) and (b). These commenters explained that promulgating requirements that overlap or conflict with CFPB requirements including RESPA and FHA loan processes, will make it more challenging for HUD to adapt to changes in RESPA and could create inconsistencies with other agencies. One commenter recommended that HUD delete paragraphs (a) and (b) and noted that HUD should not include these requirements in a regulation as the requirements may soon become outdated if RESPA changes. Another commenter stated that paragraph (a) of this section should rely on RESPA regulations to cover incomplete applications. Another commenter suggested a ''more reasonable'' timeline for a customer to return documents for an incomplete application.

Another commenter recommended deleting the following language from paragraph § 1005.733(c)(5), ''and that the primary alternative to foreclosure shall be a deed in lieu/lease-in-lieu of foreclosure,'' and replacing it with ''but the servicer may still offer alternative loss mitigation options, subject to applicable Tribal, Federal, or State law or contractual requirements.'' According to the commenter, this would clarify that loss mitigation is not cut off after the first legal action. The commenter also proposed that HUD revise the language in § 1005.733(d) from ''14 days from the date of notification of the servicer's loss mitigation determination'' to ''30 days from the date of notification,'' since borrowers need more than 14 days from the date of notification to appeal loss mitigation decisions.

HUD Response: HUD agrees with the general concept that Holders, Direct Guarantee Lenders and Servicers must follow all applicable Federal requirements, including RESPA and any other regulations promulgated by CFPB. In response to the comment, HUD added language in § 1005.701, which covers general requirements for Section 184

guaranteed loan servicing. The new language requires that ''Holders and Servicers must follow all current loss mitigation processes based on applicable Tribal, Federal, or State law.'' Similarly, § 1005.731 provided requirements that were duplicative with CFPB. Therefore, HUD removed these requirements and added new language that Servicers must provide notice of default to borrowers based on applicable Tribal, Federal, or State law.

HUD believes the timelines in § 1005.733(a) and (b) are necessary for the successful administration of the loss mitigation options under the Section 184 Program and declines to revise these sections accordingly.

HUD did not substantively revise the language in § 1005.733(c) as recommended by the commenter. CFPB does not regulate what loss mitigation options may be available to borrowers when the servicer completes filing of first legal action. HUD is free to limit loss mitigation options available to borrower upon the servicer's filing of first legal action. Based however on prior public comments requesting HUD incorporate as much flexibility in the regulations as possible, HUD revised § 1005.733(c)(5) to add that ''HUD may permit other loss mitigation on a case-by-case basis if requested by the Servicer.'' Finally, HUD did not revise the deadline in § 1005.733(d) for borrower to appeal to 30 days as recommended by the commenter. HUD believes 14 days is sufficient time for borrower to file an appeal.

§ 1005.735 Occupancy Inspection

A commenter recommended that the servicer provide advance notice to a designated Tribal entity prior to any occupancy inspection, and that a designated Tribal representative be required to be present at the property during the inspection. In addition, the commenter suggested that the Tribal entity should be a member of a Tribal housing department or law enforcement officer. According to the commenter, this would provide respect for a Tribe's sovereign lands and add a level of safety to the inspection requirement.

HUD Response: HUD agrees with the commenter and has included language that requires servicers to contact the Tribe in advance of an occupancy inspection. HUD revised the regulation to allow Tribes and the servicers to develop agreeable methods of communication and protocols when conducting an occupancy inspection.

§ 1005.737 Vacant Property Procedures

One commenter suggested that the Tribe should be a part of the servicing process to determine if a house has been abandoned or is vacant. The commenter further stated the Tribe must be empowered to secure the house by an independent determination of a Tribal official that the house is abandoned and therefore, remedial, rehabilitation, and security services can be implemented by the Tribe. Another commenter recommended that the section title of the section be revised to ''Vacant and abandoned property procedures,'' as it applies to abandoned properties as well. Lastly, some commenters proposed that this section should clarify if seven days are meant to be calendar days or business days.

HUD Response: HUD made several revisions to this section based on commenters' suggestions. The section now allows for the Tribe to determine if a property is vacant or abandoned and requires servicers to notify the Tribe if it determines a property is vacant or abandoned. Further, HUD has added ''abandoned'' to the title of the section and has expanded the timeframe for Tribal First Right of Refusal and the completion of First Legal Action.

§ 1005.739 Loss Mitigation

One commenter recommended deleting the requirement in § 1005.739 (a) to comply with ''12 CFR 1024.41'' and replace it with ''1024.41, as it might be amended from time to time, or any additional or successor regulation that governs the same subject matter.'' The commenter explained that given the CFPB's recent Request for Information (RFI) on loss mitigation, the CFPB may make changes to servicer obligations under a RESPA rulemaking, and therefore HUD should expand its coverage beyond this regulation and incorporate changes, deletions, or expansions.

Another commenter stated that the 180-day grace period in paragraph (b) of this section is too long because seasonal fluctuations within that period causes damage to the property. The commenter recommended that the proposed requirements should include provisions for interim protective actions by the Tribe to weatherize and winterize the house. Another commenter noted that its understanding of HUD's proposed language is that if a customer applies beyond 180 days of delinquency, the servicer cannot evaluate that application. Other commenters recommended including partial claim/loss mitigation advance option as a loss mitigation option, which have been the most popular options to resolve COVID and other borrower-related delinquencies. The commenters noted that this would be consistent with FHA requirements and would increase the usage of the Section 184 Program.

Another commenter recommended establishing assumptions as a standalone process outside of the loss mitigation process, similar to the FHA. The commenter explained this would help a confirmed successor in interest complete assumptions without manually reinstating the account. One commenter recommended deleting § 1005.739(d) requirement for a full financial assessment of the borrower at time of default. The commenter explained that in response to the pandemic, streamlined modifications did not rely on a full financial assessment of the borrower. Instead, the loss mitigation modification options target reducing the borrower's monthly payment without considering the borrower's income or debt. The commenter further noted that requiring a full financial assessment may hamper HUD's ability to provide streamlined payment relief modifications. The commenter recommended developing modification criteria through agency guidance instead of through a regulation.

Commenters also recommended placing § 1005.739(f) in guidance or extending the timeframes to align with FHA, due to the complex nature of servicing and to make the process more customer friendly.

HUD Response: HUD has revised this section by removing the reference to 12 CFR 1024.41 since § 1005.701 now provides that servicers must follow all Tribal, State and Federal requirements on loss mitigation, so citing the CFPB regulation is redundant. HUD also included the option of a loss mitigation advance under § 1005.739(c)(4) and added a new section, § 1005.751, on loss mitigation advances. HUD inadvertently omitted the reference to loss mitigation advance in § 1005.739(c)(4) and added a new regulation for loss mitigation advances at § 1005.751 and renumbered all subsequent regulations accordingly. HUD clarified § 1005.739(f) to provide that, when a borrower fails a loss mitigation option within 180 days of default, the servicer has 45 days from the failure date to initiate another loss mitigation option. Further, HUD clarified that the servicer shall complete First Legal Action in accordance with § 1005.763 or Tribal First Right of Refusal in accordance with § 1005.759 if a borrower does not accept, is not eligible for, or fails loss mitigation.

Additionally, HUD revised this section to provide that the servicer must conduct occupancy inspections in accordance with § 1005.735 and, if the unit is confirmed to be vacant or

abandoned, the servicer must conduct property preservation in accordance with § 1005.737. With respect to §§ 1005.735 and 1005.737, HUD added language to ensure that it can, by Section 184 Program Guidance, extend these deadlines to address national emergency or disaster situations. With respect to § 1005.739, HUD added language that provides HUD the flexibility to enhance loss mitigation options to borrowers when there is a national emergency or disaster and publish such alternative timeframes in Section 184 Program Guidance.

§ 1005.741 Notice to Tribe and BIA—Borrower Default

Commenters suggested including ''TDHE'' where appropriate in this section, similar to § 1005.757. The commenters stated that the intent of this recommendation is to connect a borrower with resources, and, in Alaska, 196 Tribes have their housing programs and services through Regional Housing Authorities.

Related to § 1005.741(a), one commenter stated that a Section 184 lender should not be required to obtain borrower consent to give notice to the Tribe. The commenter further stated that BIA is no longer responsible for leases approved by a HEARTH Tribe. Another commenter recommended that notifications of borrower default or of Tribal rights of first refusal should clearly outline deadlines and steps for a Tribe to take when they elect to exercise their ROFR or if they will assist a borrower in redeeming the loan. One commenter proposed that § 1005.741(a)(2) should be stricken.

One commenter suggested that HUD should add in § 1005.741(b), ''and foreclosure process'' after ''notification process,'' which would clarify that HUD follows the industry standard and seeks to allow borrowers to pursue loss mitigation options, including home retention options, even after the foreclosure process has been initiated.

HUD Response: HUD declines the commenter's suggestion to include the TDHE in part of the notification process. For purposes of the Section 184 Program, HUD's relationship is with the Tribe as the entity with the authority to issue ordinances that support the program. A Tribe may choose a TDHE to be its point of contact for the program. Based on previous Tribal comments, the regulation includes the option for a borrower to select Tribal notification if they go into default, so that if the Tribe has resources to assist the borrower, they may do so earlier in the loss mitigation process rather than at the end of the process. This section deals specifically with when, during the loss mitigation process, a Tribe and/or the BIA is notified. Section 1005.741 states that loss mitigation should have happened concurrent with Tribal/BIA notification.

§ 1005.743 Relief for Borrower in Military Service

A commenter agreed with suspending the foreclosure process and delaying the first legal action in this situation but stated that their experience indicates that HUD does not take these valid delays into account when reimbursing a servicer for its expenses. To retain lenders' and servicers' interest in the Section 184 Program, the commenters requested that HUD be more considerate of delays that are valid and out of the servicers' control.

HUD Response: HUD appreciates the input by the commenter. HUD has built in additional timeframes within the loss mitigation process to account for delays. Further, Holders and Servicers experiencing delays out of their control can request an extension for the filing of first legal, as is the current policy and will be further described in administrative guidance.

§ 1005.745 Forbearance Plans

One commenter proposed deleting § 1005.745(b) through (f) and moving these provisions to a PIH notice. The commenter stated that while HUD should establish forbearance as a loss mitigation option, it should follow FHA's lead in 24 CFR 203.614 and save eligibility criteria for PIH notices and handbooks. The commenter stated that including eligibility requirements in regulations unnecessarily hampers agency efforts at creating an effective loss mitigation system. Both the formal forbearance and special forbearance provisions of the section require borrowers to submit supporting documentation to obtain forbearance. However, the response to the pandemic by institutions such as the Urban Institute, which credited forbearance access during the pandemic, demonstrated that it may be valuable to streamline access to forbearance in particular situations and not require documents. The commenter concluded that HUD should allow streamlined forbearance when necessary.

Another commenter recommended that HUD remove the requirement from § 1005.745(c)(1)(ii) and simplify the formal forbearance process by mirroring the FHA formal forbearance process. Similarly, for paragraph (c)(2) of this section, the commenter suggested mirroring the FHA process to make it more customer- and servicer-friendly.

HUD Response: HUD agrees with the comment to streamline access to forbearance process and has added additional language that allows HUD to establish a special forbearance in response to a national emergency or disaster. HUD will also provide additional guidance on the process in the Section 184 Program Guidance.

§ 1005.747 Assumption

A commenter sought clarification on whether the person assuming the loan is responsible for making the loan current and suggested that HUD address this in guidance.

HUD Response: In response to the commenter, HUD added additional language to clarify that with an assumption associated with loss mitigation, the person assuming the loan must cure the default and reinstate the Section 184 Guaranteed Loan.

§ 1005.749 Loan Modification

One commenter stated that HUD's proposed text includes detailed eligibility rules for loan modifications and many of those rules are borrowed from outdated FHA Handbook provisions, which HUD should not codify in its regulations. For example, the commenter stated that FHA no longer requires an assessment of ''surplus income,'' signatures on trial payment plans, and a twelve-month loan seasoning period prior to modification. According to the commenter, FHA has removed these requirements to minimize barriers to modifications, yet HUD's proposed rule would make these rules difficult to amend even after, in FHA's experience, they have weakened loss mitigation. This commenter proposed removing all § 1005.749(b) through (e) and moving this to a PIH notice instead.

One commenter suggested replacing § 1005.749(b) with language stating, ''The servicer must offer the borrower any modification that the borrower is eligible to receive under relevant HUD guidance.'' The commenter stated that while HUD should establish forbearance as a loss mitigation option, it should follow FHA's lead in 24 CFR 203.616 and save eligibility criteria for loan modifications for PIH notices and handbooks.

Another commenter stated that requiring the servicer to ''seek HUD's approval'' under paragraph (c)(2) of this section for any subsequent loan modifications after the first one is likely to cause delays, frustration, and anxiety for the borrower if a response is not provided timely by HUD. Another commenter recommended that the proposed 30 days proposed by

paragraph (e)(2) of this section be reduced to 14 days at minimum. The commenter explained that this will help the servicer to start trials and complete modifications early, and that there is no such timeline for FHA customers.

HUD Response: HUD appreciates commenter's input and has revised the regulation mirror the current FHA loan modification requirements, as appropriate. HUD has removed the requirement for surplus income. HUD declines to accept the commenter's proposal to remove the HUD approval for subsequent loan modifications (beyond the Borrower's very first loan modification). HUD has found in the past that multiple loan modifications have not resolved the Borrower's delinquency. To provide for additional flexibility in the future, HUD added language that allows modification of the Borrower's eligibility criteria in the event of a national emergency or disaster.

§ 1005.753 Pre-Foreclosure Sale

One commenter expressed concern about the cost to the lenders of servicing loans that default. The commenter stated that the requirements of this section recognize a short sale opportunity but again refer several times to appraisal which may be further compounded by lack of market data and the availability of licensed contractors that can make repairs on defaulted units. Another commenter urged HUD to remove § 1005.753(b) through (u) and move the requirements from guidance to PIH notices. The commenter noted that the proposed text for this section provides far too many details about the pre-foreclosure sale program and will significantly limit HUD's ability to make any changes.

Another commenter stated that the term ''Government'' in paragraph (q) this section is not a defined term and therefore lacks specificity as to which it applies. The commenter also noted that the definition for ''Arm's Length Transaction'' in § 1005.749(r)(2) should be moved to the definitions section in § 1005.103.

HUD Response: HUD appreciates commenters' input. As discussed in § 1005.457, HUD has revised the appraisal standards based on public comment to allow HUD to establish alternative requirements depending on the area and availability of an appraiser. HUD removed paragraph (d) of this section because FHA no longer requires defaulted borrowers to provide a cash contribution in its pre-foreclosure sale program. In paragraph (g) of this section, HUD has increased the market value timeframe from 120 days to 180 days to match FHA standards based on public comment. Further, HUD has clarified § 1005.749(q) to provide that it is the HUD's repair cost estimate. HUD kept the definition for ''Arm's Length Transaction'' in paragraph § 1005.749(r)(2) since it is a definition only used within Subpart G and is not used throughout the rule.

§ 1005.755 Deed-in-Lieu/Lease-in-Lieu of Foreclosure (Formerly 1005.753)

One commenter suggested that in § 1005.755(a)(1), the words ''if applicable'' should be added after the words ''the BIA''.

HUD Response: HUD does not accept the commenter's suggestion. While some Tribes have the authority to issue their own leases without BIA approval, BIA is responsible for the recordation of all leases.

§ 1005.757 Incentive Payments (Formerly § 1005.755)

A commenter sought clarification on when and how much incentive is expected to be authorized under this section. The commenter noted that ''may'' can also mean ''may not'' and this would be a significant difference from FHA loans, resulting in lower participation in the Section 184 Program.

HUD Response: This section establishes HUD's ability to offer incentive payments to the borrower, Tribe, TDHE, Holder or servicer, which will be a new feature to the program. HUD prefers to maintain discretion and flexibility in establishing incentives as a new component of the program.

§ 1005.759 Property on Trust Land—Tribal First Right of Refusal; Foreclosure or Assignment (Formerly § 1005.757)

A commenter proposed clarifying the timeframe for the right of first refusal for the Tribes. The commenter noted that typically a Tribe has at least 60 days or potentially longer to accept if they choose to do so. Another commenter noted that the term ''Tribal Land'' used in § 1005.779(a) is an undefined term and recommended that the term be replaced with ''Trust Land.''

A commenter supported the authorization of the first right of refusal of foreclosed property meeting certain conditions and updated valuations, in § 1005.759(a). Some commenters also suggested that HUD should adopt the U.S. Department of Agriculture's (USDA) practice of using a net recovery value to determine the purchase price when a Tribe chooses to exercise its first right of refusal. Finally, another commenter stated that no assignment of the lease under § 1005.759(c) should occur without consent of the Borrower or without foreclosure.

HUD Response: HUD appreciates commenters' input. Based on these comments, HUD has provided a definition of Tribal First Right of Refusal and has clarified the timeframe and circumstances for when it should occur. The servicer must provide Tribal First Right of Refusal to the Tribe within 14 days of specified actions and the Tribe has 60 days to respond to the Tribal First Right of Refusal. HUD also made the technical change of ''Tribal Land'' to ''Trust Land''.

§ 1005.763 First Legal Action Deadline and Automatic Extensions (Formerly § 1005.761)

Several commenters stated that 180 days under § 1005.763(a) does not provide lenders with sufficient time, as it takes that amount of time to implement loss mitigation efforts. These commenters sought clarification under § 1005.763(a) if ''must initiate'' is the same as ''file'' for First Legal Action. And one commenter suggested removing the cross reference in paragraph (a) to the definition of ''First Legal Action'' in § 1005.103, as this is extraneous and not necessary.

In paragraph (b) of this section, a commenter sought clarification regarding whether HUD uses a 30-day auto-extension to extend the First Legal Action deadlines instead of the industry standard of a 90-day auto-extension. Another commenter recommended that HUD clarify paragraph § 1005.763(b)(2) regarding what is required to be completed within 30 days of the borrower's failure of loss mitigation. The existing guidelines state ''complete First Legal Filing'' or ''initiate foreclosure action''.

Finally, a commenter sought clarification regarding delays caused by bankruptcy filing or federally declared disaster declarations under § 1005.763(c). The commenter noted that both are valid external influences extending the first legal filing period and out of the servicer's control. Therefore, the commenter requested that the extension process be outlined in guidelines instead of the regulations.

HUD Response: HUD appreciates the commenters' input. HUD has revised the definition of filing for first legal action in § 1005.103 to provide ''the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.'' HUD added clarifying language to this section that the filing of first legal action must be complete within the given timeframe. Additionally, HUD has added clarifying language to § 1005.763(b) which

outlines the timeframes and circumstances for automatic extensions to the filing for first legal action. As previously stated, Holders and Servicers experiencing delays out of their control can request an extension for the filing of first legal action, as is the current policy and will be further described in the Section 184 Guidebook.

§ 1005.765 Assignment of the Section 184 Guaranteed Loan (Formerly § 1005.763)

A commenter stated that the required documents (recorded assignment from the county, updated Title Status Report from the BIA) typically take longer than 5 days and proposed extending the timeframe in guidance rather than regulations.

Other commenters stated that under § 1005.763(a)(4)(ii), most of the properties assigned to HUD are occupied because there has been no notice to the borrowers about vacating the property. The commenters stated that vacancy is not a requirement for an assignment and requiring approval for this common situation will cause delays in completing the assignment. The commenters also noted that completing the assignment has a strict timeframe defined by HUD, which, if not met, results in curtailments of the advance amounts reimbursed by HUD, and requiring HUD approval will increase losses that are outside the servicer's control. (0008, 0018)

HUD Response: HUD appreciates the commenter's input. HUD has revised § 1005.765 to clarify that that the servicer must submit the executed assignment for recordation to the appropriate jurisdiction or BIA within five days of either receiving HUD approval for assignment for fee simple Properties or completing Tribal First Right of Refusal in accordance with § 1005.759. HUD does not expect that the recordation process will be complete in five days. HUD further clarifies that the servicer has 45 days to submit evidence of this assignment and request for recordation in accordance with § 1005. 809(b). Further HUD deleted the language formerly at paragraph § 1005.763(a)(4)(ii). It is not HUD's intention to remove an occupying borrower, or for the servicer to receive prior HUD approval to complete the assignment. Further, HUD has removed the former § 1005.763(a)(i) through (iii) since they are redundant based on changes made to § 1005.729.

§ 1005.767 Inspection and Preservation of Properties (Formerly § 1005.765)

One commenter suggested that paragraph (a) of this section should include a provision providing that a direct letter from the Tribe informing the property is abandoned or vacant is sufficient to trigger the servicer's obligation to secure the property. The commenter further recommended that the provision permit the Tribe to secure the property in the absence of a response from the servicer. The commenter also recommended that the proposed rule should contain a procedure to determine disputed questions of fact, and evidentiary standards for the fact finder to opine on the disputed questions of facts. The commenter explained that the Tribe should be able to take self-help measures to secure and rehabilitate the vacant or abandoned house, and offset the costs against the Service Provider, if the disputed facts are proven by the Tribe.

HUD Response: HUD agrees with commenter that a Tribe's notice to HUD that the property is vacant or abandoned is sufficient to trigger the servicer's obligation to secure the property. Therefore, HUD revised § 1005.737 that the servicer may be notified by HUD when the Tribe determines a unit is vacant or abandoned and that the Tribe should be notified by the servicer that the unit is vacant or abandoned.

§ 1005.769 Property Condition (Formerly § 1005.767)

A commenter stated that the term ''Damage to Property by Waste'' in paragraph (b) of this section is unclear and that revising the paragraph by adding ''damage, deterioration or neglect'' committed by borrower would provide clarity.

HUD Response: HUD agrees with this comment and has revised § 1005.769(b) to provide ''waste, deterioration or neglect''. Further, HUD revised the title of the paragraph to convey the requirements of the paragraph more broadly. Additionally, HUD provided additional clarity by inserting ''documented'' before the word ''damage'' to make clear servicer must document the damage.

§ 1005.773 Acceptance of Property by HUD (Formerly § 1005.771)

Commenters stated that Part A claims are usually not paid for many months after the claim is filed, and that § 1005.773(c) would unreasonably result in the servicer incurring costs during HUD's decision period to pay the claim. The commenter recommended that HUD reimburse the lender to maintain the property for this length of time. Similarly, the commenters stated that § 1005.773(a)(1) through (3), (b)(1) through (3), and (c) significantly depart from the current Section 184 Program and place additional burden on the servicer. The commenters recommended that § 1005.807 be expanded to clarify that the servicer will be reimbursed until HUD accepts the property.

HUD Response: HUD appreciates the commenters' concerns and has worked to provide claim payments in a timely manner, once the claim payment is submitted in a format requested by HUD and includes all documents necessary to file a claim. In accordance with § 1005.839, the claim is paid based on the earlier of the execution of deed-in-lieu/lease-in-lieu of foreclosure; the execution of the conveyance to either servicer, HUD or a third-party; the execution of the assignment of the Section 184 Guaranteed Loan to HUD; the expiration of the reasonable diligence timeframe; or other event as prescribed by Section 184 Program Guidance. As a result, HUD is revising § 1005.807(b) to address the reimbursement of reasonable expenses and provide that HUD will establish reasonable exceptions in Section 184 Program Guidance.

Several commenters stated the servicers needed guidance on expenses related to loans in default. The commenter stated that current program practice leaves a gap in expenses between when a foreclosure is completed and when a property is conveyed to HUD. As a result, the servicer incurs expenses to maintain and protect the property and cannot recover these expenses through a claim. The commenters believe that requiring servicers to absorb unreimbursed losses to protect properties for HUD is not a reasonable policy, nor is it in line with how FHA, VA, USDA, and the GSEs handle similar issues.

HUD Response: HUD thanks the commenters for the comments. HUD incorporated the interest on unpaid principal balance and reimbursement for reasonable costs policies from HUD's April 30, 2019, letter to lenders into §§ 1005.839 and 1005.841. With respect to reimbursement of reasonable expenses, HUD has revised § 1005.807(b) to provide HUD with the flexibility to provide exceptions regarding the reimbursement of reasonable expenses. HUD will provide administrative guidance on reimbursement of reasonable expenses.

§ 1005.807 Claim Submission Categories

A commenter sought clarification in § 1005.807(a), (b), and (c) of the term ''Conveyance'' and when it is completed. Under paragraph (b), commenters also sought clarification of the provision ''execution of assignment,'' and proposed to include the reimbursement of the final title work, as this is required under § 1005.819(a)(1). The commenter also proposed the addition of a claim for loss mitigation incentives and loss mitigation advance.

HUD Response: HUD appreciates the request for clarification. Under this final rule, HUD will use the same earlier of deadlines for payment of reimbursable claim expenses as is outlined in § 1005.839(a) through (e) for reimbursement of interest payments. HUD has clarified § 1005.807 to specifically set the deadline for reimbursement and will provide exceptions by Section 184 Program Guidance.

§ 1005.809 Claim Types

One commenter asked HUD to confirm, under § 1005.809(a)(1), whether the initial conveyance claim to HUD would need to be submitted to HUD within 45 days from the executed deed instead of the industry standard of two days when submitted electronically. This commenter also asked HUD to confirm, under § 1005.809(a)(2) and (3), whether HUD provides title approval, similar to current industry standard. The commenter further sought clarification as to whether servicers will be able to submit a B Claim after the 60 days for claim payment under paragraph (a)(4) of the section. In § 1005.809(c), the commenter asked HUD to confirm whether the Conveyance Without Title Claims (CWCOT) are submitted to HUD within 180 days from when a property is conveyed to HUD, which is different from the industry standard to submit CWCOT within 30 days from receipt of third-party proceeds.

The commenter asked HUD to confirm in § 1005.809(d) whether the pre-foreclosure claims (PFS) are to be submitted to HUD within 45 days of sale date, while the industry standard is 30 days from the closing date (settlement date on HUD–1). The commenter also asked HUD to confirm whether under paragraph (d) of the section, a Deed-in-Lieu (DIL) is to be submitted to HUD within 45 days of executed conveyance deed to HUD, while industry standard is 30 days from executed conveyance deed.

Finally, the commenter also asked whether under § 1005.809(e) servicers are only allowed to submit supplemental claims to HUD for only conveyance and assignment claims, because based on the industry standards, servicers can file supplemental claims for conveyance, assignment, PFS, DIL, and CWCOT. (0023) Lastly, the commenter asked HUD to confirm if supplemental claims under paragraph (e)(2) are to be submitted to HUD within 6 months from final claim (Part B) submitted date, because the industry standard is supplemental claims are filed within six months from final claim payment date (advice of payment settlement date or wire date). (0023)

HUD Response: HUD agrees with many of the comments on this section. Accordingly, HUD has revised paragraph (a)(1) to match the industry standard of two days and to clarify the delivery requirement for claims under § 1005.807(a)(4). Section 184 Program Guidance will provide instructions on the submission of final title. HUD has also revised paragraphs (c) and (d) of the section to reflect industry standards. Section § 1005.809(e) has also been revised to clarify Supplemental Claims may be submitted for all claim types found in §§ 1005.809(a) through (d).

§ 1005.817 Conveyance of Good and Marketable Title

One commenter found the current paragraph (a) unnecessary as its sole purpose is to cite to § 1005.103 as the location of the ''Good and Marketable Title'' definition.

HUD Response: HUD agrees with the commenter and deleted paragraph (a) since it is unnecessary to restate a term that is defined in section § 1005.103.

§ 1005.821 Coverage of Title Evidence

One commenter stated that a Title Status Report (TSR) does not always show certain information such as outstanding prior liens, including any past-due and unpaid ground rents, general taxes, or special assessments. The commenter further stated that while this information may be included in title commitments, title commitments sometimes are not available for trust land. As a result, the commenter recommended that paragraph (a) of the section be revised to remove, ''The evidence of title or TSR further show that, according to the public records, there are no outstanding prior liens, including any past-due and ground rents, general taxes or special assessments, if applicable, on the date of Conveyance or assignment'' to ensure the borrowers' ability to comply:

HUD Response: HUD appreciates commenters' input. HUD has revised paragraph (a) of this section to expand the eligible sources of information acceptable to verify all liens have been released and there are no outstanding rents, taxes, or special assessments. Additionally, the initial TSR provided by the BIA will disclose all existing encumbrances. If these encumbrances no longer appear on the Final TSR, they have been released by the BIA.

§ 1005.835 Claim Payment Not Conclusive Evidence of Claim Meeting All HUD Requirements

One commenter disfavored HUD's ability to review a loan file up to five years after claim payment. The commenter believed this has the effect of weakening the loan guarantee.

HUD Response: HUD appreciates the commenters' input but does not agree permitting HUD to review a loan after claim payment has the effect of weaking the loan guarantee. Lenders and servicers are always required to comply with all applicable Section 184 regulations. The final rule does not change this current policy to be consistent with FHA, which has no official limitation on the timeframe it has to review a loan post-endorsement or post-claim. Accordingly, HUD removed the five-year reference in the regulation. HUD will provide information regarding monitoring and quality control reviews of Direct Guarantee Lenders in the Section 184 Program Guidance.

IV. Tribal Consultation

HUD's policy is to consult with Indian Tribes early in the rulemaking process on matters that have Tribal implications. Accordingly, HUD began consulting with Indian Tribes in February 2018. HUD held eleven in-person Tribal consultation sessions before the regulations in this proposed rule were drafted. As draft subparts of the regulation were completed, HUD held three additional in-person consultations to solicit Tribal feedback on each subpart. On April 4, 2019, HUD sent out a copy of the full draft proposed rule to all Tribal leaders and directors of TDHEs for review and comment. The Tribal comment period was originally from April 4, 2019, to June 4, 2019, but it was extended to June 30, 2019, after Tribal leaders requested more time to review the draft proposed rule. During this time, HUD also held two in-person Tribal consultations and two national teleconferences to review the draft proposed rule.

In addition to the Tribal consultation sessions held before and during the drafting of the proposed rule, HUD conducted ten additional consultations during the public comment period. HUD held six regional consultation sessions and four national consultation sessions between December 2022 and March 2023. During these consultation sessions, HUD mainly answered questions participants had about the proposed rule. HUD did receive comments about setting a minimum threshold of Trust land lending (§ 1005.219(e)) and possible data collection from Tribal participants (§ 1005.313). HUD considered these comments during the drafting of the final rule and will continue to consider these comments during the drafting of any subsequent **Federal Register** Notice or other Section 184 Program Guidance related to these two sections.

Tribal feedback has been an integral part of the process to develop the rule. Throughout the consultation process, HUD used Tribal feedback to refine and improve this rule. Tribal comments included areas such as lender relationships and qualifications, loan limits, rate and fees, loan processing, Borrower qualifications, eligible units, Section 184 Approved Program Area, Tribal courts, and Tribal involvement. HUD considered all written comments submitted to HUD, as well as recorded comments received from in-person Tribal consultation sessions and revised the proposed rule as appropriate.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866, 13563, and 14094

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant, and therefore, subject to review by OMB in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

Under Executive Order 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by OMB in accordance with the requirements of the order. This final rule, as discussed above, introduces changes to make the program sustainable, protect Borrowers, address recommendations by the OIG in areas such as underwriting and the claims process, and provide clarity for new and existing Direct and Non-Direct Guarantee Lenders, Holders and Servicers who participate in the Section 184 Program. These changes allow for Holders, Servicers, Direct Guarantee Lenders and Non-Direct Guarantee Lenders to serve the growing demand for the program and introduce stronger governing regulations to reduce the increased risk to the Fund.

Many current and potential Section 184 Direct Guarantee and Non-Direct Guarantee Lenders and Servicers participate in the FHA single family mortgage program. Where appropriate, aligning the new Section 184 regulations with the FHA single family mortgage program regulations should also minimize costs to new and existing lenders. Additionally, clarifying servicing requirements will protect the Borrowers by requiring Servicers to consider loss mitigation options for Borrowers. Moreover, the added requirements and protections will help to reduce losses to the Fund and thereby allow the Section 184 Program to provide additional loans and decrease the cost of the loans to eligible Borrowers.

This final rule was determined to be a significant regulatory action under section 3(f) of Executive Order 12866 (Regulatory Planning and Review) as amended by Executive Order 14094 (Modernizing Regulatory Review), and therefore was reviewed by OMB. However, this final rule was not deemed to be significant under Section 3(f)(1). Because program participants have long followed the substantive standards that this final rule would establish, HUD anticipates that this final rule will have little to no economic effect. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The information collection requirements contained in this proposed rule have been approved by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0200.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As discussed above, this final rule would provide clarity for new and existing lenders who participate in the Section 184 Program. Participation in the Section 184 Program is voluntary. HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') 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 final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C.

4332(2)(C)). The FONSI is available for public inspection at both *https://www.regulations.gov* and *https://www.hud.gov/codetalk,* and between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) proposes to establish requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any state, local, or Tribal government, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD amends 24 CFR parts 58 and 1005 as follows:

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

■ 1. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note, 1715z–13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321–4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105–276; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977, Comp., p. 123; E.O. 13807, 3 CFR, 2017, Comp.; p. 369)

■ 2. In § 58.1, revise paragraph (b)(11) to read as follows:

§ 58.1 Purpose and applicability.

* * * * *

(b) * * *

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992 on trust land and on fee land within an Indian reservation, and on fee land owned by the Indian Tribe outside of the Tribe's Indian reservation boundaries, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

* * * * *

■ 3. In § 58.35, add paragraph (b)(8) to read as follows:

§ 58.35 Categorical exclusions.

* * * * *

(b) * * *

(8) HUD's guarantee of loans for one-to-four family dwellings on trust land and on fee land within an Indian reservation and on fee land owned by the Indian Tribe outside the Tribe's Indian Reservation boundaries, under the Direct Guarantee procedure for the Section 184 Indian Housing loan guarantee program without any review or approval of the application for the loan guarantee by HUD or the responsible entity or approval of the loan guarantee by HUD before the execution of the contract for construction or rehabilitation and the loan closing.

* * * * *

■ 4. Revise part 1005 to read as follows:

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

Subpart A—General Program Requirements

Subpart B—Lender Eligibility and Requirements

Subpart C—Lending on Trust Land

Subpart D—Underwriting

Eligible Borrowers

Eligible Properties

Eligible Loans

Underwriting

Subpart E—Closing and Endorsement

Closing

Authority: 12 U.S.C. 1715z-13a; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

Subpart A—General Program Requirements

§ 1005.101 Purpose.

This part implements the Section 184 Indian Housing Loan Guarantee Program (''Section 184 Program'') authorized under Section 184 of the Housing and Community Development Act of 1992, as amended, codified at 12 U.S.C. 1715z–13a. Section 184 authorizes the U.S. Department of Housing and Urban Development (HUD) to establish a loan guarantee program for American Indian and Alaskan Native families, Tribes, and tribally Designated Housing Entities (TDHE). The loans guaranteed under the Section 184 Program are used to construct, acquire, refinance, or rehabilitate one- to four-family standard housing located on Trust Land, land located in an Indian or Alaska Native area, and Section 184 Approved Program Area. These regulations apply to Lender Applicants, Holders, Direct and Non-Direct Guarantee Lenders, Servicers and Tribes seeking to or currently participating in the Section 184 Program.

§ 1005.102 Severability.

Any provision of this part held to be invalid or unenforceable as applied to any action should be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision of this part is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this part and shall not affect the remainder thereof.

§ 1005.103 Definitions.

The following definitions apply throughout this part:

Acquisition Cost means the sum of the sales price or construction cost for a property and the cost of allowable repairs or improvements for the same property, less any unallowable sales concession(s). For the purposes of this definition, the term ''sales concession'' means an inducement to purchase a property paid by the seller to consummate a sales transaction.

Amortization means the calculated schedule of repayment of a Section 184 Guaranteed Loan in full, through structured, regular payments of principal and interest within a certain time frame.

Amortization Schedule means the document generated at the time of loan approval outlining the Borrower's schedule of payments of principal and interest for the life of the loan and the unpaid principal balance with and without the financed Upfront Loan Guarantee Fee, where applicable.

Annual Loan Guarantee Fee means a fee calculated on an annual basis and paid in monthly installments by the Borrower, which is collected by the Servicer and remitted to HUD for the purposes of financing the Indian Housing Loan Guarantee Fund.

BIA means the United States Department of Interior, Bureau of Indian Affairs.

Borrower means every individual on the mortgage application. For the purposes of servicing the loan, Borrower refers to every original Borrower who signed the note and their heirs, executors, administrators, assigns, and approved substitute Borrowers. Borrowers include Tribes and TDHEs.

Claim means the Servicer's application to HUD for payment of benefits under the Loan Guarantee Certificate for a Section 184 Guaranteed Loan.

Conflict of Interest means any party to the transaction who has a direct or indirect personal business or financial relationship sufficient to appear that it may cause partiality or influence the transaction, or both.

Date of Default means the day after the Borrower's obligation to make a loan payment or perform an obligation under the terms of the loan.

Day means calendar day, except where the term ''business day'' is used.

Default means when the Borrower has failed to make a loan payment or perform an obligation under the terms of the Section 184 Guaranteed Loan.

Direct Guarantee Lender means a Lender approved by HUD under § 1005.21 to Originate, underwrite, close, service, purchase, hold, or sell Section 184 Guaranteed Loans.

Eligible Nonprofit Organization means a nonprofit organization established under Tribal law or organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1986 as an organization exempt from taxation under section 501(a) of the Code, which has:

(1) Two years' experience as a provider of low- or moderate-income housing;

(2) A voluntary board; and

(3) No part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

Financial Statements means audited financial statements or other financial records as required by HUD.

Firm Commitment means a commitment by HUD to reserve funds, for a specified period of time, to guarantee a Loan under the Section 184 Program, when a Loan for a specific Borrower and property meets standards as set forth in subpart D of this part.

First Legal Action means the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process.

Good and Marketable Title means title that contains exceptions or restrictions, if any, which are permissible under subpart D of this part; and any objections to title that have been waived by HUD or otherwise cleared by HUD; and any discrepancies have been resolved to ensure the Section 184 Guaranteed Loan is in first lien position. In the case of Section 184 Guaranteed Loans on Trust Land, evidence of Good and Marketable Title must be reported in the Title Status Report issued by the BIA, or other HUD approved document issued by the Tribe, as prescribed by Section 184 Program Guidance and the document evidences the property interest rights.

Holder means an entity that is named on the Promissory Note and any successor or assigns for the Section 184 Guaranteed Loan and has the right and responsibilities to enforce the Section 184 requirements and the Holder's interests arising under the mortgage or deed of trust.

Identity of Interest means a sales transaction between family members, business partners, or other business affiliates.

Indian means a person who is recognized as being an Indian or Alaska Native by a federally recognized Indian Tribe, a regional or village corporation as defined in the Alaska Native Claims Settlement Act, or a State recognized Tribe eligible to receive assistance under Title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA).

Indian Family means one or more persons maintaining a household where at least one Borrower is an Indian.

Indian Housing Loan Guarantee Fund or *Fund* means a fund established at the U.S. Department of Treasury for the purpose of providing loan guarantees under the Section 184 Program.

Lease or Leasehold Interest means a written contract between a Borrower and a Tribe, entity, or individual, whereby the Borrower, as lessee, is granted a right of possession of Trust Land for a specific purpose and duration, according to applicable Tribal, Federal or State Law.

Lender Applicant means:

(1) A financial institution engaging in mortgage lending that is eligible to participate in the Section 184 Program under § 1005.203 or § 1005.205;

(2) The financial institution has applied or will apply to HUD for approval to participate in the Section 184 Program; and

(3) Has not received approval from HUD.

Loan means a loan application or mortgage loan that has not received a Loan Guarantee Certificate.

Loan Guarantee Certificate means evidence of endorsement by HUD of a Loan for guarantee issued under § 1005.525.

Loss Mitigation means an alternative to foreclosure offered by the Holder that is made available through the Servicer to the Borrower.

Non-Direct Guarantee Lender means a Lender approved by HUD under § 1005.207 who has selected a level of program participation limited to Originating Section 184 Guaranteed Loans.

Month or *monthly* means thirty days in a month, regardless of the actual number of days.

Origination, originate, or *originating* means the process by which the Lender accepts a new loan application along with all required supporting documentation. Origination does not include underwriting the loan.

Owner of Record means, for fee simple properties, the owner of the property as shown on the records of the recorder in the county where the property is located. For Trust Land Properties, the current lessee or owner of property, as shown on the Title Status Report provided by the BIA or other HUD approved document issued by the Tribe, as prescribed by Section 184 Program Guidance and the document evidences the property interest rights.

Partial Payment means a Borrower payment of any amount less than the full amount due under the terms of the Section 184 Guaranteed Loan at the time the payment is tendered.

Property means one to four-family dwellings that meet the requirements for standard housing under § 1005.419 and located on Trust Land, land located in an Indian or Alaska Native area, or Section 184 Approved Program Area.

Section 184 Guaranteed Loan is a Loan that has received a Loan Guarantee Certificate.

Section 184 Approved Program Area means the Indian Housing Block Grant (IHBG) Formula Area as defined in 24 CFR 1000.302 or any other area approved by HUD, in which HUD may guarantee Loans.

Section 184 Program Guidance means administrative guidance documents that may be issued by HUD, including but not limited to **Federal Register** documents, Dear Lender Letters, handbooks, guidebooks, manuals, and user guides.

Security means any collateral authorized under existing Tribal, Federal, or State law.

Servicer means a Direct Guarantee Lender that chooses to service Section 184 Guaranteed Loans or a Non-Direct Guarantee Lender or a financial institution approved by HUD under § 1005.705 to service Section 184 Guaranteed Loans.

Sponsor means an approved Direct Guarantee Lender that enters into a relationship with a Non-Direct Guarantee Lender or another Direct Guarantee Lender (Sponsored Entity), whereby the Sponsor provides underwriting, closing, purchasing, and holding of Section 184 Guaranteed Loans and may provide servicing.

Sponsored Entity means a Non-Direct Guarantee or Direct Guarantee Lender operating under an agreement with a Sponsor to Originate Section 184 Guaranteed Loans in accordance with § 1005.213.

Tax-exempt Bond Financing means financing which is funded in whole or in part by the proceeds of qualified mortgage bonds described in section 143 of the Internal Revenue Code of 1986, or any successor section, on which the interest is exempt from Federal income tax. The term does not include financing by qualified veterans' mortgage bonds as defined in section 143(b) of the Code.

Title Status Report is defined in 25 CFR 150.2, as may be amended.

Tribe means any Indian Tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self Determination and Education Assistance Act of 1975.

Tribally Designated Housing Entity (TDHE) means any entity as defined in the Indian Housing Block Grant Program under the Native American Housing Assistance and Self Determination Act at 25 U.S.C. 4103(22).

Trust Land means land title which is held by the United States for the benefit of an Indian or Tribe or title which is held by a Tribe subject to a restriction against alienation imposed by the United States or the Tribe. This definition shall include but is not limited to Tribal, individual, assigned trust, or restricted fee lands.

Upfront Loan Guarantee Fee means a fee, paid by the Borrower at closing, collected by the Direct Guarantee Lender and remitted to HUD for the purposes of financing the Indian Housing Loan Guarantee Fund.

Subpart B—Lender Eligibility and Requirements

§ 1005.201 Lender Applicant approval and participation.

(a) *Approval types.* The Section 184 Program has two types of Lender Applicant approvals:

(1) Lender Applicants deemed approved by statute, as described in § 1005.203; or

(2) Lender Applicants required to obtain secretarial approval under § 1005.205.

(b) *Lender Applicant participation.* In accordance with § 1005.207, Lender Applicants must select a level of program participation and submit a completed application package, as prescribed by Section 184 Program Guidance, to participate in the Section 184 Program.

§ 1005.203 Lender Applicants deemed approved by statute.

The following Lender Applicants are deemed approved by statute:

(a) Any mortgagee approved by HUD for participation in the single-family mortgage insurance program under title II of the National Housing Act;

(b) Any Lender Applicant whose housing loan under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to 38 U.S.C. 3702(d);

(c) Any Lender Applicant approved by the U.S. Department of Agriculture to make Guaranteed Loans for single family housing under the Housing Act of 1949; and

(d) Any other Lender Applicant that is supervised, approved, regulated, or insured by any other Federal agency of the United States, including but not limited to Community Development Financial Institutions.

§ 1005.205 Lender Applicants required to obtain Secretarial approval.

(a) *Lender Applicant application process.* Lender Applicants not meeting the requirements of § 1005.203 must apply to HUD for approval to participate in the Section 184 Program by submitting to HUD a completed application package, as prescribed by Section 184 Program Guidance. The application must establish that the Lender meets the following qualifications:

(1) *Business form.* The Lender Applicant shall be a corporation or other chartered institution, a permanent organization having succession, or a partnership, organized under Tribal or State law.

(i) *Partnership requirements.* A partnership must meet the following requirements:

(A) Each general partner must be a corporation or other chartered institution consisting of two or more partners.

(B) One general partner must be designated as the managing general partner. The managing general partner shall also comply with the requirements specified in paragraphs (a)(1)(i)(C) and (D) of this section. The managing general partner must have as its principal activity the management of one or more partnerships, all of which are mortgage lending institutions or property improvement or manufactured home lending institutions and must have exclusive authority to deal directly with HUD on behalf of each partnership. Newly admitted partners must agree to the management of the partnership by the designated managing general partner. If the managing general partner withdraws or is removed from the partnership for any reason, a new managing general partner shall be substituted, and HUD must be notified in writing within 15 days of the substitution.

(C) The partnership agreement shall specify that the partnership shall exist for a minimum term of ten years, as required by HUD. All Section 184 Guaranteed Loans held by the partnership shall be transferred to a Lender Applicant approved under this part prior to the termination of the partnership. The partnership shall be specifically authorized to continue its existence if a partner withdraws.

(D) HUD must be notified in writing within 15 days of any amendments to the partnership agreement that would affect the partnership's actions under the Section 184 Program.

(ii) *Use of business name.* The Lender Applicant must use its HUD-registered business name in all advertisements and promotional materials related to the Guaranteed Loan. HUD-registered business names include any alias or ''doing business as'' (DBA) on file with

HUD. The Lender must keep copies of all print and electronic advertisements and promotional materials for a period of 2 years from the date that the materials are circulated or used to advertise.

(2) *Identification and certification of employees.* The Lender Applicant shall identify personnel and certify that they are trained and competent to perform their assigned responsibilities in mortgage lending, including origination, servicing, collection, and conveyance activities, and shall maintain adequate staff and facilities to Originate or service mortgages, or both, in accordance with applicable Tribal, Federal, or State requirements, to the extent it engages in such activities.

(3) *Identification and certification of officers.* The Lender Applicant shall identify officers and certify that all employees who will sign applications for Guaranteed Loans on behalf of the Lender Applicant shall be corporate officers or shall otherwise be authorized to bind the Lender in the Origination transaction. The Lender Applicant shall certify that only authorized person(s) report on guarantees, purchases, and sales of Guaranteed Loans to HUD for the purpose of obtaining or transferring guarantee coverage.

(4) *Financial statements.* The Lender Applicant shall:

(i) Furnish to HUD a copy of its most current annual financial statements, as prescribed by Section 184 Program Guidance.

(ii) Furnish such other information as HUD may request; and

(iii) Submit to examination of the portion of its records that relates to its activities under the Section 184 Program.

(5) *Quality control plan.* The Lender Applicant shall submit a written quality control plan in accordance with § 1005.217.

(6) *Identification of branch offices.* A Lender Applicant may maintain branch offices. A financial institution's branch office must be registered with HUD to originate or submit applications for Guaranteed Loans. The financial institution shall remain responsible to HUD for the actions of its branch offices.

(7) *Certification of conflict of interest policy.* The Lender Applicant must certify that the lender shall not pay anything of value, directly or indirectly, in connection with any Guaranteed Loan to any person or entity if such person or entity has received any other consideration from the seller, builder, or any other person for services related to such transactions or related to the purchase or sale of the property, except that consideration, approved by HUD, may be paid for services actually performed. The Lender Applicant shall not pay a referral fee to any person or organization.

(8) *Licensing certification.* A Lender Applicant shall certify that it has not been refused a license or has not been sanctioned by any Tribal, Federal, State, or other authority related to any lending activity.

(9) *Minimum net worth.* Irrespective of size, a Lender Applicant shall have a net worth of not less than $1 million, or amount as provided in Section 184 Program Guidance.

(10) *Identification of operating area.* The Lender Applicant must submit a list of states in which they wish to participate in the Section 184 Program and evidence of Lender Applicant's license to operate in those states, as may be prescribed by Section 184 Program Guidance.

(11) *Other qualifications.* Other qualifications by notice for comment.

(b) *HUD approval.* HUD shall review applications under § 1005.203(a) and any other publicly available information related to the Lender Applicant, its officers, and employees. If HUD determines the Lender Applicant meets the requirements for participation in this subpart, HUD shall provide written notification of the approval to be a Non-Direct Guarantee Lender.

(c) *Limitations on approval.* A Lender Applicant may only operate in the Section 184 Approved Program Area where they are licensed.

(d) *Denial of participation.* A Lender Applicant may be denied approval to become a Section 184 Lender if HUD determines the Lender Applicant does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and that decision may be appealed in accordance with the procedures set forth in § 1005.909.

§ 1005.207 Lender Applicant participation options.

(a) *Levels of participation.* Lender Applicants must choose one of two levels of program participation, a Non-Direct Guarantee Lender or a Direct Guarantee Lender and submit an application to participate on a form prescribed by Section 184 Program guidance. A participation level must be selected by the Lender Applicant and approved by HUD before initiating any Section 184 Program activities.

(b) *Non-Direct Guarantee Lender.* (1) A Non-Direct Guarantee Lender originates loans.

(2) A Non-Direct Guarantee Lender must be a Sponsored Entity under § 1005.213.

(3) A Non-Direct Guarantee Lender must submit documentation supporting their eligibility as a Lender under § 1005.203 or approved by HUD under § 1005.205 and other documentation as prescribed by Section 184 Program Guidance to HUD through their Sponsor.

(c) *Direct Guarantee Lender.* (1) A Direct Guarantee Lender may originate, underwrite, close, service, purchase, hold, and sell Section 184 Guaranteed Loans.

(2) A Direct Guarantee Lender may sponsor Non-Direct Guarantee Lenders or other Direct Guarantee Lenders in accordance with § 1005.213.

(3) To become a Direct Guarantee Lender, Lender Applicants must submit additional documentation as provided in § 1005.209 and obtain HUD approval under § 1005.211.

§ 1005.209 Direct Guarantee Lender application process.

(a) For purposes of this section, Lender Applicants shall include Non-Direct Guarantee Lenders, Lender Applicants and financial institutions approved by HUD to only service under § 1005.705. Lender Applicants may apply to HUD for approval to participate in the Section 184 Program as a Direct Guarantee Lender. Lenders Applicants must submit a completed application package in accordance with Section 184 Program Guidance.

(b) To be approved as a Direct Guarantee Lender, a Lender Applicant must establish in its application that it meets the following qualifications:

(1) Eligibility under § 1005.203 or HUD approval under § 1005.205, as evidenced by approval documents and most recent recertification documents.

(2) Has a principal officer with a minimum of five years' experience in the origination of Loans guaranteed or insured by an agency of the Federal Government. HUD may approve a Lender applicant with less than five years of experience, if a principal officer has had a minimum of five years of managerial experience in the origination of Loans guaranteed or insured by an agency of the Federal Government.

(3) Has on its permanent staff an underwriter(s) that meets the following criteria:

(i) Two years' experience underwriting Loans guaranteed or insured by an agency of the Federal Government;

(ii) Is an exclusive employee of the Lender Applicant;

(iii) Authorized by the Lender Applicant to obligate the Lender Applicant on matters involving the origination of Loans;

(iv) Is registered with HUD as an underwriter and continues to maintain such registration; and

(v) Other qualifications as may be prescribed by Section 184 Program Guidance.

(c) The Lender Applicant must submit a list of States or geographic regions in which it is licensed to operate, evidenced by submitting the active approvals for each State or region, and declare its interest in participating in the Section 184 Program.

(d) The Lender Applicant must submit the quality control plan as required by its approving agency, modified for the Section 184 Program.

(e) If a Lender Applicant wants to service Section 184 Guaranteed Loans as Direct Guarantee Lender, they must meet qualifications and apply in accordance with § 1005.703.

§ 1005.211 Direct Guarantee Lender approval.

HUD shall review all documents submitted by a Lender Applicant under § 1005.209 and make a determination of conditional approval or denial.

(a) *Conditional approval.* Conditional approval is signified by written notification from HUD that the Lender Applicant is a conditionally approved Direct Guarantee Lender under the Section 184 Program subject to the following conditions:

(1) The Lender Applicant signs an agreement to comply with requirements of this part, and any applicable Tribal, Federal, or State law; and

(2) If applicable, the Lender Applicant submits a list of entities it currently sponsors under another Federal Loan program and intends to sponsor in the Section 184 Program. This list shall include the following for each Sponsored Entity:

(i) Contact information, including mailing address, phone number, and email address for corporate officers.

(ii) The Federal tax identification number (TIN) for the Sponsored Entity, and

(iii) Names and Nationwide Multistate Licensing System and Registry numbers for all Loan originators and processors.

(3) The Lender Applicant certifies it monitors and provides oversight of Sponsored Entities to ensure compliance with this part, and any applicable Tribal, Federal, or State law.

(4) The Lender Applicant must, for each underwriter, submit ten test endorsement case binders, or a number prescribed by Section 184 Program Guidance, which meet the requirements of subparts D and E. Unsatisfactory performance by an underwriter during HUD's test case review may constitute grounds for denial of approval to participate as a Direct Guarantee Lender. If participation is denied, such denial is effective immediately and may be appealed in accordance with the procedures set forth in § 1005.909; and

(5) The Lender Applicant will operate only in accordance with the Lender's licensing in Section 184 Approved Program Areas.

(b) *Final approval.* Final approval is signified by written notification from HUD that the Lender Applicant is an approved Direct Guarantee Lender under the Section 184 Program without further submission of test case endorsement case binders to HUD. HUD retains the right to request additional test cases as determined necessary.

(c) *Limitations on approval.* (1) A Lender Applicant may only operate as a Direct Guarantee Lender in accordance with the Lender's Tribal or State licensing and within Section 184 Approved Program Areas.

(2) The Lender Applicant must employ and retain an underwriter with the qualifications as provided in § 1005.209(b)(3). Failure to comply with this provision may subject the Lender Applicant to sanctions under § 1005.907.

(d) *Denial of participation.* A Lender Applicant may be denied approval to become a Direct Guarantee Lender if HUD determines the Lender Applicant does not meet the qualification requirements of this subpart. HUD will provide written notification of denial and that decision may be appealed in accordance with the procedures set forth in § 1005.909.

§ 1005.213 Non-Direct Guarantee Lender application, approval, and Direct Guarantee Lender sponsorship.

(a) *Sponsorship.* A Sponsorship is a contractual relationship between a Sponsor and a Sponsored Entity.

(b) *General responsibility requirements of a Sponsor.* (1) The Sponsor must determine the eligibility of a Lender and submit to HUD, as prescribed in Section 184 Program Guidance, a recommendation for approval under § 1005.207(b) or evidence of HUD approval under §§ 1005. 205(b) or 211(b).

(2) Upon HUD approval of eligibility under § 1005.207(b), or HUD acknowledgement of the evidence of HUD approval under § 1005.205(b) or § 1005.211(b), the Sponsor may enter into a Sponsorship with the Sponsored Entity.

(3) The Sponsor must notify HUD of changes in a Sponsorship within 10 days.

(4) The Sponsor must provide HUD-approved training to the Sponsored Entity on the requirements of the Section 184 Program before the Sponsored Entity may originate Section 184 Guaranteed Loans for the Sponsor.

(5) Each Sponsor shall be responsible to HUD for the actions of its Sponsored Entity in Originating Loans. If Tribal or State law requires specific knowledge by the Sponsor or the Sponsored Entity, HUD shall presume the Sponsor had such knowledge and shall remain liable.

(6) The Sponsor is responsible for conducting quality control reviews of the Sponsored Entity's origination case binders and Loan performance to ensure compliance with this part.

(7) The Sponsor is responsible for maintaining all records for Loans Originated by a Sponsored Entity in accordance with this part.

(c) *Responsibilities of the Sponsored Entity.* A Sponsor must ensure that a Sponsored Entity complies with this part and any other Tribal, Federal, or State law requirements.

§ 1005.215 Direct Guarantee Lender annual reporting requirements.

Direct Guarantee Lenders must submit an annual report on Loan performance, including reporting on all its Sponsored Entities, where applicable, along with any other required reporting under § 1005.903 and other such reports as prescribed by Section 184 Program Guidance.

§ 1005.217 Quality control plan.

(a) A quality control plan sets forth a Lender Applicant, Direct Guarantee Lender, or Non-Direct Guarantee Lender's procedures for ensuring the quality of the Direct Guarantee or Non-Direct Guarantee Lender's Section 184 Guaranteed Loan Origination, underwriting, closing, and/or servicing, as applicable. The purpose of the quality control plan is to ensure the Lender Applicant, Direct Guarantee and non-Direct Guarantee Lender's compliance with Section 184 Program requirements and protect HUD and the entities from unacceptable or unreasonable risks. A Lender Applicant, Direct Guarantee Lender, and Non-Direct Guarantee Lender must adopt and implement a quality control plan.

(b) A quality control plan must:

(1) Be maintained and updated, as needed, to comply with all applicable Section 184 Program requirements.

(2) Cover all policies and procedures, whether performed by the Lender or an agent, to ensure full compliance with all Section 184 Program requirements.

(3) Provide the Lender with information sufficient to adequately

monitor and oversee the Lender's compliance and measure performance, as it relates to the Lender's Section 184 Guaranteed Loan activity.

(4) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to retain all quality control plan related documentation, including selection criteria, review documentation, findings, and actions to mitigate findings, for a period of three years from initial quality control review, or from the last action taken to mitigate findings, whichever is later.

(5) Allow the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to use employees or agents to perform the quality control functions, so long as they do not directly participate in any Loan administration processes as outlined in Section 184 Program Guidance.

(6) Ensure the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender assumes full responsibility for any agent's conduct of quality control reviews.

(7) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to train all staff, agents working with the Section 184 Program on Loan administration and quality control processes and provide staff access to all current Section 184 legal authorities and policy guidance. The Lender, Direct Guarantee or Non-Direct Guarantee Lender must retain copies of training documentation for all staff working on the Section 184 Program in accordance with § 1005.219(d)(3). Failure to comply with the training and documentation requirements may subject the Direct Guarantee Lender and Non-Direct Guarantee Lender to sanctions in accordance with § 1005.907.

(8) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to review a random statistical sample of rejected Loan applications within 90 days from the end of the month in which the decision was made. The reviews must be conducted no less frequently than monthly and with the goal of ensuring that the reasons given for the rejection were valid and each rejection received concurrence of an appropriate staff person with sufficient approval authority. The Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender must submit a report of this review in form and timeframe as prescribed in Section 184 Program Guidance.

(9) Ensure that the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender's employees and agents are eligible to participate in the Section 184 Program. Any employees or agents deemed ineligible shall be restricted from participating in the Section 184 Program.

(10) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to refer any suspected fraud or material misrepresentation by any party whatsoever directly to HUD's Office of Inspector General (OIG) and the Office of Native American Programs.

(11) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to report all material deficiencies and submit a corrective action plan to HUD within 30 days, or a timeframe as prescribed by Section 184 Program Guidance.

(12) Require the Lender Applicant, Direct Guarantee or Non-Direct Guarantee Lender to conduct appropriate Loan level quality control procedures, in accordance with Section 184 Program Guidance.

(13) Require the Lender Applicant to comply with any other administrative requirement as may be prescribed by Section 184 Program Guidance.

(c) Lender Applicants applying to be a Direct Guarantee Lender under § 1005.209, must submit a quality control plan in accordance with paragraph (b) of this section and include the following additional requirements:

(1) Require the Lender Applicant to collect and forward all Loan Guarantee Fees in accordance with the Section 184 Program requirements, with sufficient documentation evidencing the timely collection and payment of the fees to HUD.

(2) Require the Lender Applicant to verify that the endorsement case binder is submitted to HUD for guarantee within required time frames.

(3) Require the Lender Applicant to review a random statistical sample of its endorsement case binders for potential fraud, material misrepresentations, or other findings on a quarterly basis. The Lender Applicant must investigate and determine if fraud, material misrepresentation or other findings occurred.

(4) Require the Lender Applicant to perform quality control review of its Sponsored Entities in the same manner and under the same conditions as required for the Lender's own operation.

(5) Where applicable, require the Sponsor to apply paragraph (b) of this section to its Sponsored Entities.

(d) All Sponsored Entities shall comply with paragraph (b) of this section and provide a quality control plan directly to their Sponsor in accordance with their sponsorship agreement.

§ 1005.219 Other requirements.

(a) *Tribal, Federal, and State law.* All Holders, Direct Guarantee Lenders, Non-Direct Guarantee Lenders and Servicers must comply with all applicable Tribal, Federal, and State laws which impact mortgage-related activities.

(b) *Dual employment.* All Non-Direct Guarantee Lenders and Direct Guarantee Lenders must require its employees to be exclusive employees, unless the Non-Direct Guarantee and Direct Guarantee Lender has determined that the employee's other employment, including any self-employment, does not create a Conflict of Interest.

(c) *Reporting requirements.* All Direct Guarantee Lenders must submit reports in accordance with § 1005.903. Non-Direct Guarantee Lenders must submit required reports to their Sponsor, under this part or any requirements as prescribed by Section 184 Program Guidance.

(d) *Records retention.* Records retention requirements are as follows:

(1) Direct Guarantee Lenders must maintain an endorsement case binder for a period of three years beyond the date of satisfaction or maturity date of the Loan, whichever is sooner. However, where there is a payment of Claim, the endorsement case binder must be retained for a period of at least five years after the final Claim has been paid. Section 184 Program Guidance shall prescribe additional records retention time depending on the circumstances of the Claim.

(2) All Direct Guarantee Lenders and Non-Direct Guarantee Lenders must retain personnel files of employees for one year beyond the employee's separation.

(3) All Direct Guarantee Lenders and Non-Direct Guarantee Lenders must follow the applicable records retention requirements imposed by applicable Tribal, Federal, and State laws.

(4) Direct Guarantee Lenders and Non-Direct Guarantee Lenders must maintain the quality control plan records for a period prescribed in § 1005.217(b)(4).

(e) *Minimum level of lending on Trust Land.* (1) Direct Guarantee Lenders must actively market, Originate, underwrite, and close Loans on Trust Land. A Sponsor must ensure its Sponsored Entities actively market and Originate Loans on Trust Land. HUD may impose a minimum level of lending on Trust Land, which may be adjusted periodically, through publication in the **Federal Register**.

(2) Failure to meet the minimum level of lending on Trust Land may result in sanctions in accordance with §§ 1005.905 and 1005.907.

(3) HUD may grant exceptions for Direct Guarantee Lenders and Non-Direct Guarantee Lenders licensed and doing business in a State or States with limited Trust Lands. The process to request the exception will be prescribed by Section 184 Program Guidance.

§ 1005.221 Business change reporting.

(a) Within a timeframe as prescribed by Section 184 Program Guidance, Direct Guarantee Lenders shall provide written notification to HUD, in such a form as prescribed by Section 184 Program Guidance of:

(1) All changes in the Direct Guarantee Lender or Sponsored Entity's legal structure, including, but not limited to, mergers, acquisitions, terminations, name, location, control of ownership, and character of business;

(2) Staffing changes with senior leadership and Loan underwriters for Direct Guarantee Lenders and Sponsored Entities; and

(3) Any sanctions by another supervising entity.

(b) Failure to report changes within a reasonable timeframe prescribed in Section 184 Program Guidance may result in sanctions in accordance with §§ 1005.905 and 1005.907.

§ 1005.223 Direct Guarantee Lender Annual recertification requirements.

(a) All Direct Guarantee Lenders are subject to annual recertification on a date and form as prescribed by Section 184 Program Guidance.

(b) With each annual recertification, Direct Guarantee Lenders must submit updated contact information, continued eligibility documentation and other pertinent materials as prescribed by Section 184 Program Guidance, including but not limited to:

(1) A certification that it has not been refused a license or sanctioned by any Tribe, State, or Federal entity or other governmental authority related to any lending activity;

(2) A certification that the Direct Guarantee Lender is in good standing with any Tribe, State, or Federal entity in which it will perform Direct Guarantee Lender activities; and

(3) Renewal documents and certification of continued eligibility from an authorizing entity listed in § 1005.203.

(4) Lenders approved under § 1005.205 must submit documentation supporting continued eligibility as prescribed by Section 184 Program Guidance.

(c) All Sponsored Entities shall comply with this requirement and provide the annual recertification documentation directly to their Sponsor in accordance with their sponsorship agreement.

(d) Direct Guarantee Lenders must also submit the following in accordance with Section 184 Program Guidance:

(1) A certification that the Direct Guarantee Lender continues to meet the direct guarantee program eligibility requirements in accordance with § 1005.209;

(2) A list of all Sponsored Entities with which the Direct Guarantee Lender has a sponsorship relationship, and a certification of their continued eligibility; and

(3) All reports.

(e) Direct Guarantee Lenders must retain documentation related to the continued eligibility of their Sponsored Entities for a period as prescribed by Section 184 Program Guidance.

(f) Direct Guarantee Lenders may request an extension of the recertification deadline, but such a request must be presented to HUD at least 30 days before the recertification deadline.

(g) HUD will review the annual recertification submission and may request any further information required to determine recertification.

(h) HUD will provide written notification of approval to continue participation in the Section 184 Program or denial. A denial may be appealed pursuant to § 1005.909.

(1) If an annual recertification is not submitted by a reasonable deadline prescribed in Section 184 Program Guidance, HUD may subject the Direct Guarantee Lender to sanctions under § 1005.907.

(2) [Reserved]

§ 1005.225 Program ineligibility.

A Lender Applicant, Direct Guarantee Lender or Non-Direct Guarantee Lender may be deemed ineligible for Section 184 Program participation when HUD becomes aware that the entity or any officer, partner, director, principal, manager or supervisor, loan processor, loan underwriter, or loan originator of the entity was:

(a) Suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424, or under similar procedures of any other Federal agency;

(b) Indicted for, or have been convicted of, an offense that reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the Lender, Direct Guarantee Lender or Non-Direct Guarantee Lender to participate in the title I or title II programs of the National Housing Act, or Section 184 Program;

(c) Found to have unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(d) Engaged in business practices that do not conform to generally accepted practices of prudent Lender Applicants, Direct or Non-Direct Guarantee Lenders or that demonstrate irresponsibility;

(e) Convicted of, or have pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry during the 7-year period preceding the date of the application for licensing and registration, or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(f) In violation of provisions of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (12 U.S.C. 5101, *et seq.*) or any applicable provision of Tribal or State law; or

(g) In violation of 12 U.S.C. 1715z–13a.

Subpart C—Lending on Trust Land

§ 1005.301 Tribal legal and administrative framework.

(a) *Tribal requirements.* (1) A Tribe seeking to allow eligible Borrowers to place a mortgage lien on Trust Land under the Section 184 Program must apply to HUD for approval to participate in the program.

(2) Tribes electing to make Trust Land available under the Section 184 Program must provide to HUD a legal and administrative framework for leasing, foreclosure, and eviction on Trust Land to protect the interests of the Borrower, Tribe, Direct Guarantee Lender, and HUD.

(3) When Tribes are notified of the Borrower's default in accordance with § 1005.501(j) or when the Tribe receives notice of Tribal right of first refusal pursuant to § 1005.759, Tribes must assist, where practical, in facilitating loss mitigation and disposition, such as assisting with identifying potential purchasers or identifying Tribal members who may wish to assume the loan, encouraging Borrower to execute Lease-in-Lieu, and providing other general assistance to the Borrower.

(4) Tribes must notify HUD in writing when the Tribe determines a property is vacant or abandoned and the property is not secured by the Servicer or HUD.

(b) *Legal and administrative framework.* A Tribe may enact legal procedures through Tribal council resolution or any other recognized legislative action. These procedures must be legally enforceable and include the following requirements:

(1) *Foreclosure and assignment.* When a Borrower is in default, and is

unwilling or unable to successfully complete loss mitigation in accordance with subpart G of this part; and Servicer either completes First Legal Action against the Borrower, or assigns the loan to HUD after completing Tribal first right of refusal in accordance with § 1005.759:

(i) The Tribe must demonstrate that a foreclosure will be processed through the legal systems having jurisdiction over the Section 184 Guaranteed Loan. A foreclosure must be held in a court of competent jurisdiction, which includes Federal courts, when HUD forecloses on the property.

(ii) Foreclosure ordinances must allow for the legal systems with jurisdiction to assign Borrower's property interest to HUD or Holder.

(iii) Where applicable, if the Holder assigns the Section 184 Guaranteed Loan to HUD without initiating or completing the foreclosure process, or the property becomes vacant and abandoned during the loss mitigation or foreclosure process, the Tribe may assign the lease to HUD to facilitate disposition of the property, so long as the Tribe provides due process to the lessee in compliance with Tribal law.

(2) *Property disposition.* Once a lease is vacated or reassigned, or the property interest has otherwise been conveyed to HUD or the Holder, the Tribe or the TDHE shall work with HUD or the Holder to sell the property to an eligible party.

(3) *Eviction.* The Tribe must have a legal and administrative framework implementing eviction procedures, allowing for the expedited removal of the Borrower in default, all household residents, and any unauthorized occupants of the property. Eviction procedures must enable the Servicer or the Tribe to secure possession of the property. Eviction may be required upon:

(i) The completion of a foreclosure;

(ii) The involuntary termination of the lease;

(iii) The reassignment of the lease or conveyance of the property interest to HUD or the Holder; or

(iv) The sale of the property.

(4) *Lien priority.* Section 184 Guaranteed Loans must be in a first lien position securing the property.

(i) To ensure that each Section 184 Guaranteed Loan holds a first lien position, the Tribe must enact an ordinance that either:

(A) Provides for the satisfaction of the Section 184 Guaranteed Loan before any and all other obligations; or

(B) Follows State law to determine the priority of liens against the property. If a Tribal jurisdiction spans two or more states, the State in which the property is located is the applicable State law.

(ii) For lien to be considered valid on Trust Land, the lien must be:

(A) Approved by the Tribe, and BIA as applicable; and

(B) Recorded by the Tribe and/or BIA, as applicable.

(5) *Lease provisions for Trust Land.* Where applicable, the lease provisions for Trust Land must meet the following requirements:

(i) Tribes may use a HUD model lease for Section 184 Guaranteed Loan lending on Trust Land. The Tribe may make modifications to the HUD model lease, with the approval of HUD and, as applicable, BIA.

(ii) Tribes may draft their own lease in compliance with Federal requirements and contain mandatory lease terms and language as prescribed in Section 184 Program Guidance, with approval of HUD and, as applicable, BIA. At a minimum the lease must:

(A) Identify lessor;

(B) Identify the lessee;

(C) Provide a legal description of the land and identify the property address covered by the lease;

(D) The lease must have a minimum term of 50 years unless an extended term is approved by the Secretary. For refinances or lease transfers the lease must have a remaining term which exceeds the maturity date of the Loan by a minimum of ten years, or other period as prescribed by Section 184 Program Guidance.

(E) The lease must be executed by all interested parties to be enforceable;

(F) The Tribe shall require HUD consent for any lease termination or assignment of the lease when the Section 184 Guaranteed Loan is secured by the property.

(G)(*1*) The lease must contain the following provision: ''In the case of a default on a Section 184 Guaranteed Loan:

(*i*) The lessee may assign the lease and deliver possession of the leased premises, including any improvements thereon, to HUD; or

(*ii*) The lessor may assign the lease and deliver possession of the leased premises, including any improvements thereon, to HUD when the Tribe has provided due process to lessee in compliance with Tribal law.

(*2*) HUD may transfer this lease and the leased premises to a successor lessee if the successor lessee is another member of the Tribe or Tribal entity, as approved by the Tribe.''

(H) Lease language as prescribed by Section 184 Program Guidance.

(I) The lease must also provide that in the event of foreclosure, the lease will not be subject to any forfeiture or reversion and will not be otherwise subject to termination.

§ 1005.303 Tribal application.

A Tribe shall submit an application on a form prescribed by HUD. The application must include a copy of the Tribe's foreclosure, eviction, lease, priority lien ordinances, all cross-referenced ordinances in those sections, and any other documents in accordance with Section 184 Program Guidance.

§ 1005.305 Approval of Tribal application.

HUD shall review applications under § 1005.303 and where all requirements of § 1005.301 are met, HUD shall provide written notification of the approval of the Tribe to participate in the Section 184 Program. If HUD determines the application is incomplete, or the documents submitted do not comply with the requirements of this subpart or any process prescribed in Section 184 Program Guidance, HUD will work with the Tribe to cure the deficiencies before there is a denial of the application.

§ 1005.307 Tribal annual recertification.

A Tribe shall recertify annually to HUD whether it continues to meet the requirements of this subpart, on a form and by a deadline prescribed by Section 184 Program Guidance. Recertification shall include Tribal certification of no changes to the Tribe's foreclosure, eviction, lease, and lien priority ordinances. The Tribe shall provide any updated contact information and similar information that may be required under Section 184 Program Guidance.

§ 1005.309 Tribal duty to report proposed changes and actual changes.

Based on the timeframe as prescribed by Section 184 Program Guidance, the Tribe must notify HUD of any proposed changes in the Tribe's foreclosure, eviction, lease, and lien priority ordinances or contact information. Tribes shall obtain HUD approval of the changes in the foreclosure, eviction, lease, and lien priority ordinances. HUD will provide written notification to the Tribe of HUD's review of the proposed ordinance changes and advise the Tribe whether the updated documents meet the requirements of this subpart.

§ 1005.311 HUD notification of any lease default.

In cases where the lessee is in default under the lease for any reason, the lessor shall provide written notification to HUD within 30 days of the lease default.

§ 1005.313 Tribal reporting requirements.

The Tribe shall provide accurate reports and certifications to HUD, as may be prescribed by Section 184 Program Guidance.

Subpart D—Underwriting

Eligible Borrowers

§ 1005.401 Eligible Borrowers.

(a) *Eligible Borrowers.* Eligible Borrowers are Indian Families, Tribes, or TDHEs.

(b) *Documentation.* Indian Family Borrowers must document their status as American Indian or Alaska Native through evidence as prescribed by Section 184 Program Guidance.

(c) *Limitation on the number of loans.* An Indian Family Borrower is limited to one Section 184 Guaranteed Loan, for primary residence, at a time unless the Indian Family Borrower is a non-occupant co-Borrower on one other Section 184 Guaranteed Loan. An Indian Family Borrower and/or non-occupant co-Borrower must meet all other applicable requirements of this subpart and any guidance provided in Section 184 Program Guidance.

§ 1005.403 Principal Residence.

(a) *Principal Residence.* Means the dwelling where the Indian Family Borrower maintains as a permanent place of abode. An Indian Family Borrower may have only one Principal Residence at any one time.

(b) *Occupancy requirement.* An Indian Family Borrower must occupy the property as a Principal Residence. Borrowers who are a TDHE or a Tribe do not need to occupy the property as a Principal Residence and are not subject to the occupancy requirement.

(c) *Non-occupant co-Borrower.* A co-Borrower who does not occupy the property as a principal resident is permitted and is not subject to paragraphs (a) and (b) of this section. A non-occupant co-Borrower must be related by blood, or an unrelated individual who can document evidence of a family-type, longstanding, and substantial relationship not arising out of the loan transaction. A non-occupant co-Borrower must meet all other applicable requirements of this subpart and any requirements as may be established in Section 184 Program Guidance.

§ 1005.405 Borrower residency status.

(a) An eligible Borrower who is an Indian must be:

(1) A U.S. citizen;

(2) A lawful permanent resident alien; or

(3) A non-permanent resident alien.

(b) Documentation must be provided to the Direct Guarantee Lender to support lawful residency status as defined in the Immigration and Nationality Act, codified at 8 U.S.C. 1101, *et seq.*

§ 1005.407 Relationship of income to loan payments.

(a) *Adequacy of Borrower gross income.* (1) All Borrowers must establish, in accordance with Section 184 Program Guidance, that their income is and will be adequate to meet:

(i) The periodic payments required by the loan to be guaranteed by the Section 184 Program; and

(ii) Other long-term obligations.

(2) In cases where there is a non-occupant Co-Borrower, the occupying Borrower must meet a minimum qualifying threshold, in accordance with Section 184 Program Guidance.

(b) *Non-discrimination.* Determinations of adequacy of Borrower income under this section shall be made in a uniform manner without regard to age, race, color, national origin, religion, sex (including gender identity and sexual orientation), familial status, disability, marital status, source of income of the Borrower, location of the property.

§ 1005.409 Credit standing.

(a) A Borrower must have a general credit standing satisfactory to HUD. A Direct Guarantee Lender must not use a Borrower's credit score when evaluating the Borrower's credit worthiness. The Direct Guarantee Lender must analyze the Borrower's credit history and payment pattern to determine credit worthiness.

(b) If a Borrower had a previous default on a Section 184 Guaranteed Loan which resulted in a Claim payment by HUD, the Borrower shall be subject to a 7-year waiting period or other period as may be prescribed by Section 184 Program Guidance.

§ 1005.411 Disclosure and verification of Social Security and Employer Identification Numbers or Tax Identification Number.

All Borrowers must meet applicable requirements for the disclosure and verification of Social Security, Employer Identification Numbers, or Tax Identification Numbers.

Eligible Properties

§ 1005.413 Acceptable title.

To be considered acceptable title, a Section 184 Guaranteed Loan must be secured by an interest in real estate held in fee simple or other property interest on Trust Land. Where the title evidences a lease that is used in conjunction with the Section 184 Guaranteed Loan on Trust Land, the lease must comply with relevant provisions of § 1005.301.

§ 1005.415 Sale of property.

(a) *Owner of Record requirement.* The property must be or have been purchased from the Owner of Record and the transaction may not involve or had not involved any sale or assignment of the sales contract.

(b) *Supporting documentation.* The Direct Guarantee Lender shall obtain and submit to HUD documentation verifying that the seller is the Owner of Record as part of the application for a loan guarantee under the Section 184 Program. Documentation must conform with the requirements set out in Section 184 Program Guidance. This documentation may include, but is not limited to, a property ownership history report from the State or local government, a copy of the recorded deed or other HUD approved document issued by the Tribe, as provided by Section 184 Program Guidance and the document evidences the property interest rights, as permitted by this subpart from the seller, or other documentation (such as a copy of a property tax bill, title commitment, or binder) demonstrating the seller's ownership.

(c) *Time restrictions on re-sales*—(1) *General.* The eligibility of a property for a Loan guaranteed by HUD is dependent on the time that has elapsed between the date the seller acquired the property (based upon the date of settlement) and the date of execution of the sales contract that will result in the HUD guarantee (the re-sale date). The Direct Guarantee Lender shall obtain documentation verifying compliance with the time restrictions described in this paragraph and must submit this documentation to HUD as part of the application for the Section 184 Guaranteed Loan, in accordance with § 1005.501.

(2) *Re-sales occurring 90 days or less following acquisition.* If the re-sale date is 90 days or less following the date of acquisition by the seller, the property is not eligible under the Section 184 Program.

(3) *Re-sales occurring between 91 days and 180 days following acquisition.* (i) If the re-sale date is between 91 days and 180 days following acquisition by the seller, the property is generally eligible under the Section 184 Program.

(ii) However, HUD will require that the Direct Guarantee Lender obtain additional documentation if the re-sale price is 100 percent over the purchase

price. Such documentation must include a second appraisal from a different appraiser. The Direct Guarantee Lender may also document its Loan file to support the increased value by establishing that the increased value results from the rehabilitation of the property.

(iii) Additional documentation may be required, as prescribed by Section 184 Program Guidance.

(4) *Authority to address property re-sales occurring between 181 days and 12 months following acquisition.* (i) If the re-sale date is more than 181 days after the date of acquisition by the seller, but before the end of the twelfth month after the date of acquisition, the property is eligible under the Section 184 Program.

(ii) However, HUD may require that the Direct Guarantee Lender provide additional documentation to support the re-sale value of the property if the re-sale price is 5 percent or greater than the lowest sales price of the property during the preceding 12 months (as evidenced by the contract of sale). At HUD's discretion, such documentation must include, but is not limited to, a second appraisal from a different appraiser. HUD may exclude re-sales of less than a specific dollar amount from the additional value documentation requirements.

(iii) If the additional value documentation supports a value of the property that is more than 5 percent lower than the value supported by the first appraisal, the lower value will be used to calculate the maximum principal loan amount under § 1005.443. Otherwise, the value supported by the first appraisal will be used to calculate the maximum principal loan amount.

(iv) Additional value documentation may be prescribed by Section 184 Program Guidance.

(5) *Re-sales occurring more than 12 months following acquisition.* If the re-sale date is more than 12 months following the date of acquisition by the seller, the property is eligible under the Section 184 Program.

(d) *Exceptions to the time restrictions on sales.* The time restrictions on sales described in paragraph (b) of this section do not apply to:

(1) Sales by HUD of real estate owned (REO) properties under 24 CFR part 291 and of single-family assets in revitalization areas pursuant to section 204 of the National Housing Act (12 U.S.C. 1710);

(2) Sales by an agency of the United States Government of REO single family properties pursuant to programs operated by such agencies;

(3) Sales of properties by Tribes, TDHEs, State, or local governments, or Eligible Nonprofit Organizations approved to purchase HUD REO single family properties at a discount with resale restrictions;

(4) Sales of properties that were acquired by the sellers by death, devise, or intestacy;

(5) Sales of properties purchased by an employer or relocation agency in connection with the relocation of an employee;

(6) Sales of properties by Tribes, TDHEs, State and local government agencies; and

(7) Only upon announcement by HUD through issuance of a notice, sales of properties located in areas designated by the President as federally declared disaster areas. The notice will specify how long the exception will be in effect.

(8) HUD may approve other exceptions on a case-by-case basis.

§ 1005.417 Location of property.

At the time a loan is guaranteed, the property must be for residential use under Tribal, State, or local law and be located within a Section 184 Approved Program Area.

§ 1005.419 Requirements for standard housing.

(a) *General standards.* Each dwelling unit located on a property guaranteed under the Section 184 Program must:

(1) Be decent, safe, sanitary, and modest in size and design;

(2) Conform with International Building Code, applicable general construction standards for the region, or other code as prescribed by Section 184 Program Guidance;

(3) Contain a heating system that:

(i) Has the capacity to maintain a minimum temperature in the dwelling of 65 degrees Fahrenheit during the coldest weather in the area;

(ii) Is safe to operate and maintain;

(iii) Delivers a uniform distribution of heat; and

(iv) Conforms to any applicable Tribal heating code, or if there is no applicable Tribal code, an appropriate local, State, or International Building Code, or other code as prescribed by Section 184 Program Guidance.

(4) Contains a plumbing system that:

(i) Uses a properly installed system of piping;

(ii) Includes a kitchen sink and partitional bathroom with lavatory, toilet, and bath or shower; and

(iii) Uses water supply, plumbing, and sewage disposal systems that conform to any applicable Tribal building code or, if there is no applicable Tribal code, the minimum building standards established by the appropriate local or State code, or the International Building Code, or other code as prescribed by Section 184 Program Guidance;

(5) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any applicable Tribal code or, if there is no applicable Tribal code, an appropriate local, State, or International Building Code, or other code as prescribed by Section 184 Program Guidance;

(6) Meets minimum square footage requirements and be not less than:

(i) 570 square feet in size, if designed for a family of not more than 4 persons;

(ii) 850 square feet in size, if designed for a family of not less than 5 and not more than 7 persons;

(iii) 1020 square feet in size, if designed for a family of not less than 8 persons; or

(iv) Current locally adopted standards for size of dwelling units, documented by the Direct Guarantee Lender.

(v) Upon the written request of a Tribe, or TDHE, HUD may waive the minimum square footage requirements under paragraphs (a)(6)(i) through (iv) of this section.

(7) Conform with the energy performance requirements for new construction established by HUD under section 526(a) of the National Housing Act (12 U.S.C. 1735f–4(a)).

(b) *Additional requirements.* HUD may prescribe any additional requirements to permit the use of various designs and materials in housing acquired under this part.

(c) *One to four dwelling unit properties.* Properties containing one to four dwelling units:

(1) Must meet local zoning requirements;

(2) For 2–4 dwelling unit properties, units may be attached or detached; and

(3) Must have all dwelling unit(s) located on the property and included in the parcel legal description recorded under the loan.

(d) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R shall apply.

(e) *Environmental review procedures.* (1) The regulations in 24 CFR 1000.20 apply to an environmental review for Trust Land and for fee land within an Indian reservation, and on fee land owned by the Indian Tribe outside of the Tribe's Indian reservation

boundaries, in connection with a Loan guaranteed under this part. That section permits a Tribe to choose to assume environmental review responsibility.

(2) Before HUD issues a commitment to guarantee any loan, or before HUD guarantees a loan if there is no commitment, the Tribe or HUD must comply with environmental review procedures to the extent applicable under 24 CFR part 58 or 50, as appropriate.

(3) If the Loan involves proposed or new construction, HUD will require the Direct Guarantee Lender to submit a signed Builder's Certification of Plans, Specifications and Site (Builder's Certification). The Builder's Certification must be in a form prescribed by Section 184 Program Guidance and must cover:

(i) Flood hazards;

(ii) Noise;

(iii) Explosive and flammable materials storage hazards;

(iv) Runway clear zones/clear zones;

(v) Toxic waste hazards;

(vi) Other foreseeable hazards or adverse conditions (*i.e.,* rock formations, unstable soils or slopes, high ground water levels, inadequate surface drainage, springs, etc.) that may affect the health and safety of the occupants or the structural soundness of the improvements.

(4) The Builder's Certification must be provided to the appraiser for reference before the performance of an appraisal on the property.

(f) *Flood insurance*—(1) *Special Flood Hazard Areas.* A property is not eligible for a Section 184 loan guarantee if a residential building and related improvements to the property are located within a Special Flood Hazard Area (SFHA) designated by a FEMA Flood Insurance Rate Map unless insurance under the National Flood Insurance Program (NFIP), or notwithstanding 24 CFR 58.6(a), private flood insurance in lieu of NFIP insurance is secured for the property.

(2) *Eligibility for new construction in SFHAs.* If any portion of the dwelling, related structures or equipment essential to the value of the property and subject to flood damage is located within an SFHA, the property is not eligible for a Section 184 Guaranteed Loan unless the Direct Guarantee Lender obtains from FEMA a final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removes the property from the SFHA; or obtains a FEMA National Flood Insurance Program Elevation Certificate (FEMA Form 086–0–33) prepared by a licensed engineer or surveyor. The elevation certificate must document that the lowest floor including the basement of the residential building, and all related improvements/equipment essential to the value of the property, is built at or above the 100-year flood elevation in compliance with the NFIP criteria, and flood insurance must be obtained., notwithstanding 24 CFR 58.6(a),

(3) *Required flood insurance amount.* Where flood insurance is required under paragraph (f)(1) of this section, flood insurance, whether NFIP insurance or private flood insurance in lieu of NFIP, must be maintained for the life of the Section 184 Guaranteed Loan in an amount that is not less than the lessor of:

(i) The project cost less the estimated land cost;

(ii) The outstanding principal balance of the loan; or,

(iii) For NFIP insurance only, the maximum amount available with respect to the property improvements;

(4) *Required documentation.* The Direct Guarantee Lender must obtain a Life of Loan Flood Certification for all Properties. If applicable, the Direct Guarantee Lender must provide all eligibility documentation obtained under paragraph (e)(2) of this section.

(g) *Restrictions on property within Coastal Barrier Resources System.* In accordance with the Coastal Barrier Resources Act, a property is not eligible for a Section 184 Loan Guarantee if the improvements are or are proposed to be located within the Coastal Barrier Resources System.

(h) *Airport hazards*—(1) *Existing Construction.* If a property is Existing Construction and is located within a Runway Clear Zone (also known as a Runway Protection Zone) at a civil airport or within a Clear Zone at a military airfield, the Direct Guarantee Lender must obtain a Borrower's acknowledgement of the hazard.

(2) *New Construction.* If a New Construction property is located within a Runway Clear Zone (also known as a Runway Protection Zone) at a civil airport or within a Clear Zone at a military airfield, the Direct Guarantee Lender must reject the property for loan guarantee. Properties located in Accident Potential Zone 1 (APZ 1) at a military airfield may be eligible for a Section 184 loan guarantee provided that the Direct Guarantee Lender determines that the property complies with Department of Defense guidelines.

§ 1005.421 Certification of appraisal amount.

A Section 184 Guaranteed Loan must be accompanied by a sales contract satisfactory to HUD, executed by the seller, whereby the seller agrees that before any sale of the property, the seller will deliver to the purchaser of the property a certification of the appraisal, in a form satisfactory to HUD, setting forth the amount of the appraised value of the property.

§ 1005.423 Legal Restrictions on Conveyance.

(a) Legal Restrictions on Conveyance means any provision in any legal instrument, law, or regulation applicable to the Borrower or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal, will, or trust agreement, that attempts to cause a conveyance (including a lease) made by the Borrower to:

(1) Be void or voidable by a third party;

(2) Be the basis of contractual liability of the Borrower for breach of an agreement not to convey, including rights of first refusal, pre-emptive rights or options related to Borrower efforts to convey;

(3) Terminate or subject to termination all or a part of the interest held by the Borrower in the property if a conveyance is attempted;

(4) Be subject to the consent of a third party;

(5) Be subject to limits on the amount of sales proceeds retainable by the seller; or

(6) Be grounds for acceleration of the Guaranteed Loan or increase in the interest rate.

(b) Section 184 Guaranteed Loans shall not be subject to any Legal Restrictions on Conveyance, except for restrictions in paragraphs (b)(1) through (4) of this section:

(1) A lease or any other legal document that restricts the assignment of interest in properties held in trust or otherwise restricted to an eligible Indian Family.

(2) A mortgage funded through tax-exempt bond financing and includes a due-on-sale provision in a form approved by HUD that permits the Direct Guarantee Lender to accelerate a mortgage that no longer meets Federal requirements for tax-exempt bond financing or for other reasons acceptable to HUD. A mortgage funded through tax-exempt bond financing shall comply with all form requirements prescribed under this subpart and shall contain no other provisions designed to enforce compliance with Federal or State requirements for tax-exempt bond financing.

(3) A mortgaged property subject to protective covenants which restrict occupancy by, or transfer to, persons of a defined population if:

(i) The restrictions do not have an undue effect on marketability as determined in the original plan.

(ii) The restrictions do not constitute illegal discrimination and are consistent with the Fair Housing Act and all other applicable nondiscrimination laws under Tribal, Federal, State, or local law, where applicable.

(4) HUD shall require that the previously approved restrictions automatically terminate if the lease or title to the mortgaged property is transferred by foreclosure, deed-in-lieu/lease-in-lieu of foreclosure, or if the loan is assigned to HUD.

§ 1005.425 Rental properties.

(a) *When a Borrower is an Indian Family.* A Section 184 Guaranteed Loan may be used to purchase, construct, rehabilitate, or refinance a property, which may contain up to four dwelling units. The Borrower must occupy one unit on the property as a Principal Residence and may rent the additional units.

(b) *When the Borrower is a Tribe or TDHE.* There is no limit to the number of properties a Tribe or TDHE may purchase or own with a Section 184 Guaranteed Loan(s) on or off Trust Land. However, the Tribe or TDHE must meet all applicable Section 184 program requirements.

§ 1005.427 Refinancing.

(a) *Refinance eligibility.* HUD may permit a Borrower to refinance any qualified mortgage, including an existing Section 184 Guaranteed Loan, so long as the Borrower and property meet all Section 184 Program requirements.

(b) *Types of refinances.* HUD may guarantee a Rate and Term refinance, a Streamline refinance, or a Cash-Out refinance, consistent with paragraphs (c) through (f) of this section.

(c) *General requirements.* All types of refinances are subject to the following requirements:

(1) The term of the refinancing may not exceed a term of 30 years.

(2) The Borrower must have a payment history on the existing mortgage that is acceptable to HUD.

(3) The Direct Guarantee Lender may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(4) If an Up-Front Loan Guarantee Fee was financed as part of the existing Section 184 Guaranteed Loan, no refund will be given. However, the maximum amount of the refinancing loan computed in accordance with § 1005.443 may be increased by the amount of the Up-Front Loan Guarantee Fee associated with the new refinancing loan and exceed the applicable Section 184 Guaranteed Loan limit as established by HUD for an area pursuant to § 1005.441.

(5) The new loan must meet all other applicable Section 184 requirements, including maximum loan to value ratios, as prescribed by Section 184 Program Guidance.

(d) *Rate and Term Refinance Transaction.* (1) Rate and term refinance is the refinancing of an existing mortgage for the purpose of changing the interest rate or term, or both, of a loan without advancing new funds on the loan, with the exception of allowable closing costs.

(2) A Rate and Term Refinance Transaction must meet the following requirements:

(i) The new loan must be in an amount that does not exceed the lesser of the original principal amount of the existing mortgage; or the sum of the unpaid principal balance of the existing mortgage plus loan closing charges and allowable fees approved by HUD.

(ii) The new loan must result in a reduction in regular monthly payments by the Borrower, except when refinancing a mortgage for a shorter term will result in an increase in the Borrower's regular monthly payments.

(iii) The new Loan is not subject to paragraphs (d)(2)(i) and (ii) of this section for an existing mortgage used to construct the property and where the property has been completed for less than one year. The new loan must be in an amount not to exceed the unpaid principal balance plus loan closing charges and allowable fees approved by HUD, plus, at Borrower's option, additional construction costs paid in cash by the Borrower, that were not included in the original construction contract.

(e) *Streamline Refinance Transaction.* Streamline Refinance Transaction refers to the refinance of an existing Section 184 Guaranteed Loan requiring limited Borrower credit documentation and underwriting.

(1) The new loan must be in an amount that does not exceed the unpaid principal balance of the existing Section 184 Guaranteed Loan.

(2) The new loan with an appraisal may be in the amount equal to the unpaid principal balance of the existing mortgage plus Loan closing charges and allowable fees approved by HUD. The new loan must be subject to an appraisal.

(f) *Cash-out refinance transaction.* (1) A Cash-out refinance transaction is when the new Loan is made for an amount larger than the existing mortgage's unpaid principal balance, utilizing the property's equity.

(2) A Cash-out refinance Loan amount cannot exceed a maximum loan to value ratio, as established by HUD.

(3) A Borrower may elect to receive a portion of equity in the form of cash in an amount up to a maximum allowed amount as prescribed by Section 184 Program Guidance.

(4) All cash advances, except cash amounts to the Borrower, must be used for approved purposes in accordance with HUD and BIA requirements, and must be supported by verified documentation.

(5) The Cash-out refinance must meet all other applicable Section 184 Program requirements.

§ 1005.429 Eligibility of Loans covering manufactured homes.

A Loan covering a manufactured home (as defined in 24 CFR part 3280), shall be eligible for a Section 184 Guaranteed Loan when the following requirements have been met:

(a) *For manufactured homes located on a fee simple property.* (1) A manufactured home, as erected on the property, must be installed in accordance with 24 CFR part 3286; conform with property standards under § 1005.419; and shall have been constructed in accordance with 24 CFR part 3280, as evidenced by the certification label.

(2) The Loan shall cover the manufactured home(s) and site, shall constitute a loan on a property, and classified and taxed as real estate, as applicable.

(3) In the case of a manufactured home which has not been permanently erected on a site for more than one year prior to the date of the application for the Loan Guarantee Certificate:

(i) A manufactured home shall be erected on a site-built permanent foundation and shall be permanently attached thereto by anchoring devices adequate for all loads in accordance with 24 CFR part 3286. The towing hitch or running gear, which includes axles, brakes, wheels, and other parts of the chassis that operate only during transportation, shall have been removed. The finished grade level beneath the manufactured home shall be at least two feet above the 100-year return frequency flood elevation. The site, site improvements, and all other features of the property not addressed by the Manufactured Home Construction and Safety Standards shall

meet or exceed applicable requirements of the Minimum Property Standards (MPS).

(ii) The space beneath a manufactured home shall be enclosed by continuous foundation-type construction designed to resist all forces to which it is subject without transmitting forces to the building superstructure. The enclosure shall be adequately secured to the perimeter of the manufactured home and be constructed of materials that conform to MPS requirements for foundations.

(iii) A manufactured home shall be braced and stiffened before it leaves the factory to resist racking and potential damage during transportation.

(iv) Section 1005.433 is modified to the extent provided in this paragraph. Applications relating to the guarantee of loans under this paragraph (a) must be accompanied by an agreement in a form satisfactory to HUD executed by the seller or manufacturer or such other person as HUD may require, agreeing that in the event of any sale or conveyance of the property within a period of one year beginning with the date of initial occupancy, the seller, manufacturer, or such other person will, at the time of such sale or conveyance, deliver to the purchaser or owner of such property the manufacturer's warranty on a form prescribed by HUD. This warranty shall provide that the manufacturer's warranty is in addition to and not in derogation of all other rights and remedies the purchaser or owner may have, and a warranty in form satisfactory to HUD warranting that the manufactured home, the foundation, positioning, and anchoring of the manufactured home to its permanent foundation, and all site improvements are constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by HUD) on which HUD has based its valuation of the property. The warranty shall also expressly state that the manufactured home sustained no hidden damage during transportation, and if the manufactured home is a double-wide, that the sections were properly joined and sealed. The warranty must provide that upon the sale or conveyance of the property and delivery of the warranty, the seller, builder, or such other person will promptly furnish HUD with a conformed copy of the warranty establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

(4) In the case of a manufactured home which has been permanently erected on a site for more than one year prior to the date of the application for the Section 184 Guaranteed Loan:

(i) A manufactured home shall be permanently anchored to and supported by permanent footings and shall have permanently installed utilities that are protected from freezing. The space beneath the manufactured home shall be a properly enclosed crawl space.

(ii) The site, site improvements, and all other features of the property not addressed by 24 CFR parts 3280 and 3286 shall meet or exceed HUD requirements. The finished grade level beneath the manufactured home shall be at or above the 100-year return frequency flood elevation.

(b) *For manufactured homes located on Trust Land.* Manufactured homes on Trust Land shall meet manufactured home installation standards pursuant to Tribal laws, if any. In the absence of Tribal laws, the requirements in paragraphs (a)(1), (3), and (4) of this section shall apply and other such requirements as established by Section 184 Program Guidance.

§ 1005.431 Acceptance of individual residential water purification.

If a property does not have access to a continuing supply of safe and potable water as part of its plumbing system without the use of a water purification system, the requirements of this section apply. The Direct Guarantee Lender must provide appropriate documentation with the submission for a Section 184 Guaranteed Loan to address each of the requirements of this section.

(a) *Equipment.* Water purification equipment must be approved by a nationally recognized testing laboratory acceptable to Tribal, State, or local health authority.

(b) *Certification by Tribal, State, or local health authority.* A Tribal, State, or local health authority certification must be submitted to HUD, which certifies that a point-of entry or point-of-use water purification system is used for the water supply, the treatment equipment meets the requirements of the Tribal, State, or local health authority, and has been determined to meet Tribal, State, or local health authority quality standards for drinking water. If neither Tribal, State, nor local health authority standards are applicable, then quality shall be determined in accordance with standards set by the Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. (EPA standards are prescribed in the National Primary Drinking Water requirements, 40 CFR parts 141 and 142.)

(c) *Borrower notices and certification.* (1) The prospective Borrower must have received written notification, when the Borrower signs a sales contract, that the property does not have access to a continuing supply of safe and potable water without the use of a water purification system to remain safe and acceptable for human consumption.

(2) Prior to final ratification of the sales contract, the Borrower must have received:

(i) A water safety report identifying specific contaminants in the water supply serving the property, and the related health hazard arising from the presence of those contaminants.

(ii) A written good faith estimate of the maintenance and replacement costs of the equipment necessary to assure continuing safe drinking water.

(3) The prospective Borrower must sign a certification, acknowledging the required notices have been received by the Borrower, in the form prescribed by Section 184 Program Guidance, at the time the application for mortgage credit approval is signed by the Direct Guarantee Lender. The required certification must be submitted to HUD with the request for the Loan Guarantee Certificate.

§ 1005.433 Builder warranty.

(a) Applications relating to proposed construction must be accompanied by an agreement in a form satisfactory to HUD, executed by the seller or builder or such other person as HUD may require, and agreeing that in the event of any sale or conveyance of the property, within a period of one year beginning with the date of initial occupancy, the seller, builder, or such other person will, at the time of such sale or conveyance, deliver to the purchaser or owner of such property a warranty in a form satisfactory to HUD, warranting that the property is constructed in substantial conformity with the plans and specifications (including amendments thereof or changes and variations therein which have been approved in writing by HUD) on which HUD has based on the valuation of the property.

(b) Such agreement must provide that upon the sale or conveyance of the property and delivery of the warranty, the seller, builder, or such other person will promptly furnish HUD with a confirmed copy of the warranty, establishing by the purchaser's receipt thereon that the original warranty has been delivered to the purchaser in accordance with this section.

Eligible Loans

§ 1005.435 Eligible collateral.

A Section 184 Guaranteed Loan may be secured by any collateral authorized under existing Federal law or applicable State or Tribal law. The collateral must be sufficient to cover the amount of the loan, as determined by the Direct Guarantee Lender and approved by HUD. Improvements on Trust Lands may be considered as eligible collateral. Trust Land cannot be considered as part of the eligible collateral.

§ 1005.437 Loan provisions.

(a) *Loan form.* (1) The Loan shall be in a form meeting the requirements of HUD. HUD may prescribe loan closing documents. For each case in which HUD does not prescribe loan closing documents, HUD shall require specific language in the loan which shall be uniform for every loan. HUD may also prescribe the language or substance of additional provisions for all loans, as well as the language or substance of additional provisions for use only in particular jurisdictions.

(2) Each Loan shall also contain any provisions necessary to create a valid and enforceable security interest under Tribal law or the laws of the jurisdiction in which the property is located.

(b) *Loan multiples.* A Loan, in whole dollars, shall be in an amount not to exceed the maximum principal loan amount (as calculated under § 1005.443) for the area where the property is located.

(c) *Payments.* The Loan payments shall:

(1) Be due on the first of the month;

(2) Contain complete Amortization provisions in accordance with § 1005.453 and an Amortization period not in excess of the term of the loan; and

(3) Provide for payments to principal and interest to begin no later than the first day of the month, 60 days after the date the loan is executed. For closings taking place within the first seven days of the month, interest credit is acceptable.

(d) *Maturity.* The Loan shall have a repayment term of not more than the maximum period as approved by HUD and fully amortized.

(e) *Property standards.* The Loan must be a first lien upon the property that conforms with the requirements for standard housing under § 1005.419.

(f) *Disbursement.* The entire principal amount of the Loan must have been disbursed to the Borrower or to the Borrower's creditors for the Borrower's account and with the Borrower's consent.

(g) *Disbursement for construction advances.* HUD may guarantee loans from which advances will be made during construction when all applicable Section 184 Program requirements are met and all the following conditions are satisfied:

(1) The Direct Guarantee Lender and Borrower execute a building Loan agreement, in the form prescribed by Section 184 Program Guidance, setting forth the terms and conditions under which advances will be made.

(2) The advances may be made only as provided in the building loan agreement.

(3) The principal amount of the loan is held by the Direct Guarantee Lender in an interest-bearing account, trust, or escrow for the benefit of the Borrower, pending advancement to the Borrower or Borrower's creditors as provided in the building loan agreement;

(4) The loan shall bear interest on the amount advanced to the Borrower or the Borrower's creditors and on the amount held in an account or trust for the benefit of the Borrower.

(h) *Changes to the Loan Agreement.* Notwithstanding paragraph (g)(2) of this section, changes to the building loan Agreement must be approved and documented by the Direct Guarantee Lender prior to the construction advance.

(i) *Documentation.* Direct Guarantee Lender must submit a construction completion package to HUD, as prescribed in Section 184 Program guidance.

(j) *Prepayment privilege.* The Loan must contain a provision permitting the Borrower to prepay the Loan in whole or in part at any time. The Loan may not provide for the payment of any fee or penalty on account of such prepayment.

§ 1005.439 Loan lien.

(a) *First lien.* A Borrower must establish that, after the loan offered for guarantee has been recorded, the property will be free and clear of all liens other than such loan, and that there will not be outstanding any other unpaid obligations contracted in connection with the loan transaction or the purchase of the property, except obligations that are secured by property or collateral owned by the Borrower independently of the property.

(b) *Junior lien.* The property may be subject to a junior lien held by a Tribe, Direct Guarantee Lender, TDHE, Federal, State, local government, or an Eligible Nonprofit Organization. Where applicable, a junior lien when intended to be utilized in conjunction with a Section 184 loan, must be evaluated in the Section 184 underwriting process by the Direct Guarantee underwriter in accordance with Section 184 Program Guidance. In cases where a junior lien is recorded after the Section 184 Loan Guarantee Certificate is issued, the junior lien must comply with this section.

(1) Periodic payments, if any, shall be collected monthly and be substantially the same;

(2) The monthly Loan payments for the Section 184 Guaranteed Loan and the junior lien shall not exceed the Borrower's reasonable ability to pay, as determined by HUD;

(3) The sum of the principal amount of the Section 184 Guaranteed Loan and the junior lien shall not exceed the loan-to-value limitation applicable to the Section 184 Program, and shall not exceed the loan limit for the area, except as otherwise permitted by HUD;

(4) The repayment terms shall not provide for a balloon payment before ten years unless approved by HUD;

(5) The junior lien must become due and payable on sale or refinancing of the secured property covered by the Section 184 Guaranteed Loan, unless otherwise approved by HUD; and

(6) The junior lien shall contain a provision permitting the Borrower to prepay the junior lien in whole or in part at any time and shall not require a prepayment penalty.

(c) *Junior liens to reduce Borrower monthly payments.* With prior HUD acceptance, the property may be subject to a junior lien advanced to reduce the Borrower's monthly payments on the Section 184 Guaranteed Loan following the date it is guaranteed, if the junior lien meets the following requirements:

(1) The junior lien shall not provide for any payment of principal or interest until the property securing the junior lien is sold or the Section 184 Guaranteed Loan is refinanced, at which time the junior lien shall become due and payable.

(2) The junior lien shall not provide for any payment of principal or interest so long as the occupancy requirements are met; and, where applicable, shall provide for forgiveness of the junior lien amount at the end of the term of the junior lien.

(d) *Junior liens related to tax-exempt bond financing and low-income housing tax credits.* HUD approval shall be required when Borrower seeks to encumber property with a junior lien pursuant to § 1005.423(b).

§ 1005.441 Section 184 Guaranteed Loan limit.

The Section 184 Guaranteed Loan limit is the level set by HUD for the Section 184 Approved Program Area and is based upon the location of the property. The limit that is in effect on

the date the Section 184 Program case number is issued in accordance with § 1005.445 shall apply, regardless of the closing date. The limit shall be revised periodically by HUD and published in Section 184 Program guidance.

§ 1005.443 Loan amount.

(a) *Minimum required investment.* The Borrower is required to make a minimum investment in the property. This investment must come from the Borrower's own funds, gifts, or Tribal, State, or local funds awarded to the Borrower. The minimum investment in the property is the difference between the sales price and the base loan amount.

(b) *Calculating base loan amount.* (1) The base loan amount is determined by calculating:

(i) 97.75 percent of the appraised value of the property or the Acquisition Cost, whichever is less; or

(ii) 98.75 percent of the lesser of the appraised value or sales price when the appraised value or sales price is $50,000 or less.

(2) The base loan amount cannot exceed the Section 184 Guaranteed Loan limits established under § 1005.441.

(c) *Maximum principal loan amount.* The maximum principal loan amount is the base loan amount and the Up-Front Loan Guarantee Fee. The Section 184 Guaranteed Loan limit may only be exceeded by the amount of the Up-Front Loan Guarantee Fee.

(d) *Minimum principal loan amount.* A Direct Guarantee Lender may not require a minimum loan amount for a Section 184 Guaranteed Loan.

§ 1005.445 Case numbers.

(a) Section 184 case numbers may only be obtained by a Direct Guarantee Lender.

(b) To obtain a case number, the Direct Guarantee Lender must:

(1) Have an active loan application from a Borrower(s) with an identified property;

(2) Provide evidence of borrower eligibility, as prescribed in § 1005.401(a);

(3) Verify that the property is located in a Section 184 Approved Program Area;

(4) Confirm that the Loan does not exceed the Section 184 Loan limit; and

(5) Submit Loan specific information as prescribed in Section 184 Program Guidance.

(c) Case numbers are automatically cancelled after a period as identified in Section 184 Program Guidance, unless a Firm Commitment is issued, or an extension is granted by HUD in accordance with Section 184 Program Guidance prior to the expiration of the case number.

§ 1005.447 Maximum age of Loan documents.

Documents reviewed at underwriting and at loan closing may not be older than the 120 days, or another time period prescribed by Section 184 Program Guidance. Documents whose validity for underwriting purposes is not affected by the passage of time, such as divorce decrees or tax returns, are not subject to time limitations.

§ 1005.449 Qualified mortgage.

A Section 184 Guaranteed Loan, except for mortgage transactions exempted under 15 U.S.C. 1639c(b)(3)(ii), is afforded safe harbor as a qualified mortgage that meets the ability-to-repay requirements in 15 U.S.C. 1639c(a).

§ 1005.451 Agreed interest rate.

The loan shall bear interest at the rate agreed upon by the Direct Guarantee Lender and the Borrower and determined by HUD to be reasonable. The agreed upon interest rate may not exceed the rate generally charged in the area for mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government, or a rate determined by HUD, whichever is lower. The agreed upon interest rate must not take into consideration a Borrower's credit score in accordance with § 1005.409 and must not be based on risk-based pricing.

§ 1005.453 Amortization provisions.

The loan must contain complete Amortization provisions satisfactory to HUD, requiring payments due on the first day of each month by the Borrower. The sum of the principal and interest payments in each month shall be substantially the same.

Underwriting

§ 1005.455 Direct guarantee underwriting.

(a) *Underwriter due diligence.* A Direct Guarantee Lender shall exercise the same level of care which it would exercise in obtaining and verifying information for a Loan in which the Direct Guarantee Lender would be entirely dependent on the property as security to protect its investment. Direct Guarantee Lender procedures that evidence such due diligence shall be incorporated as part of the quality control plan required under § 1005.219. Compliance with HUD-prescribed underwriting guidelines shall be the minimum standard of due diligence in underwriting the Loans. Failure to comply with HUD-prescribed underwriting guidelines may result in sanctions in accordance with §§ 1005.905 and 1005.907.

(b) *Evaluating the Borrower(s) qualifications.* The Direct Guarantee Lender shall evaluate the Borrower's credit characteristics, the adequacy and stability of the Borrower's income to meet the periodic payments under the loan and all other obligations, the adequacy of the Borrower's available assets to close the transaction, the Borrower's management capacity and grant performance, if applicable, and render an underwriting decision in accordance with applicable regulations, policies, and procedures.

(c) *Assumption.* Applications for the assumption of an existing Section 184 Guaranteed Loan shall be underwritten using the same Borrower eligibility and underwriting standards in accordance with this subpart.

§ 1005.457 Appraisal.

(a) A Direct Guarantee Lender shall have the property appraised in accordance with all applicable Federal requirements, including but not limited to the Uniform Standards of Professional Appraisal Practice, Equal Credit Opportunity Act (15 U.S.C. 1691–1691f), and the Fair Housing Act (42 U.S.C. 3601–19). HUD may establish alternative requirements to Uniform Standards of Professional Appraisal Practice, when necessitated by location and availability of an appraiser, and publish such alternative requirements in Section 184 Program Guidance.

(b) A Direct Guarantee Lender must select an appraiser identified on the Federal Housing Administration Appraiser Roster, compiled in accordance with 24 CFR part 200, subpart G. The Direct Guarantee Lender shall not discriminate on the basis of race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, national origin, or age in the selection of an appraiser. HUD may establish guidance regarding the alternatives to the use of an appraiser identified on the Federal Housing Administration Appraiser Roster, when necessitated by a rural or remote location and the availability of an appraiser.

(c) A Direct Guarantee Lender and an appraiser must ensure that an appraisal and related documentation satisfy Federal Housing Administration, Fannie Mae, or Freddie Mac appraisal requirements, and both bear responsibility for the quality of the appraisal in satisfying such requirements.

(d) A Direct Guarantee Lender that submits, or causes to be submitted, an

appraisal or related documentation that does not satisfy requirements under paragraphs (a) through (d) of this section may be subject to sanctions by HUD pursuant to §§ 1005.905 and 1005.907.

(e) The validity period of appraisals is 180 days or as provided by Section 184 Program Guidance.

(f) Where the initial appraisal report will be more than 180 days at closing, an appraisal update may be performed to extend the appraisal validity period prior to closing, in accordance with Section 184 Program Guidance. The updated appraisal is valid for one year after the effective date of the initial appraisal report; and

(g) The appraisal shall meet other guidance as prescribed in Section 184 Program Guidance.

§ 1005.459 Loan submission to HUD for endorsement.

(a) *Deadline for submission.* Within 60 days after the date of closing the loan, a Direct Guarantee Lender must submit an endorsement case binder to HUD, in accordance with § 1005.503.

(b) *Late submission.* If the endorsement case binder is submitted past 60 days, the Direct Guarantee Lender must include, as part of the case binder, a late endorsement request with supporting documentation, affirming:

(1) The loan is not currently in default;

(2) All escrow accounts for taxes, hazard insurance, and monthly Loan Guarantee Fees are current;

(3) Neither the Direct Guarantee Lender nor Servicer provided the funds to bring or keep the loan current or to bring about the appearance of acceptable payment history; and

(4) Notwithstanding paragraph (b)(3) of this section, with prior approval from HUD, Direct Guarantee Lender or Servicer may provide funds to bring or keep the loan current.

§ 1005.461 HUD issuance of Firm Commitment.

HUD may underwrite and issue a Firm Commitment when it is in the interest of HUD.

Subpart–E—Closing and Endorsement

Closing

§ 1005.501 Direct Guarantee Lender closing requirements.

The Direct Guarantee Lender shall close the loan in accordance with the following:

(a) *Chain of title/interest.* (1) For fee simple Properties, the Direct Guarantee Lender must obtain evidence of all prior ownership within 12 months of the case number assignment date. The Direct Guarantee Lender must review the evidence of prior ownership to determine any undisclosed Identity of Interest transactions.

(i) If an Identity of Interest is discovered, the Direct Guarantee Lender must review for any possible Conflict of Interest.

(ii) As a requirement of closing, all Borrowers must execute a Section 184 Borrower's Certification, addressing any Identity of Interest and Conflict of Interest.

(2) For Trust Land transactions, the requirements for the determination of ownership title interest shall be prescribed by HUD in Section 184 Program Guidance.

(b) *Title/Title Status Report.* The Direct Guarantee Lender must ensure that all objections to title binder/initial certified Title Status Report have been cleared, and any discrepancies have been resolved, to ensure that the Section 184 Guaranteed Loan will be in first security interest position.

(c) *Closing in compliance with Direct Guarantee Lender approval.* The Direct Guarantee Lender must instruct the settlement agent to close the Section 184 Guaranteed Loan on the same terms or on the same assumptions in which it was underwritten and approved.

(d) *Closing in the Direct Guarantee Lender's name.* A Section 184 Guaranteed Loan must close in the name of the Direct Guarantee Lender issuing the underwriting approval.

(e) *Required HUD documents at closing.* The Direct Guarantee Lender must use the forms and language as prescribed in Section 184 Program Guidance.

(f) *Projected escrow.* The Direct Guarantee Lender must establish an escrow account in accordance with § 1005.717 and the Real Estate Settlement Procedures Act and any other escrow requirements as prescribed under applicable Tribal and Federal laws and regulations.

(g) *Closing costs and fees.* The Direct Guarantee Lender may charge the Borrower reasonable and customary fees in accordance with § 1005.515.

(h) *Closing date.* The closing date must occur before the expiration of the Firm Commitment.

(i) *Per diem interest and interest credits.* The Direct Guarantee Lender may collect per diem interest from the closing date to the date Amortization begins. Alternatively, the Direct Guarantee Lender may begin Amortization up to 7 days prior to the closing date and provide a per diem interest credit. Any per diem interest credit may not be used to meet Borrower's minimum required investment. Per diem interest must be computed using a factor of 1/365th of the annual rate.

(j) *Authorization of Tribal notification in the event of default.* At closing and on a form provided by HUD, the Borrower must elect whether to authorize the Direct Guarantee Lender or Servicer to notify the Tribe in the event of a default, as prescribed in the Section 184 Program Guidance.

(k) *Signatures.* Direct Guarantee Lender must ensure that the note, security instrument, and all closing documents are signed by the required parties.

(l) *Other requirements.* Direct Guarantee Lender shall close the loan in accordance with any applicable Tribal, State, or Federal requirements. Direct Guarantee Lenders must execute any other documents as may be required by applicable Tribal, Federal, or State law.

§ 1005.503 Contents of endorsement case binder.

The Direct Guarantee Lender's endorsement case binder shall be submitted in a format as prescribed by HUD and contain the documents meeting the requirements of § 1005.501 and any other documents supporting the Direct Guarantee Lender's underwriting determination.

§ 1005.505 Payment of Upfront Loan Guarantee Fee.

The Direct Guarantee Lender, shall provide evidence of the remittance of the Upfront Loan Guarantee Fee, as required under § 1005.607, in accordance with a process provided by HUD in Section 184 Program Guidance.

§ 1005.507 Borrower's payments to include other charges and escrow payments.

(a) The Direct Guarantee Lender must include in the Section 184 Guaranteed Loan monthly payment the following charges and escrow payments:

(1) The ground rents, if any, when the Tribe or TDHE does not have an existing withholding or payment policy in place;

(2) Annual Loan Guarantee Fee, as prescribed in § 1005.607, if any;

(3) The estimated amount of all taxes;

(4) Special assessments, if any;

(5) Flood insurance premiums, if flood insurance is required;

(6) Fire and other hazard insurance premiums, except master policy premiums payable to a condominium association or a Tribe and paid directly by the Borrower:

(7) Other charges as allowed in Section 184 Program Guidance.

(b) The Section 184 Guaranteed Loan shall further provide that such payments shall be held by the Direct

Guarantee Lender in a manner satisfactory to HUD for the purpose of paying such ground rents, taxes, assessments, and insurance premiums before the same become delinquent, for the benefit and account of the Borrower. The Section 184 Guaranteed Loan must also make provisions for adjustments in case the estimated amount of such taxes, assessments, and insurance premiums shall prove to be more, or less, than the actual amount thereof so paid by the Borrower. Such payments shall be held in an escrow subject to § 1005.717.

(c) The Borrower shall not be required to pay premiums for fire or other hazard insurance which protects only the interests of the Direct Guarantee Lender, or for life or disability income insurance, or fees charged for obtaining information necessary for the payment of property taxes. The foregoing does not apply to charges made or penalties exacted by the taxing authority, except that a penalty assessed, or interest charged, by a taxing authority for failure to timely pay taxes or assessments shall not be charged by the Direct Guarantee Lender to the Borrower if the Direct Guarantee Lender had sufficient funds in escrow for the account of the Borrower to pay such taxes or assessments prior to the date on which penalty or interest charges are imposed.

§ 1005.509 Application of payments.

All monthly payments to be made by the Borrower to the Servicer shall be added together, and the aggregate amount shall be paid by the Borrower each month in a single payment by the Borrower, in accordance with the loan documents. The Servicer shall apply the Borrower's funds in accordance with § 1005.715.

§ 1005.511 Late fee.

When the monthly Section 184 Guaranteed Loan payment is 15 or more days in arrears, the Servicer may collect from Borrower a late fee of up to four percent of the overdue payment of principal and interest, or any other limit as established by HUD through public notice with an opportunity for comment. The late fee provision must appear on the note executed at closing.

§ 1005.513 Borrower's payments when Section 184 Guaranteed Loan is executed.

The Borrower must pay to the Direct Guarantee Lender, upon execution of the Section 184 Guaranteed Loan, where applicable, the:

(a) One-time Up-Front Loan Guarantee Fee or any portion payable pursuant to § 1005.603; and

(b) All other applicable monthly charges pursuant to § 1005.507, including the Annual Loan Guarantee Fee pursuant to § 1005.607 covering the period from the closing date to the due date of the first installment payment under the Section 184 Guaranteed Loan.

§ 1005.515 Charges, fees, or discounts.

(a) The Direct Guarantee Lender must ensure that all fees charged and disclosure requirements at closing to the Borrower comply with all applicable Tribal, Federal, State, and local laws.

(b) The Direct Guarantee Lender may collect from the Borrower the following charges, fees, or discounts at closing:

(1) A charge to compensate the Direct Guarantee Lender for expenses incurred in originating and closing the Loan. HUD may establish limitations on the amount of any such charge in Section 184 Program Guidance.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the Direct Guarantee Lender, for any of the following items:

(i) Recording fees and recording taxes or other charges incident to recordation;

(ii) Credit report;

(iii) Survey, if required by Direct Guarantee Lender or Borrower;

(iv) Title examination;

(v) Title insurance, if any;

(vi) Fees paid to an appraiser or inspector approved by HUD for the appraisal and inspection, if required, of the property;

(vii) Reasonable and customary charges in the nature of discounts; and

(viii) Interest calculations in accordance with § 1005.501(i).

(ix) Such other reasonable and customary charges as may be authorized by HUD.

(c) All charges, fees or discounts are subject to review by HUD after endorsement.

§ 1005.517 Certificate of nondiscrimination by the Direct Guarantee Lender.

(a) Where applicable, a Direct Guarantee Lender shall certify to HUD as to each of the following:

(1) That neither the Direct Guarantee Lender, nor anyone authorized to act for the Direct Guarantee Lender, will refuse to sell, after the making of a bona fide offer, or refuse to negotiate for the sale otherwise make unavailable or deny the property covered by the Section 184 Guaranteed Loan to any eligible purchaser or discriminate in making a loan or engaging in a residential real estate-related transaction (as defined in 42 U.S.C. 3605) because of age, race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin, source of income of the Borrower, location of the property, or because the Borrower exercised any right under the Consumer Credit Protection Act, except as provided by law.

(2) That any restrictive covenant, other than permissible restrictions on Trust Land, on such property relating to race, color, religion, sex (including gender identity and sexual orientation), disability, familial status, or national origin is hereby illegal, unenforceable, or void.

(b) That civil action for preventative relief may be brought by the Attorney General in any appropriate U.S. District Court against any person responsible for a violation of this certification.

Endorsement and Post-Closing

§ 1005.519 Creation of the contract.

The loan shall be a Section 184 Guaranteed Loan from the date of the issuance of a Loan Guarantee Certificate. The Direct Guarantee Lender is thereafter bound by the regulations in this subpart with the same force and to the same extent as if a separate contract had been executed relating to the Section 184 Guaranteed Loan, including the provisions of the regulations in this subpart and 12 U.S.C. 1715z–13a.

§ 1005.521 Pre-endorsement review and requirements.

Direct Guarantee Lender must complete a pre-endorsement review of the endorsement case binder. This review must be conducted by staff not involved in the originating, processing, or underwriting of the Loan. This review must also confirm that the loan was underwritten by an approved Direct Guarantee Lender. The endorsement case binder must contain all documentation relied upon by the Direct Guarantee Lender to justify its decision to approve the Loan in accordance with subpart D of this part. Upon finalizing the pre-endorsement review, the Direct Guarantee Lender must certify that all required documents are submitted and meet the requirements of § 1005.503.

§ 1005.523 HUD pre-endorsement review.

(a) Direct Guarantee Lender shall submit to HUD within 60 days after the date of the closing of the Loan, or such additional time as permitted by HUD, the endorsement case binder.

(b) Upon submission by a Direct Guarantee Lender of the endorsement case binder containing those documents required by § 1005.503, HUD will review the documents to ensure that the Loan meets all statutory, regulatory, and administrative requirements, including but not limited to:

(1) There is no fee, late charge, or interest due to HUD;

(2) The Loan was not in default when submitted for the Loan Guarantee Certificate, unless otherwise approved by HUD, or if submitted for guarantee more than 60 days after the date of closing, the loan shows an acceptable payment history; and

(3) The loan was underwritten by an approved Direct Guarantee Lender.

(c) Upon review, if HUD determines the loan to meet program requirements, HUD will issue a Loan Guarantee Certificate. If HUD determines the loan is ineligible, HUD will provide the Direct Guarantee Lender with a written determination and specify any available corrective actions that may be available. If there is information indicating that any certification or required document is false, misleading, or constitutes fraud or misrepresentation on the part of any party, or that the loan fails to meet a statutory or regulatory requirement, HUD will conduct a complete audit of the endorsement case binder. Repeated submission of deficient endorsement case binders may subject the Direct Guarantee Lender to sanctions or civil money penalties pursuant to §§ 1005.905 and 1005.907.

§ 1005.525 Loan Guarantee Certificate.

(a) HUD shall issue a Loan Guarantee Certificate as evidence of the guarantee when HUD completes a review of the Direct Guarantee Lender's endorsement case binder and determines the Loan complies with all applicable Section 184 Program requirements. HUD's issuance of the Loan Guarantee Certificate does not preclude HUD from conducting post-endorsement reviews under § 1005.527, seeking indemnification under § 1005.529, or imposing sanctions from originating Direct Guarantee Lender, Holder and/or Servicer under §§ 1005.905 and 1005.907.

(b) HUD may issue a Loan Guarantee Certificate for a loan involving a security interest in Trust Land before HUD receives the required trailing documents from BIA, where applicable, if the Direct Guarantee Lender agrees to indemnify HUD. The indemnification agreement between HUD and the Direct Guarantee Lender will terminate only upon receipt of the Trailing Documents in a form and manner acceptable to HUD. Trailing Documents may include the following documents:

(1) A final certified TSR that identifies that the BIA or Tribe approved and recorded the mortgage instrument and residential lease related to the Section 184 Loan, as applicable;

(2) A certified true copy of the recorded mortgage instrument;

(3) A certified true copy of the recorded lease, if applicable;

(4) A certified true copy of the recorded executed mortgage release documents for all prior mortgages identified on the initial certified TSR, if applicable; and

(5) A certified true copy of any BIA approved and executed subordination agreements;

(c) The Loan Guarantee Certificate is conclusive evidence of the eligibility of the Loan for guarantee under this part. Such evidence will be incontestable in the hands of the bearer and the full faith and credit of the United States is pledged to the payment of amounts agreed to be paid by HUD as security for such obligations.

(d) This section may not be construed to preclude HUD from conducting a post-endorsement review. With respect to the original Direct Guarantee Lender, HUD may establish defenses against the original Direct Guarantee Lender based on fraud or material misrepresentation. This section may not be construed to bar HUD from establishing partial defenses to the amount payable on the Section 184 Guaranteed Loan.

§ 1005.527 Post-endorsement review.

(a) HUD may review an endorsement case binder at any time, including but not limited to a quality control review of all documents in § 1005.503.

(b) Within three business days of a request by HUD, the Direct Guarantee Lender must make available for review, or forward to HUD, copies of the identified endorsement case binder(s).

(c) A Direct Guarantee Lender's failure to provide HUD access to any files may be grounds for sanctions in accordance with §§ 1005.905 and 1005.907.

(d) Based on HUD's review under paragraph (a) of this section, if HUD determines that:

(1) The Loan does not satisfy the requirements of subpart F of this part;

(2) The Direct Guarantee Lender or Sponsored Entity committed fraud or a material misrepresentation; or

(3) The Direct Guarantee Lender or Sponsored Entity had known or should have known of fraud or a material misrepresentation in violation of this part, such that the Loan should not have been approved by the Direct Guarantee Lender;

(e) HUD may request indemnification from the originating Direct Guarantee Lender and impose sanctions on the Direct Guarantee Lender and Sponsored Entity pursuant to §§ 1005.905 and 1005.907.

§ 1005.529 Indemnification.

(a) When HUD conducts a pre- or post-endorsement review and HUD determines there is an underwriting deficiency where the Section 184 Guaranteed Loan should not have been approved, HUD may request the originating Direct Guarantee Lender to indemnify HUD.

(b) Underwriting deficiencies with respect to the Section 184 Guaranteed Loan may include but is not limited to fraud or misrepresentation by the originating Direct Guarantee Lender.

(c) HUD will notify the originating Direct Guarantee Lender in writing when an indemnification is required.

(d) Under an indemnification, the originating Direct Guarantee Lender must reimburse HUD when a subsequent Holder files a Claim and HUD suffers a financial loss.

(e) If the originating Direct Guarantee Lender fails to indemnify HUD, HUD may impose sanctions pursuant to §§ 1005.905 and 1005.907.

Subpart F—Section 184 Guaranteed Loan Fees

§ 1005.601 Scope and method of payment.

HUD shall charge a one-time Section 184 Up-Front Loan Guarantee Fee, and a recurring Annual Loan Guarantee Fee where applicable, which will be collected by a Direct Guarantee Lender or Servicer as required by §§ 1005.603 and 1005.607 and remitted to HUD as required by §§ 1005.605 and 1005.609. The fees collected by the Direct Guarantee Lender or Servicer on behalf of HUD shall be payable to HUD in cash, in the manner prescribed by Section 184 Program Guidance.

§ 1005.603 Up-Front Loan Guarantee Fee.

At settlement, the Direct Guarantee Lender will collect from the Borrower a one-time Up-Front Loan Guarantee Fee in an amount not exceeding three percent of the principal obligation of the Section 184 Guaranteed Loan. The amount will be set by HUD through a notice in the **Federal Register**.

§ 1005.605 Remittance of Up-Front Loan Guarantee Fee.

The Direct Guarantee Lender shall remit the Up-Front Loan Guarantee Fee to HUD within 15 days after settlement, using the payment system as prescribed by Section 184 Program Guidance. The Direct Guarantee Lender shall provide an account reconciliation of the Up-Front Loan Guarantee Fee in the time and manner as may be prescribed in Section 184 Program Guidance.

§ 1005.607 Annual Loan Guarantee Fee.

(a) *Percentage of Annual Loan Guarantee Fee.* Where applicable the Servicer must collect a monthly installment for the Annual Loan Guarantee Fee from the Borrower in an amount not exceeding one percent of the principal obligation of the loan. The percentage used to calculate the Annual Loan Guarantee Fee amount will be prescribed by notice in the **Federal Register**.

(b) *Payment of Annual Loan Guarantee Fee.* Where applicable, the Section 184 Guaranteed Loan shall require monthly payments by the Borrower to the Servicer in an amount equal to one-twelfth of the Annual Loan Guarantee Fee, payable by the Servicer to HUD in accordance with the Amortization Schedule issued with the Loan approval.

(c) *Amortization Schedule.* The amount of the Borrower's monthly installment will be based on an Amortization Schedule as prescribed in Section 184 Program Guidance.

§ 1005.609 Remittance of Annual Loan Guarantee Fee.

(a) Where applicable, monthly installment of the Annual Loan Guarantee Fee shall be due and payable to HUD no later than the 15th day of each month, beginning in the month in which the Borrower is required to make the first monthly loan payment. Monthly payments of the Annual Loan Guarantee Fee must be submitted using a HUD prescribed payment system, as prescribed by Section 184 Program Guidance.

(b) Where applicable, subject to the exception in paragraph (d) of this section, the Servicer shall continue to collect from the Borrower, as established by a schedule provided in § 1005.607(b) and pay HUD the monthly installment of the Annual Loan Guarantee Fee, without taking into account Borrower's default, loss mitigation, prepayments, agreements to postpone payments, or agreements to recast the loan. Any changes to the Annual Loan Guarantee Fee will be published in the **Federal Register**.

(c) Where applicable, the Servicer shall adjust the monthly installment of the Annual Loan Guarantee Fee in accordance the schedule provided in § 1005.607(b). Notwithstanding paragraph (a) of this section, the Servicer shall refund to the Borrower any overpayment of Annual Loan Guarantee Fees collected from the Borrower, due to a delayed adjustment of the Loan Guarantee Fee, within 30 days of the overpayment. Failure to refund the Borrower within this timeframe will result in a penalty in accordance with § 1005.611.

(d) Where applicable, the Servicer shall cease collecting the monthly installment of the Annual Loan Guarantee Fee when the amortized loan to value ratio equals an amount less than the Annual Loan Guarantee Fee termination threshold loan-to-value ratio as established by the Secretary in the **Federal Register** and established by a schedule provided in § 1005.607(b). Notwithstanding paragraph (a) of this section, the Servicer shall refund to the Borrower any overpayment of Annual Loan Guarantee Fees collected when the loan-to-value ratio falls below the threshold established by the Secretary in the **Federal Register**, within 30 days of the overpayment. Failure to refund the Borrower within this timeframe will result in penalty in accordance with § 1005.611.

(e) Annual Loan Guarantee Fees paid, if any, in accordance with the schedule provided in § 1005.607(b) shall not be refundable to the Borrower.

(f) Where applicable, if the Servicer submits the monthly installment of the Annual Loan Guarantee Fee to HUD after the due date, the amount paid must include the required payment of penalties pursuant to § 1005.611(c).

(g)(1) When transfer of servicing occurs in accordance with § 1005.707:

(i) The schedule of monthly installment payments provided in § 1005.607(b) must be provided to the new Servicer; and

(ii) The account reconciliation of the Upfront Guarantee Fee and Annual Loan Guarantee Fee due and remitted to HUD must be provided to the new Servicer.

(2) The new Servicer is responsible for compliance with all requirements of this part, including, but not limited to, any outstanding Annual Loan Guarantee Fee payments and penalties owed to HUD, or any Annual Loan Guarantee Fee adjustments or refunds due to the Borrower.

(3) If a transfer results in missed monthly installment(s) of the Annual Loan Guarantee Fee, the new Servicer shall pay the overdue installment(s) in a lump sum to HUD within 30 days of acquisition of the loan and include any applicable penalties in accordance with § 1005.611.

(h) The Direct Guarantee Lender shall provide an account reconciliation of the Annual Loan Guarantee Fee in the time and manner as may be prescribed in Section 184 Program Guidance.

§ 1005.611 HUD imposed penalties.

(a) *Prohibited penalty pass through.* The Holder, Direct Guarantee Lender or Servicer shall not recover or attempt to recover from the Borrower any penalties HUD imposes upon the Holder, Direct Guarantee Lender or Servicer.

(b) *Failure of Direct Guarantee Lender to timely remit Up-Front loan guarantee to HUD.* (1) The Direct Guarantee Lender shall include a late fee if the Up-Front Loan Guarantee Fee is not remitted to HUD within 15 days of settlement.

(2) Failure to remit the Up-Front Loan Guarantee Fee, with a late fee where applicable, may result in HUD rejecting the endorsement or Claim case binder.

(c) *Failure of Servicer to timely remit the monthly installment of the Annual Loan Guarantee Fee to HUD.* (1) The Servicer shall include a late fee for each monthly installment of the Annual Loan Guarantee Fee remitted to HUD after the15th of each month.

(2) Failure to remit monthly installment of the Annual Loan Guarantee Fee to HUD, with late fee, may result in HUD rejecting the Claim case binder, where applicable.

(d) *Failure of Servicer to adjust the amount of the Annual Loan Guarantee Fee.* (1) When a Servicer fails to make the annual adjustment to the amount of the monthly installment of the Annual Loan Guarantee Fee in accordance with § 1005.607(b), the Holder shall, in addition to reimbursing the Borrower as required in § 1005.609(c), pay HUD a penalty for each month the Servicer collects an overpayment of the Annual Loan Guarantee Fee.

(2) The Servicer shall provide annual written notice, in the manner prescribed by Section 184 Program Guidance to the Borrower prior to the scheduled change in the monthly installment of the Annual Loan Guarantee Fee, with such advance notice as required by 12 CFR 1026.9, or other applicable Federal law.

(e) *Failure to cease collection of the Annual Loan Guarantee Fee.* When a Servicer fails to cease collection of the monthly installment of the Annual Loan Guarantee Fee after the loan to value ratio reaches the threshold described in § 1005.609(d), the Holder shall, in addition to reimbursing the Borrower as required in § 1005.609(d), pay HUD a penalty for each month the Servicer collects an overpayment of the Annual Loan Guarantee Fee.

(f) *Late fee and penalty amounts.* Late fees and penalty amounts under this section shall be prescribed by HUD in Section 184 Program Guidance.

Subpart G—Servicing

Servicing Section 184 Guaranteed Loans Generally

§ 1005.701 Section 184 Guaranteed Loan servicing generally.

This subpart identifies the servicing requirements for Section 184 Guaranteed Loans. All Section 184 Guaranteed Loans must be serviced by Section 184 approved Servicers, including Section 184 Guaranteed Loans owned by Holders. Holders are responsible for all servicing actions, including the acts of its Servicers. Servicers are responsible for their actions in servicing Section 184 Guaranteed Loans, including actions taken on behalf of, or at the direction of, the Holder. Failure to comply with this subpart may result in the reduction of the Claims amount in accordance with subpart H of this part or may subject Holder and/or Servicer to sanctions pursuant to subpart I. Holders and Servicers must comply with all applicable Tribal, Federal, and State requirements related to mortgage servicing.

§ 1005.703 Servicer eligibility and application process.

(a) To be eligible to service Section 184 Guaranteed Loans, a Direct Guarantee Lender, Non-Direct Guarantee Lender or other financial institution must be an approved mortgage Servicer for FHA or another agency of the Federal Government.

(b) All eligible Direct Guarantee Lenders, Non-Direct Guarantee Lenders and other financial institutions must apply to become a Servicer in accordance with Section 184 Program Guidance.

(c) Direct Guarantee Lenders servicing Section 184 Guaranteed Loans prior to June 18, 2024 may request an exemption from paragraph (a) of this section.

§ 1005.705 Servicer approval.

(a) *Final approval.* Approval is signified by:

(1) Written notification from HUD that the Direct Guarantee Lender, Non-Direct Guarantee Lender, or other financial institution is approved as a Servicer under the Section 184 Program; and

(2) Agreement by the Direct Guarantee Lender, Non-Direct Guarantee Lender, or other financial institution to comply with requirements of this part and any applicable Federal, State, or Tribal law requirement.

(b) *Limitations on approval.* The Direct Guarantee Lender, Non-Direct Guarantee Lender or other financial institution may only be approved to service Section 184 Guaranteed Loans in areas where the Direct Guarantee Lender, Non-Direct Guarantee Lender or financial institution is licensed, as applicable.

(c) *Denial of participation.* A Direct Guarantee Lender, Non-Direct Guarantee Lender or other financial institution may be denied approval to become a Servicer if HUD determines the Direct Guarantee Lender, Non-Direct Guarantee Lender or other financial institution does not meet the qualification requirements of § 1005.703. HUD will provide written notification of denial and of the right to submit a written appeal in accordance with § 1005.909.

§ 1005.707 Responsibility for servicing.

(a) *Program compliance.* (1) The Servicer must participate in HUD training on the Section 184 program.

(2) A Servicer shall provide written notification to HUD of any changes that affect qualifications under this subpart within a timeframe prescribed by Section 184 Program Guidance.

(b) *Sub-Servicer.* (1) If a Servicer elects to use a sub-servicer, the sub-servicer must be an approved Servicer under § 1005.705.

(2) Servicers are responsible for the actions of their sub-servicers. The Holder and Servicer shall remain fully responsible to HUD for Section 184 Guaranteed Loan servicing in accordance with this subpart, and the actions of a sub-Servicer shall be considered the actions of the Servicer.

(c) *Change in Servicer.* (1) When the responsibility of servicing a Section 184 Guaranteed Loan is transferred from one Servicer to another, the acquiring Servicer shall assume responsibility for compliance with this part, this includes addressing any noncompliance by the former Servicer.

(2) The former Servicer must notify HUD of the change in Servicer within 15 days of the transfer, or timeframe as prescribed by Section 184 Program Guidance.

(3) The acquiring Servicer shall provide notice to the Borrower of the transfer of servicing in accordance with applicable Tribal, Federal and/or State laws that may require such notice.

(4) HUD will hold the acquiring Servicer responsible for errors, omissions, and unresolved HUD review findings on the part of the former Servicer (or former sub-Servicer), discovered after the transfer is reported even when the errors or omissions took place prior to the transfer.

(d) *Transfer of servicing rights.* The Servicer must submit written notification to HUD, within 15 days of transfer, or other time period as prescribed by Section 184 Program Guidance, of the transfer of servicing rights through the acquisition or sale of any Section 184 Guaranteed Loans.

(e) *Reporting requirements.* (1) On a date and manner established by Section 184 Program Guidance, the Servicer shall report to HUD the status of all Section 184 Guaranteed Loans in its Servicing portfolio.

(2) Where applicable, Servicer shall provide an Annual Loan Guarantee Fee reconciliation to the Borrower and HUD, in a manner and timeframe as prescribed by Section 184 Program Guidance.

(3) Servicer must comply with any other reporting requirements under § 1005.903.

(4) The Servicer's failure to submit required reports on time may subject the Holder and/or Servicer to sanctions and civil money penalties pursuant to §§ 1005.905 and 1005.907.

(f) *Business change reporting.* Within a timeframe and on a form as prescribed by Section 184 Program Guidance, the Servicer shall provide written notification to HUD of:

(1) All changes in the Servicer's legal structure, including, but not limited to, mergers, acquisitions, terminations, name, location, control of ownership, and character of business;

(2) Staffing changes related to servicing Section 184 Guaranteed Loans; and

(3) Any sanctions by another supervising entity.

(4) Failure to report changes within the timeframe prescribed in Section 184 Program Guidance may result in sanctions in accordance with §§ 1005.905 and 1005.907.

(g) *Annual recertification.* (1) All Servicers are subject to annual recertification on a date and manner as prescribed by Section 184 Program Guidance. With each annual recertification, Servicers must submit updated contact information, current FHA or another Federal agency recertification status, and other pertinent documents as prescribed by Section 184 Program Guidance.

(2) Servicers may request an extension of the recertification deadline in accordance with Section 184 Program Guidance.

(3) HUD will review the annual recertification submission and may request any further information required to determine recertification. HUD will provide written notification of approval to continue participation in the Section 184 Program or denial. A denial may be appealed pursuant to § 1005.909.

(4) If an annual recertification is not submitted by the reasonable deadline as

prescribed in Section 184 Program Guidance, HUD may subject the Servicer to sanctions under § 1005.907.

(h) *Program ineligibility.* Servicer may be deemed ineligible for Section 184 Program participation when HUD becomes aware that the entity or any officer, partner, director, principal, manager or supervisor of the entity was:

(1) Suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under 2 CFR part 2424, or under similar procedures of any other Federal agency

(2) Indicted for, or have been convicted of, an offense during the 7-year period preceding the date of the application for licensing and registration, or at any time preceding such date of the application, if such indictment or conviction reflects adversely upon the integrity, competency, or fitness to meet the responsibilities of the Servicer to participate in the title I or title II programs of the National Housing Act, or Section 184 Program;

(3) Found to have unresolved findings as a result of HUD or other governmental audit, investigation, or review;

(4) Engaged in business practices that do not conform to generally accepted practices of prudent Servicers or that demonstrate irresponsibility;

(5) Convicted of, or have pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage Loan industry during the 7-year period preceding the date of the application for licensing and registration, or at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust or money laundering;

(6) In violation of provisions of the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (12 U.S.C. 5101, *et seq.*) or any applicable provision of Tribal or State law; or

(7) In violation of 12 U.S.C. 1715z–13a or any other requirement established by HUD.

(i) *Records retention.* Servicers must maintain the servicing case binder for a period of three years beyond the date of satisfaction or maturity date of the Loan, whichever is sooner. However, where there is a payment of Claim, the Claim case binder must be retained for a period of at least five years after the final Claim has been paid. Section 184 Program Guidance shall prescribe additional records retention time depending on the circumstances of the Claim.

(ii) [Reserved]

§ 1005.709 Providing information to Borrower and HUD.

(a) Servicers shall provide Section 184 Guaranteed Loan information to Borrowers and arrange for individual loan consultation on request. The Servicer must establish written procedures and controls to assure prompt responses to inquiries. At a minimum, the Servicer must provide contact information to the Borrower in accordance with applicable Tribal, Federal and/or State laws, including:

(1) A written address a Borrower can use to request and submit information; and

(2) A toll-free telephone number a Borrower can use to verbally ask questions and seek information.

(b) All Borrowers must be informed of the system available for obtaining answers to loan inquiries, the Servicer's office from which needed information may be obtained and reminded of the system at least annually.

(c) Within 30 days after the end of each calendar year, the Servicer shall furnish to the Borrower a statement of the interest paid, and of the taxes disbursed from the escrow account during the preceding year.

(d) At the Borrower's request, the Servicer shall furnish a statement of the escrow account sufficient to enable the Borrower to reconcile the account.

(e) Each Servicer shall deliver to the Borrower a written notice of any transfer of the Servicing of the Section 184 Guaranteed Loan. The notice must be sent in accordance with applicable Tribal, Federal and/or State laws. Servicers must respond to Borrower inquiries pertaining to the transfer of Servicing in accordance applicable Tribal, Federal and/or State laws.

(f) Servicers must respond to HUD's written or electronic requests for information concerning individual accounts within three business days, or other timeframe established by Section 184 Program Guidance, or the deadline placed by other applicable law, whichever is sooner.

§ 1005.711 Assumption and release of personal liability.

(a) *Assumption.* Section 184 Guaranteed Loans may be fully assumed by an eligible substitute Borrower(s), based on the following:

(1) *Creditworthiness.* At least one person acquiring ownership must be determined to be creditworthy under subpart D of this part. If the Servicer is approved as a Direct Guarantee Lender, the Servicer performs a creditworthiness determination under § 1005.409. If the Servicer or Holder is not approved as a Direct Guarantee Lender, then the Servicer shall request a creditworthiness determination in a manner prescribed by Section 184 Program Guidance.

(2) *Trust Lands.* (i) As applicable, a lease approved by HUD, the Tribe or the BIA in the new Borrower's name is required. Servicers shall not proceed to closing on the assumption until and unless the Tribe has consented to assign the property interest to the new Borrower at closing. Where applicable, a final certified Title Status Report documenting the assignment of the lease or recordation of a new lease is required.

(ii) Where applicable, the lease may contain other conveyance restrictions. Servicer must review the lease for conveyance restrictions and ensure the lease complies with § 1005.303(b)(2).

(iii) Other requirements prescribed in Section 184 Program Guidance.

(b) *Fees.* The Servicer may collect from the Borrower the following fees and costs:

(1) A charge to compensate the Direct Guarantee Lender for reasonable and necessary expenses incurred as part of the assumption review and processing. HUD may establish limitations on the amount of any such charge.

(2) Reasonable and customary costs, but not more than the amount actually paid by the Direct Guarantee Lender, for any of the following items: credit report, verification of employment and the execution of additional release of liability forms.

(3) Additional fees and costs over and above the assumption fee and reasonable and customary costs cannot be assessed.

(c) *Release of liability.* At closing, the Servicer must release the existing Borrower from any personal liability on a form approved by HUD; the eligible and approved substitute Borrower assumes personal liability of the Section 184 Guaranteed Loan when the release is executed.

(d) *Modification of Loan Guarantee Certificate.* Upon completion of an assumption, the Servicer shall submit copies of the documentation required in this section to HUD, in a manner and form prescribed by HUD. HUD will review the assumption for compliance prior to issuing a revised Loan Guarantee Certificate.

§ 1005.713 Due-on-sale provision.

A Section 184 Guaranteed Loan shall contain a due-on-sale clause permitting acceleration, as prescribed by Section 184 Program Guidance. The Servicer shall promptly advise HUD of any prohibited sale or other transfer of the property or leasehold interest that occurs. The Servicer must request

approval from HUD to accelerate the Loan when any prohibited sale or transfer occurs. If acceleration is permitted by applicable Tribal, Federal, or State law, the Servicer shall certify as to the legal authority as part of the request for approval, in a form and manner prescribed by Section 184 Program Guidance. Within 30 days of receipt of HUD approval to accelerate, the Servicer shall notify the Borrower of default and acceleration.

§ 1005.715 Application of Borrower payments.

(a) Servicer shall comply with § 1005.509 with respect to the application of Borrower payments. The Servicer shall apply the payments in the following order:

(1) Escrow items, including monthly payments of the Annual Loan Guarantee Fee, rents, taxes, special assessments, and if required, flood insurance, fire, and other hazard insurance premiums;

(2) Interest accrued on the Section 184 Guaranteed Loan;

(3) Principal of the Section 184 Guaranteed Loan; and

(4) Late charges, if permitted under the terms of the Section 184 Guaranteed Loan and subject to such conditions as HUD may prescribe.

(b) Partial Payments shall be applied in accordance with § 1005.723.

§ 1005.717 Administering escrow accounts.

(a) The Servicer shall not use escrow funds for any purpose other than that for which they were received. It shall segregate escrow commitment deposits, work completion deposits, and all periodic payments received on account of leasehold rents, taxes, assessments, monthly payments of Annual Loan Guarantee Fee, and insurance charges or premiums, and shall deposit such funds with one or more financial institutions in a special account or accounts that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Leasehold rents on Trust Lands may require additional escrow segregation by Servicers, as may be prescribed in Section 184 Program Guidance.

(b) It is the Servicer's responsibility to ensure timely escrow disbursements and their proper application. Servicers must establish controls to ensure that accounts payable from the escrow account or the information needed to pay such accounts payable is obtained on a timely basis. Penalties for late payments for accounts payable from the escrow account must not be charged to the Borrower or HUD unless the Servicer can show that the penalty was the direct result of the Borrower's error or omission. The Servicer shall further comply with applicable Tribal, Federal, or State laws, including method of calculations related to escrow, the methods of collection and accounting, and the payment of the accounts payable for which the money has been escrowed.

(c) The Servicer shall not initiate foreclosure for escrow account shortfalls resulting from advances made pursuant to this section.

(d) When a Loan Guarantee Certificate is terminated voluntarily or due to Borrower's prepayment, in total satisfaction of the Section 184 Guaranteed Loan, amounts in the escrow account designated to pay any HUD required program fees shall be remitted to HUD in a form approved by HUD at the time of the required reporting related to the voluntary termination or prepayment. When a Section 184 Guaranteed Loan is prepaid in full, amounts held in escrow for taxes, hazard insurance, or rents, if applicable, that are not yet due or incurred, shall be released to the Borrower.

§ 1005.719 Fees and costs after endorsement.

(a) After endorsement, the Servicer may collect reasonable and customary fees and costs from the Borrower only as provided below. The Servicer may collect these fees or costs from the Borrower only to the extent that the Servicer is not reimbursed for such fees or costs by HUD. Permissible fees and costs include:

(1) Late fee in accordance with § 1005.511;

(2) Costs for processing or reprocessing a check returned as uncollectible (where bank policy permits, the Servicer must deposit a check for collection a second time before assessing an insufficient funds charge);

(3) Fees for processing a change of ownership of the property;

(4) Fees and costs for processing an assumption of the Section 184 Guaranteed Loan in connection with the sale or transfer of the property;

(5) Costs for processing a request for credit approval incurred in the course of processing an assumption or substitute Borrower;

(6) Costs for substitution of a hazard insurance policy at other than the expiration of term of the existing hazard insurance policy;

(7) Costs for modification of the Section 184 Guaranteed Loan requiring recordation of the agreement, including those for extension of term or re-amortization;

(8) Fees and costs for processing a partial release of the property;

(9) Attorney's and trustee's fees and costs actually incurred (including the cost of appraisals and advertising) when a Section 184 Guaranteed Loan has been referred to foreclosure counsel and subsequently the Section 184 Guaranteed Loan is reinstated. No attorney's fee and cost that exceeds the reasonable limits prescribed by Section 184 Program Guidance may be collected from the Borrower, unless approved by HUD;

(10) A trustee's fee, if the security instrument provides for payment of such a fee, for execution of a satisfactory release when the deed of trust is paid in full;

(11) Where permitted by the security instrument, attorney's fees and costs actually incurred in the defense of any suit or legal proceeding wherein the Servicer shall be made a party thereto by reason of the Section 184 Guaranteed Loan. No attorney's fee may be charged for the services of the Servicer's staff attorney or other employee;

(12) property preservation costs incurred, subject to reasonable limits prescribed by Section 184 Program Guidance, or otherwise approved by HUD;

(13) Fees permitted for providing a beneficiary notice under applicable Tribal, Federal and/or State law, if such a fee is not otherwise prohibited by the applicable law(s); and

(14) Such other reasonable and customary costs as may be authorized by HUD.

(b) Reasonable and customary fees must be based upon the actual cost of the work performed, including out-of-pocket expenses. HUD may establish maximum fees and costs which are reasonable and customary in different geographic areas. Except as provided in this part, no fee or costs shall be based on a percentage of either the face amount of the Section 184 Guaranteed Loan or the unpaid principal balance due.

§ 1005.721 Enforcement of late fees.

(a) A Servicer shall not commence foreclosure when the Borrower's only default is his or her failure to pay a late fee(s).

(b) A late fee that may be assessed under the Section 184 Guaranteed Loan but unpaid by the Borrower shall not justify Servicer's return of Borrower's payment. However, if the Servicer thereafter notifies the Borrower of his obligation to pay a late fee, such a fee may be deducted from any subsequent

payment or payments submitted by the Borrower or on his behalf if this is not inconsistent with the terms of the Section 184 Guaranteed Loan. Partial Payments shall be treated as provided in § 1005.723.

(c) A payment submission may be returned because of failure to include a late fee only if the Servicer notifies the Borrower before imposition of the charge of the amount of the monthly payment, the date when the late fee will be imposed, and either the amount of the late charge or the total amount due when the late fee is included.

(d) During the 60-day period beginning on the effective date of transfer of the Servicing of a Section 184 Guaranteed Loan, a late fee shall not be assessed. If a payment is received by the prior Servicer on or before the due date (including any applicable grace period allowed by the Section 184 Guaranteed Loan), no late fees shall be assessed by the new Servicer.

(e) A Servicer shall not assess a late fee for failure to pay a late fee, as prohibited under 12 CFR 1026.36.

§ 1005.723 Partial Payments.

(a) A Servicer must have a written policy on how it handles Partial Payments, in compliance with this section and that policy shall be readily available to the public.

(b) Upon receipt of a Partial Payment, a Servicer must provide the Borrower a copy of the Servicer's written Partial Payment policy and a letter explaining how it will handle the received Partial Payment. The Servicer may:

(1) Accept a Partial Payment and either apply it to the Borrower's account;

(2) Identify it with the Borrower's account number and hold it in a trust account pending disposition; or

(3) Return the Partial Payment(s) to the Borrower.

§ 1005.725 Handling prepayments.

Notwithstanding the terms of the Section 184 Guaranteed Loan, the Servicer shall accept a prepayment at any time and in any amount. Monthly interest on the Section 184 Guaranteed Loan must be calculated on the actual unpaid principal balance of the Section 184 Guaranteed Loan as of the date the prepayment is received, and not as of the next payment due date.

§ 1005.727 Substitute Borrowers.

Where an original Borrower requests the substitution of an existing Borrower on the Section 184 Guaranteed Loan:

(a) A Servicer who is Non-Direct Guarantee Lender or financial institution must obtain HUD approval for the substitution. A remaining original Borrower must be maintained and continue to be personally liable for the Section 184 Guaranteed Loan, notwithstanding any discharge entered in accordance with applicable Tribal, Federal, or State law.

(b) A Servicer who is a Direct Guarantee Lender may, subject to limitations established by HUD, approve an eligible substitute Borrower that meets the requirements for Section 184 Guaranteed Loans which they own or service, without specific approval from HUD. The remaining original Borrower must be maintained and continue to be personally liable for the Section 184 Guaranteed Loan, notwithstanding any discharge entered in accordance with applicable Tribal, Federal, or State law.

Servicing Default Section 184 Guaranteed Loans

§ 1005.729 Section 184 Guaranteed Loan collection action.

A Servicer shall take prompt action to collect amounts due from Borrowers to minimize the number of accounts in default status. The Servicer must exhaust all reasonable possibilities of collection, including assessing the Borrower's financial circumstances for loss mitigation options in accordance with § 1005.739. No Servicer shall commence foreclosure, assign the loan to HUD, or acquire title to a property until the requirements of this subpart have been completed.

§ 1005.731 Default notice to Borrower.

The Servicer shall provide notice to the Borrower as prescribed by applicable Tribal, Federal, or State law.

§ 1005.733 Loss mitigation application, timelines, and appeals.

(a) *Servicer response to loss mitigation application.* Within five days after the Servicer receives the Borrower's loss mitigation application, the Servicer must, in writing:

(1) Acknowledge receipt of the application;

(2) Determine if the application is complete or incomplete;

(3) If incomplete, notify the Borrower which documentation is required and missing, and that submission of the missing documents is required no later than fourteen days from the date of the response to provide missing documents to the Servicer. If the Borrower does not timely submit the requested documents, the Servicer must initiate live contact with the Borrower.

(b) *Servicer timeframe for evaluating complete loss mitigation application.* Within fourteen days of receipt of a complete application from Borrower, the Servicer must evaluate the application.

(c) *Notification of Servicer determination.* The Servicer shall provide written notification:

(1) Informing the Borrower of all available loss mitigation options;

(2) Encouraging the Borrower to review all available loss mitigation options and to contact the Servicer with any questions;

(3) Encouraging Borrowers, when feasible, to consider pursuing simultaneous loss mitigation options, to the extent it is offered by the Servicer;

(4) Informing the Borrower that if no loss mitigation option is elected or if all elected loss mitigation options fail, the Servicer may proceed with Tribal notice under § 1005.757(a) or First Legal Action at 180 days of default in accordance with § 1005.757 or § 1005.761; and

(5) Informing the Borrower that, upon First Legal Action or the assignment of the Section 184 Guaranteed Loan to HUD, the Servicer may no longer offer or authorize a pre-foreclosure sale as an alternative to foreclosure, and that the primary alternative to foreclosure shall be a deed-in-lieu/lease-in-lieu of foreclosure, subject to applicable Tribal, Federal, or State law or contractual requirements. HUD may permit other loss mitigation on a case-by-case basis if requested by the Servicer.

(d) *Appeal.* (1) If, after the Borrower receives the Servicer's loss mitigation options, the Borrower disagrees with Servicer's loss mitigation determination, the Borrower may appeal in writing and request that the Servicer re-evaluate the Borrower's loss mitigation application. The Borrower must submit its appeal no later than 14 days from the date of notification of the Servicer's loss mitigation determination, or any other deadline as may be prescribed by Section 184 Program Guidance. Upon receipt of the Borrower's appeal of the Servicer's loss mitigation determination, the Servicer shall re-evaluate the Borrower's loss mitigation application within thirty days but may not use the same staff that made the initial loss mitigation determination and shall notify the Borrower of its appeal decision in writing.

(2) If the Borrower submits a timely written appeal, the 180-day deadline for First Legal Action shall be suspended during the appeal process.

§ 1005.735 Occupancy inspection.

(a) *Occupancy inspection.* An occupancy inspection is a visual inspection of a Section 184 Guaranteed Loan property by the Servicer to determine if the property is vacant or

abandoned and to confirm the identity of any occupants.

(b) *Occupancy follow-up.* An occupancy follow-up is an attempt to communicate with the Borrower via letter, telephone, or other method of communication, other than on-site inspection, to determine occupancy when the Section 184 Guaranteed Loan remains in default after the initial occupancy inspection that did not result in determination of the Borrower's occupancy status.

(c) *Initial occupancy inspection.* The Servicer must perform the initial occupancy inspection after the 45th day of default but no later than the 60th day of the default when:

(1) A payment has not been received within 45 days of the due date or for any other defaults under the Section 184 Guaranteed Loan; and

(2) Efforts to reach the Borrower or occupant have been unsuccessful.

(d) *Occupancy follow-ups and continued inspections.* If the Servicer is unable to determine the Borrower's occupancy status through the initial occupancy inspection, the Servicer must perform occupancy follow-ups and, if necessary, occupancy inspections every 25–35 days from the last inspection until the occupancy status is determined.

(e) *Occupancy inspections during bankruptcy.* When payments are not submitted and a Borrower is a debtor in bankruptcy, the Servicer must contact either the bankruptcy trustee or the Borrower's bankruptcy attorney, if the Borrower is represented, for information concerning the occupancy status of the property or if an occupancy inspection is necessary or requires authorization. If the Servicer cannot determine that the property is vacant or abandoned during the period of the automatic stay, the Servicer must document in the servicing case binder with evidence that it timely contacted the attorney or trustee.

(f) *Occupancy inspections on Trust Land.* Servicers must make an initial contact with the Tribe in advance of any occupancy inspection on Trust Land to review the Tribe's protocol for conducting occupancy inspections. After the initial contact, Servicers must contact the Tribe in advance of an occupancy inspection on Trust Land in accordance with the Tribe's protocol.

(g) *Alternative deadlines.* HUD may prescribe alternative extended deadlines to the requirements in paragraphs (c) and (d) of this section through Section 184 Program Guidance.

(h) *Conflicts with other law.* Nothing in this section shall require a Servicer to conduct an inspection when prohibited by applicable Tribal, Federal, State, or local law.

§ 1005.737 Vacant or abandoned property procedures.

If the Servicer determines through an occupancy inspection or occupancy follow-up that the property is vacant or abandoned, or if the Servicer is notified by HUD that the Tribe or the TDHE determined the property is vacant or abandoned, the Servicer must send a letter, via certified mail or other method providing delivery confirmation, to all Borrowers at the property address, or other known address of Borrower, informing them of the Servicer's determination that the property is vacant or abandoned. This letter must include the Servicer's contact information.

(a) If occupancy is verified through the delivery confirmation, the Servicer shall continue pursuing collection efforts and loss mitigation as required by §§ 1005.729 and 1005.739 until the Servicer has the authority to proceed to First Legal Action in accordance with § 1005.763 or Tribal First Right of Refusal in accordance with § 1005.759.

(b) If the Servicer verifies through the delivery confirmation process that the property is vacant or abandoned; then the Servicer shall:

(1) Commence first-time vacant property inspection;

(2) Take appropriate property preservation and protection actions to secure and maintain the property;

(3) For properties on Trust Land:

(i) Notify the Tribe that the property is vacant or abandoned; and

(ii) Complete Tribal First Right of Refusal under § 1005.759;

(4) For fee simple Properties, complete First Legal Action within 30 days;

(5) Continue to perform vacant property inspections every 25–35 days until the default is cured, the property is disposed of, or the bankruptcy court has granted approval for the Servicer to contact the Borrower or to take any required property preservation actions; and

(6) Retain documentation in the servicing case binder providing evidence of activities required by HUD in this section or otherwise provided in Section 184 Program Guidance.

(c) *Alternative deadlines.* HUD may prescribe alternative extended deadlines to the time requirements of this section in Section 184 Program Guidance.

(d) *Conflicts with other law.* Nothing in this section shall require a Servicer to communicate with a Borrower in a manner prohibited by applicable Tribal, Federal, or State law.

Servicing Default Section 184 Guaranteed Loans Under the Loss Mitigation Program

§ 1005.739 Loss mitigation.

(a) The purpose of loss mitigation is to attempt to cure the Borrower's default and minimize financial loss to HUD.

(b) The Servicer must offer a loss mitigation option, if applicable, to the Borrower and if practical under the circumstances, within 180 days of the Date of Default, or any extended timeframe prescribed by Section 184 Program Guidance.

(c) Loss mitigation options include:

(1) A forbearance plan;

(2) Assumption;

(3) A loan modification;

(4) Loss mitigation advance;

(5) Pre-foreclosure sale;

(6) A deed-in-lieu/lease-in-lieu of foreclosure; or

(7) Other options, as may be prescribed in Section 184 Program Guidance.

(d) A loss mitigation review shall, to the greatest extent possible, be based on a full financial assessment of the Borrower at time of default, and the collection technique(s) must take into account the circumstances particular to each Borrower.

(e) HUD may prescribe conditions and requirements in Section 184 Program Guidance for the eligibility and appropriate use of loss mitigation options.

(f) Within 180 days of default, or any extended timeframe prescribed by Section 184 Guidance, if the Borrower fails to meet their loss mitigation option requirements, the Servicer shall have up to 45 days from the date of the failure of the loss mitigation to determine whether the Borrower should continue with the current loss mitigation option or have Borrower enter into an alternate loss mitigation option.

(g) If a Borrower does not accept, is not eligible for, or fails loss mitigation, the Servicer shall complete First Legal Action in accordance with § 1005.763 or Tribal First Right of Refusal in accordance with § 1005.759.

(h) Documentation must be maintained for the initial and all subsequent evaluations and resulting loss mitigation actions in the servicing case binder in accordance with § 1005.219(d)(2).

(i) A Servicer that is found to have failed to engage in and comply with loss mitigation as required under this subpart may be subject to enforcement action by HUD, including but not limited to sanctions under §§ 1005.905 and 1005.907.

(j) HUD may provide alternative requirements to this section when there

is a national emergency or disaster and publish such alternative requirements in Section 184 Program Guidance.

§ 1005.741 Notice to Tribe and BIA—Borrower default.

(a) When two consecutive Section 184 Guaranteed Loan payments are in default or sixty days after other default under the Section 184 Guaranteed Loan, the Servicer shall provide notice of default to:

(1) The BIA, where applicable, for Section 184 Guaranteed Loan property that is on Trust Land, in accordance with applicable BIA requirements; and,

(2) The Tribe, where applicable, for any Section 184 Guaranteed Loan property where a Borrower has provided consent of notification in accordance with § 1005.501(j).

(b) The Servicer shall continue exploring loss mitigation options, consistent with the requirements under this subpart, with the Borrower during the notification process to the Tribe and/or BIA, as applicable.

§ 1005.743 Relief for Borrower in military service.

(a) *Postponement of principal payments.* If the Borrower is a person in ''military service,'' as such term is defined in the Servicemembers Civil Relief Act (50 U.S.C. 3901–4043), the Servicer may, by written agreement with the Borrower, postpone for the period of military service and three months thereafter any part of the monthly payment which represents the Amortization of principal. The agreement shall contain a provision for the resumption of monthly payments after such a period in amounts which will completely amortize the Section 184 Guaranteed Loan within the maturity as provided in the original loan term.

(b) *Forbearance.* Forbearance plans may be available to Borrowers in military service pursuant to § 1005.745(e).

(c) *Postponement of foreclosure.* If at any time during default the Borrower is a person in ''military service,'' as such term is defined in the Servicemembers Civil Relief Act, the period during which the Borrower is in such military service shall be excluded in computing the period within which the Servicer shall complete First Legal Action to acquire the property or Tribal notice under § 1005.759(a). No postponement or delay in the prosecution of foreclosure proceedings during the period the Borrower is in such military service shall be construed as failure on the part of the Servicer to exercise reasonable diligence in prosecuting such proceedings to completion as required by this subpart.

§ 1005.745 Forbearance plans.

(a) *General.* Forbearance plans are arrangements between a Servicer and Borrower that may allow for a period of reduced and/or suspended payments and specific terms for the repayment plan. During the Forbearance period, where Borrower is in compliance with the Forbearance plan, the Servicer shall not proceed to First Legal Action or complete Tribal First Right of Refusal notice under § 1005.759 until expiration or default of the Agreement.

(b) *Informal forbearance.* Informal forbearance plans are oral agreements, where permitted under Tribal or State law, between a Servicer and Borrower allowing for reduced or suspended payments and may provide specific terms for repayment.

(1) *Eligibility.* The Servicer may offer an informal forbearance plan to a Borrower with a delinquent Section 184 Guaranteed Loan who is not experiencing a loss of income or an increase in living expenses that can be verified.

(2) *Duration.* The period shall be three months or less.

(c) *Formal forbearance.* Formal forbearance plans are written agreements executed by the Servicer and Borrower, allowing for reduced or suspended payments and such plans may include specific terms for repayment.

(1) *Eligibility.* The Servicer may offer a formal forbearance plan when:

(i) The Borrower is not experiencing a loss of income or increase in living expenses that can be verified; or

(ii) If the Servicer determines that the Borrower is otherwise ineligible for other loss mitigation options but has sufficient surplus income or other assets that could repay the indebtedness.

(2) *Agreement.* The Servicer shall execute a written agreement with the Borrower outlining the terms and conditions of the formal forbearance. The Servicer must include in the formal forbearance agreement a provision for the resumption of monthly payments on a date certain, with repayment in amounts which will completely reinstate the Section 184 Guaranteed Loan no later than the original maturity date. The Servicer must retain in the servicing case binder a copy of the written formal forbearance agreement postponing principal and interest payments.

(3) *Duration.* The repayment period shall be equal to or greater than three months but not to exceed six months, unless authorized by HUD.

(4) *Required documents.* The Servicer must obtain from the Borrower any necessary supporting documentation and retain this documentation in the servicing case binder.

(5) *Property condition.* The Servicer must conduct any review it deems necessary, including a property inspection, when the Servicer has reason to believe that the physical condition of the property adversely impacts the Borrower's use or ability to support the debt as follows:

(i) Financial information provided by the Borrower indicating large expenses for property maintenance;

(ii) The Servicer receives notice from local government or other third parties regarding property condition; or

(iii) The property may be affected by a disaster event.

(iv) If significant maintenance costs contributed to the default or are affecting the Borrower's ability to make payments under the loan or formal forbearance agreement, the Servicer may provide in the formal forbearance agreement a period of loan forbearance during which repairs specified in the agreement will be completed at the Borrower's expense.

(d) *Special forbearance-unemployment.* The special forbearance-unemployment loss mitigation option is available when one or more of the Borrowers has become unemployed and the loss of employment has negatively affected the Borrower's ability to continue to make their monthly Section 184 Guaranteed Loan payment. It is a formal forbearance plan with a written agreement executed by the Servicer and Borrower, allowing for reduced or suspended payments and such plan may include specific terms for repayment.

(1) *Eligibility.* The Servicer must ensure that the Borrower meets all the following eligibility requirements:

(i) The Section 184 Guaranteed Loan must be at least three months in default.

(ii) The Borrower is experiencing a verified loss of income or increase in living expenses due to loss of employment.

(iii) The Borrower must continue to occupy the property as a Principal Residence.

(iv) The Borrower must have a verified unemployment status and no Borrower is currently receiving continuous income; or an analysis of the Borrower's financial information indicates that special forbearance-unemployment is the best or only option available for the Borrower.

(2) *Agreement.* The Servicer shall execute a written special forbearance-unemployment agreement with the

Borrower outlining the terms and conditions of the special forbearance-unemployment. The Servicer must include in the special forbearance-unemployment agreement a provision for the resumption of monthly payments on a date certain, with repayment in amounts which will completely reinstate the Section 184 Guarantee Loan no later than the original maturity. The Servicer must retain in the servicing case binder a copy of the written special forbearance-unemployment agreement postponing principal and interest payments.

(3) *Duration.* The repayment period shall not exceed six months.

(4) *Required documents.* The Servicer must obtain from the Borrower such supporting third party documentation, including receipts of unemployment benefits or an affidavit signed by the Borrower, stating the date that the Borrower became unemployed and stating that the Borrower is actively seeking, and is available, for employment. The Servicer must retain this documentation in the servicing case binder.

(5) *Property condition.* The Servicer must conduct any review it deems necessary, including a property inspection, when the Servicer has reason to believe that the physical condition of the property adversely impacts the Borrower's use or ability to support the debt as follows:

(i) Financial information provided by the Borrower indicating large expenses for property maintenance;

(ii) The Servicer receives notice from local government or other third parties regarding property condition; or

(iii) The property may be affected by a disaster event.

(iv) If significant maintenance costs contributed to the default or are affecting the Borrower's ability to make payments under the Section 184 Guaranteed Loan or special forbearance-unemployment agreement, the Servicer may provide in the special forbearance-unemployment agreement a period of forbearance during which repairs specified in the agreement will be completed at the Borrower's expense.

(e) *Special forbearance-servicemember.* The Servicer may, by written special forbearance-servicemember agreement with the Borrower, postpone any part of the monthly Section 184 Guaranteed Loan that represents Amortization of principal, for the period permitted by HUD under § 1005.743.

(1) *Eligibility.* The servicemember must be in active-duty military service and meet the criteria established in 50 U.S.C. 3911. Dependents of servicemembers are entitled to protections in limited situations per the Servicemembers Civil Relief Act, as amended.

(2) *Duration.* The repayment period shall be for the period of military service and three months thereafter.

(3) *Required documents.* The Borrower shall provide the Servicer with a copy of the servicemember's deployment orders.

(4) *Agreement.* (i) The Servicer shall execute a written special forbearance-servicemember agreement with the Borrower outlining the terms and conditions of the special forbearance-servicemember agreement. The Servicer must include in the special forbearance-servicemember agreement a provision for the resumption of monthly payments on a date certain, with repayment in amounts which will completely reinstate the Section 184 Guaranteed Loan no later than the original maturity date. The Servicer must retain in the servicing case binder a copy of the written special forbearance-servicemember agreement postponing principal and interest payments.

(ii) The Servicer shall comply with all applicable requirements under the Servicemembers Civil Relief Act.

(f) *Continued review and re-evaluation.* The Servicer shall monitor the Borrower's compliance with an agreement under § 1005.743 every 30 days, until the end of the agreement.

(g) *Other special forbearances.* HUD may provide for a special forbearance in response to a disaster or other national emergency or other circumstances approved by the Secretary.

§ 1005.747 Assumption.

The Servicer shall explore assumption as a loss mitigation option with the Borrower in accordance with § 1005.711. Assumptions associated with loss mitigation must result in the cure of the default and reinstatement of the Section 184 Guaranteed Loan.

§ 1005.749 Loan modification.

(a) *General.* A Section 184 Guaranteed Loan modification may include a change in one or more of the following: interest rate; capitalization of delinquent principal, interest, or escrow items; or re-Amortization of the balance due. A Section 184 Guaranteed Loan modification may not be used as a means to reinstate the Section 184 Guaranteed Loan prior to sale or assumption.

(b) *Eligibility.* The Servicer must ensure that the Borrower is able to support the monthly loan payment after the loan is modified.

(c) *Borrower qualifications.* The Servicer must ensure that the Borrower meets the following eligibility criteria:

(1) At least 12 months have elapsed since the closing date of the original Section 184 Guaranteed Loan.

(2) The Borrower has not executed a loan modification agreement in the past 24 months. The number of loan modification agreements may be limited as prescribed by Section 184 Program Guidance. The Servicer may approve the first loan modification agreement under the Loan, and HUD must approve any subsequent loan modifications.

(3) The Borrower's default is due to a verified loss of income or increase in living expenses.

(4) One or more Borrowers receive continuous income sufficient to support the monthly payment under the modified rate and term, although not sufficient to sustain the original Section 184 Guaranteed Loan and repay the arrearage.

(5) The Borrower's minimum percentage of net income shall be prescribed by HUD.

(7) The Borrower's monthly payment, which consists of principal, interest, taxes, insurance, and other escrow, can be reduced by the greater of 10 percent of the existing monthly Section 184 Guaranteed Loan payment amount but no less than $100, using an agreed upon interested rate in accordance with § 1005.451 and amortizing for a term up to 30 years or any other period as may be prescribed by HUD.

(8) The Borrower has successfully completed a three-month trial payment plan based on the Section 184 Guaranteed Loan estimated modification monthly payment amount.

(d) *Property conditions.* The Servicer must conduct any review it deems necessary, including a property inspection, when the Servicer has reason to believe that the physical conditions of the property adversely impact the Borrower's use or ability to support the debt as follows:

(1) Financial information provided by the Borrower indicates large expenses for property maintenance;

(2) The Servicer receives notice from local government or other third parties regarding property condition; or

(3) The property is affected by a disaster event.

(e) *Trial payment plans.* A trial payment plan is a written agreement executed by all parties on the Section 184 Guaranteed Loan, for a minimum period of three months, during which the Borrower must make the agreed-upon consecutive monthly payments prior to execution of the final loan modification.

(1) *Trial payment plan terms.* The Servicer must ensure that the following apply to interest rates and monthly payment amounts under trial payment plan:

(i) The interest rate for the trial payment plan and the loan modification must in accordance with § 1005.451.

(ii) The interest rate is established when the trial payment plan is offered to the Borrower.

(iii) The established monthly loan modification payment must be the same or less than the established monthly trial payment.

(2) *Start of trial payments.* The Servicer must send the proposed trial payment plan agreement to the Borrower at least 30 days before the date the first trial payment is due.

(3) *Trial payment plan signatures.* (i) All parties on the Section 184 Guaranteed Loan and all parties that will be subject to the modified loan must execute the trial payment plan agreement unless:

(A) A Borrower or co-Borrower is deceased;

(B) A Borrower and a co-Borrower are divorced; or

(C) A Borrower or co-Borrower on the Section 184 Guaranteed Loan has been released from liability as the result of an approved substitute Borrower.

(ii) When a Borrower uses a non-Borrower household member's income to qualify for a loan modification, the non-Borrower household member must be on the modified note and Section 184 Guaranteed Loan and sign the trial payment plan agreement.

(4) *Application of trial payments.* The Servicer must treat payments made under the trial payment plan as Partial Payments, held in a suspense account and applied in accordance with procedures in the Section 184 Program Guidance and applicable Federal regulations.

(5) *End of trial payment plan period.* The Servicer must offer the Borrower a permanent loan modification after the Borrower's successful completion of a trial payment plan.

(6) *Trial payment plan failure.* The Borrower fails a trial payment plan when one of the following occurs:

(i) The Borrower does not return the executed trial payment plan agreement within the month the first trial payment is due;

(ii) The Borrower vacates or abandons the property; or

(iii) The Borrower does not make a scheduled trial payment plan payment by the last day of the month it was due.

(7) *Alternatives to foreclosure after trial payment plan failure.* If a Borrower fails to successfully complete a trial payment plan, the Servicer must:

(i) Provide notice to the Borrower of the failure to comply with the trial payment plan; and

(ii) Offer the Borrower the opportunity for a deed-in-lieu/lease-in-lieu of foreclosure, with seven days to respond to the offer.

(8) *Funds remaining at the end of trial payment period.* (i) At the end of a successful trial payment plan, any remaining funds that do not equal a full payment must be applied to any escrow shortage or be used to reduce the amount that would be capitalized onto the principal balance.

(ii) *Trial payment plan failure.* If the Borrower does not complete the trial payment plan, the Servicer must apply all funds held in suspense to the Borrower's account in the established order of priority.

(9) *Reporting of trial payment plans.* The Servicer must report the trial payment plans to HUD in the manner prescribed in Section 184 Program Guidance.

(f) *Loan modification documents.* HUD does not require a specific format for the loan modification documents; however, the Servicer must use documents that conform to all applicable Tribal, Federal, and State laws.

(g) *Post-modification review and modification of Loan Guarantee Certificate.* Upon completion of a successful trial payment plan and within 30 days of the execution of the loan modification documents, the Servicer shall provide copies of the loan modification documents to HUD. The Servicer shall comply with additional processing instructions as prescribed by Section 184 Program Guidance.

§ 1005.751 Loss mitigation advance.

(a) *General.* A loss mitigation advance is a reimbursement by HUD to the Holder for the advancement of funds on behalf of the Borrower in the amount necessary to assist in the reinstatement of the Borrower's Section 184 Guaranteed Loan. The loss mitigation advance is a subordinate lien in favor of HUD. More than one loss mitigation advance may be made to an eligible Borrower.

(b) *Borrower eligibility.* To be eligible for a loss mitigation advance:

(1) The Borrower's Section 184 Guaranteed Loan is 90 or more days past due:

(2) The Borrower has the ability to resume making on-time monthly loan payments and the property is owner occupied.

(3) [Reserved]

(c) *Terms.* The loss mitigation advance shall:

(1) Include all arrearages, which refers to any amounts needed to bring the Borrower's Section 184 Guaranteed Loan current;

(2) Provide that all prior loss mitigation advances, if any, in total must not exceed 30 percent of the unpaid principal balance as of the date of default;

(3) Include any other terms and conditions, as may be prescribed by Section 184 Program Guidance; and

(4) Along with another loss mitigation, where applicable, fully reinstate the Section 184 Guaranteed Loan upon the Borrower's acceptance of the loss mitigation advance.

§ 1005.753 Pre-foreclosure sale.

(a) *General.* A pre-foreclosure sale, also known as a short sale, refers to the sale of real estate that generates proceeds that are less than the amount owed on the property and any junior lien holders have agreed to release their liens and forgive the deficiency balance on the real estate.

(b) *Eligibility.* To be eligible for a pre-foreclosure sale, a Servicer must ensure:

(1) The Section 184 Guaranteed Loan was Originated at least 12 months prior to default;

(2) The default was due to an adverse and unavoidable financial situation impacting the Borrower;

(3) The property has a current fair market value that is equal to or less than the unpaid principal balance;

(4) The Borrower elected the pre-foreclosure sale option within 120 days, or any other date as prescribed by Section 184 Program Guidance, from default; and

(5) All other requirements of the pre-foreclosure sale loss mitigation option under this section are met.

(c) *Surchargeable damages.* Surchargeable damage is damage to the Section 184 Guaranteed Loan property caused by fire, flood, earthquake, tornado, boiler explosion (for condominiums only) or Servicer neglect. The Servicer is responsible for the cost of surchargeable damage, and these amounts are not reimbursable by HUD. The Servicer must request HUD approval before approving the use of the pre-foreclosure sale loss mitigation option when the property has sustained surchargeable damage. If the damage is not surchargeable damage, the Servicer is not required to obtain HUD approval prior to approving the Approval to Participate Agreement with Borrower. The Servicer must comply with paragraph (p) of this regulation where a hazard insurance claim must be filed.

(d) *Condition of title or Title Status Report.* (1) For Section 184 Guaranteed

Loans on fee simple lands, a Servicer must ensure the property has Good and Marketable Title. Before approving a pre-foreclosure sale loss mitigation option, the Servicer must obtain title evidence or a preliminary report verifying that the title is not impaired by unresolvable title defects or junior liens that cannot be discharged.

(2) For Section 184 Guaranteed Loans on Trust Land, the Servicer shall obtain a certified Title Status Report from the BIA. Before approving a pre-foreclosure sale loss mitigation option, the Servicer must verify that the property is not encumbered by unresolvable title defects or junior liens that cannot be discharged.

(e) *Discharge of junior liens.* The Servicer must contact all junior lienholders to verify the Borrower has secured a discharge of the junior liens.

(f) *Property list price and valuation*—(1) *List price.* The Servicer must ensure that the Borrower lists the property for sale at no less than the ''as-is'' value, as determined by an appraisal completed in accordance with the requirements in § 1005.457.

(2) *Appraisals.* The Servicer must have the property appraised in accordance with § 1005.457 and pursuant to the following requirements:

(i) The appraisal must contain an ''as-is'' fair market value for the subject property;

(ii) A copy of the appraisal must be provided to HUD. A copy of the appraisal must be provided to the Borrower or sales agent, upon request;

(iii) A Servicer must present HUD with a request for a variance to approve a pre-foreclosure sale transaction if one of the following conditions exists:

(A) The current appraised value of the property is less than the unpaid principal balance by an amount of $75,000 or greater;

(B) The appraised value is less than 50 percent of the unpaid principal balance; or

(C) The appraisal is deemed unacceptable because the as-is value cannot be affirmed using a Broker's Price Opinion or Automated Valuation Model within 10 percent of the value.

(iv) Paragraph (f)(2)(iii) of this section is not applicable to property on Trust Land unless there is a viable real estate market;

(v) Under paragraph (f)(2)(iii) of this section, the Servicer must note on the variance request the specific reason for the request and attach any supporting documents needed for HUD review;

(vi) The Servicer must obtain HUD approval before authorizing the marketing of the property; and

(vii) All pre-foreclosure appraisals must be accompanied by a broker's price opinion or an automated valuation model unless the property is located on Trust Land.

(g) *Required documents.* After determining that a Borrower and property meet the pre-foreclosure sale eligibility requirements, the Servicer shall send to the Borrower:

(1) *Pre-foreclosure sale approval to participate agreement.* The agreement, on a form prescribed by Section 184 Program Guidance, shall list the pre-foreclosure sale requirements, including the date by which the Borrower's sales contract must be executed during the pre-foreclosure sale marketing period; and

(2) *Pre-foreclosure addendum.* The addendum shall be in the form prescribed by Section 184 Program Guidance. The pre-foreclosure sale addendum must be fully executed at closing.

(h) *Delivery of documents to Borrower.* Documents listed under paragraphs (g)(1) and (2) of this section must be sent to the Borrower via methods providing delivery confirmation with a date and time stamp of delivery. The Servicer must inform the Borrower that the documents must be signed and returned to the Servicer within 10 days of receipt.

(i) *Copies to HUD.* The Servicer must send signed copies of the documents in paragraphs (g)(1) and (2) of this section to HUD within 15 days of receipt from the Borrower.

(j) *Tribal Notification for Properties on Trust Land.* At the same time the Servicer sends the Approval to Participate Agreement to the Borrower, in accordance with the requirements as prescribed by Section 184 Program Guidance, the Servicer shall send a notice to the Tribe and the TDHE of the option to assume the Section 184 Guaranteed Loan or purchase the property.

(k) *Use of a real estate broker.* The Borrower is responsible for retaining the services of a HUD-approved real estate broker/agent within seven days of the signed Approval to Participate Agreement. For Trust Land, the Borrower may request, through the Servicer, an exception to this section. If an exception is granted, HUD will work with the Borrower, Servicer and Tribe or TDHE to sell the property or pursue another loss mitigation option.

(l) *Required listing disclosure.* The Servicer shall require the listing agreement between the seller and the agent/broker to include the following cancellation clause: ''Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the Broker, and without payment of a commission or any other consideration if the property is conveyed to HUD or the Holder. The sale completion is subject to approval by the Servicer and HUD.'' This section is not applicable to property on Trust Land unless a HUD-approved real estate broker/agent is utilized.

(m) *Pre-foreclosure sale marketing, settlement period, failure to complete pre-foreclosure sale.* The Borrower has seven days, or other timeframe as prescribed by Section 184 Program Guidance from the date of the signed approval to participate agreement to market the property in the Multiple Listing Service, or other marketing resource if the property is on Trust Land.

(1) The property must be marketed in the Multiple Listing Service or other marketing resource for a period of 90 days, or other timeframe as prescribed by Section 184 Program Guidance before Borrower may consider any offers.

(2) During the marketing period, Servicers must conduct a monthly review of the property's marketing status with the real estate broker/agent or the Tribe or TDHE, for property on Trust Land.

(3) The maximum marketing period for the sale of the property is 120 days from the execution date of the Approval to Participate Agreement and the date of the property settlement. If there is a signed contract of sale, but property settlement has not occurred by the end of the 120 Days, the marketing period may be extended up to 60 days to allow for closing to occur.

(4) Within 30 days of the end the marketing period, or no earlier than 120 days of default, whichever is later, if no settlement has occurred, Servicer shall provide electronic or written notice to the Borrower of the Borrower's default under the pre-foreclosure sale agreement and present the agreed upon deed-in-lieu/lease-in-lieu of foreclosure, with title being taken in the name of the Secretary. The Borrower shall have ten days from the date of the notice to respond in writing or by electronic means. If the Servicer receives no response or if the Servicer receives notice of the Borrower's rejection of the alternative to foreclosure, the Servicer must complete First Legal Action within 30 days or Tribal First Right of Refusal within 14 days of the Borrower's deadline to respond or actual rejection response date, whichever is sooner.

(n) *Property inspections and maintenance.* The Servicer shall inspect the property in accordance with

§ 1005.735 and follow § 1005.739, where applicable.

(o) *Disclosure of damage after pre-foreclosure sale approval.* In the event the property becomes damaged, the Borrower must report damage to the Servicer in accordance with the pre-foreclosure sale agreement. When the Servicer becomes aware that the property has sustained damage after a Borrower has received the Approval to Participate Agreement, the Servicer must evaluate the property to determine if it continues to qualify for the pre-foreclosure sale program or terminate participation if the extent of the damage changes the property's fair market value.

(p) *Hazard insurance claim.* Where applicable, the Servicer must work with the Borrower to file a hazard insurance claim and either: use the proceeds to repair the property; or adjust the Claim by the amount of the insurance settlement (Non-Surchargeable Damage) or the Secretary's repair cost estimate.

(q) *Evaluation of offers.* The Servicer must receive from the listing real estate broker/agent an offer that yields the highest net return to HUD and meets HUD's requirements for bids, as follows:

(1) *Real estate broker/agent to ensure execution of documents.* The real estate broker/agent must ensure that the accepted offer and the pre-foreclosure sale addendum are signed by all applicable parties before submitting to the Servicer for approval, and

(2) *Arm's length transaction.* The transaction must be between two unrelated parties who are each acting in their own best interest.

(3*) Back-up offers.* Once an offer has been submitted to the Servicer for approval, the real estate broker/agent must retain any offer that the seller elects to hold as backup offer until a determination has been made on the previously submitted offer.

(r) *Contract approval by Servicer*—(1) *Review of sales contract.* In reviewing the contract of sale, the Servicer must:

(i) Ensure that the pre-foreclosure sale is an outright sale of the property and not a sale by assumption.

(ii) Review the sales documentation to determine that there are no hidden terms or special agreements existing between any of the parties involved in the pre-foreclosure sale transaction; and no contingencies that might delay or jeopardize a timely settlement.

(iii) Determine that the property was marketed pursuant to HUD requirements.

(iv) Not approve a Borrower for a pre-foreclosure sale if the Servicer knows or has reason to know of the Borrower's fraud or misrepresentation of information.

(2) *Sales contract review period.* After receiving an executed contract of sale and pre-foreclosure sale addendum from the Borrower, the Servicer must send to the Borrower a Sales Contract Review, on a form prescribed by Section 184 Program Guidance, no later than five business days after the Servicer's receipt of an executed contract for sale.

(3) *Net sale proceeds.* (i) Net sale proceeds are the proceeds of a pre-foreclosure sale, calculated by subtracting reasonable and customary closing and settlement costs from the property sales price.

(ii) Regardless of the property sale price, a Servicer may only approve a pre-foreclosure sale contract for sale if the net sale proceeds are at or above minimum allowable thresholds established by HUD. The net sale proceeds must conform to the requirements on the Pre-Foreclosure Sale Approval to Participate Agreement.

(iii) The Servicer is liable for any Claim overpayment on a pre-foreclosure sale transaction that closes with less than the required net sale proceeds unless a variance has been granted by HUD.

(4) *Unacceptable settlement costs.* The Servicer must not include the following costs in the Net Sale Proceeds calculation:

(i) Repair reimbursements or allowances;

(ii) Home warranty fees;

(iii) Discount points or loan fees;

(iv) Servicer's title insurance fee;

(v) Third-party fees incurred by the Servicer or Borrower to negotiate a pre-foreclosure sale; and

(vi) Any other costs as may be prohibited in Section 184 Program Guidance.

(5) *Other third-party fees.* (i) With the exception of reasonable and customary real estate commissions, the Servicer must ensure that third-party fees incurred by the Servicer or Borrower to negotiate a pre-foreclosure sale are not included on the Closing Disclosure or similar legal documents unless explicitly permitted by Tribal or State law.

(ii) The Servicer, its agents, or any outsourcing firm it employs must not charge any fee to the Borrower for participation in the pre-foreclosure sale.

(s) *Closing and post-closing responsibilities.* For the purpose of this section, with respect to Trust Land, the closing agent may be selected by the Tribe or TDHE.

(1) *Closing worksheet.* Prior to closing, the Servicer must provide the closing agent with a Closing Worksheet, on a form prescribed by HUD, listing all amounts payable from net sale proceeds; and a pre-foreclosure sale addendum signed by all parties.

(2) *Servicer review of final terms of pre-foreclosure sale transaction.* The Servicer will receive from the closing agent a calculation of the actual net sale proceeds and a copy of the Closing Disclosure or similar legal document. The Servicer must ensure that:

(i) The final terms of the pre-foreclosure sale transaction are consistent with the purchase contract;

(ii) Only allowable settlement costs have been deducted from the seller's proceeds;

(iii) The net sale proceeds will be equal to or greater than the allowable thresholds;

(iv) A Closing Worksheet form is included in the claim case binder; and

(v) It reports the pre-foreclosure sale to consumer reporting agencies.

(3) *Closing agent responsibilities after final approval.* Once the Servicer gives final approval for the pre-foreclosure sale and the settlement occurs, the closing agent must:

(i) Pay the expenses out of the Net Sale Proceeds and forward the Net Sale Proceeds to the Servicer;

(ii) Forward a copy of the Closing Disclosure or similar legal document to the Servicer to be included in the Claim case binder no later than three business days after the pre-foreclosure sale transaction closes; and,

(iii) Sign the pre-foreclosure sale Addendum on or before the date the pre-foreclosure sale transaction closes, unless explicitly prohibited by Tribal or State statute.

(4) *Satisfaction of debt.* Upon receipt of the portion of the net sale proceeds designated for Section 184 Guaranteed Loan satisfaction, the Servicer must apply the funds to the outstanding balance and discharge any remaining debt, release the lien in the appropriate jurisdiction, and may file a Claim.

(5) *Discharge of junior liens.* The Servicer must verify the pre-foreclosure sale will result in the discharge of junior liens as follows:

(i) If the Borrower has the financial ability, the Borrower must be required to satisfy or otherwise obtain release of liens.

(ii) If no other sources are available, the Borrower may obligate up to a maximum amount from sale proceeds towards discharging the liens or encumbrances, such maximum amount will be prescribed by HUD.

(t) *Early termination of pre-foreclosure participation*—(1) *Borrower-initiated termination.* The Servicer must permit a Borrower to voluntarily terminate participation in the pre-

foreclosure sale loss mitigation option at any time.

(2) *Servicer-initiated termination.* The Servicer shall terminate a Borrower's pre-foreclosure sale program participation for any of the following reasons:

(i) Discovery of unresolvable title problems;

(ii) Determination that the Borrower is not acting in good faith to market the property;

(iii) Significant change in property condition or value;

(iv) Re-evaluation based on new financial information provided by the Borrower that indicates that the case does not qualify for the pre-foreclosure sale option; or

(v) Borrower has failed to complete a pre-foreclosure sale within the time limits prescribed by Section 184 Program Guidance and no extensions of time have been granted by HUD.

(3) *Notification of pre-foreclosure sale Program Participation Termination.* The Servicer must forward to the Borrower a written explanation for terminating their program participation. This letter is to include the ''end-of-participation'' date for the Borrower.

(4) *Failure to complete a pre-foreclosure sale.* Should the Borrower be unable to complete a pre-foreclosure sale transaction, the Servicer must proceed with a deed-in-lieu/lease-in-lieu of foreclosure in accordance with § 1005.755. If the Servicer is unable to obtain a deed-in-lieu/lease-in-lieu of foreclosure, the Servicer must proceed to First Legal Action or assignment in accordance with §§ 1005.763 and 1005.765.

§ 1005.755 Deed-in-lieu/lease-in-lieu of foreclosure.

(a) *Requirements.* In lieu of instituting or completing a foreclosure, the Servicer or HUD may acquire a property by voluntary conveyance from the Borrowers. Conveyance of the property by deed-in-lieu/lease-in-lieu of foreclosure is allowed subject to the Servicer's compliance with the following requirements:

(1) The lease-in-lieu of foreclosure for a property on Trust Land shall be approved by the Tribe prior to execution and by the BIA at recordation.

(2) The Section 184 Guaranteed Loan is in default at the time of the deed-in-lieu/lease-in-lieu of foreclosure is executed and delivered;

(3) The Section 184 Guaranteed Loan is satisfied of record as a part of the consideration for such conveyance;

(4) The deed-in-lieu/lease-in-lieu of foreclosure from the Borrower contains a covenant which warrants against the acts of the grantor and all claiming by, through, or under the grantor and conveys Good and Marketable Title, or for leases, assigns without objectionable encumbrances;

(5) With respect to Section 184 Guaranteed Loans on fee simple lands, the Servicer transfers to HUD Good and Marketable Title accompanied by satisfactory title evidence.

(6) With respect to Section 184 Guaranteed Loans on Trust Lands, the Servicer provides to HUD a certified Title Status Report, or other HUD approved document issued by the Tribe, as prescribed by Section 184 Program Guidance evidencing assignment to HUD without any objectionable encumbrances.

(7) The property must meet the property conditions under § 1005.769. HUD may consent to conveyance of the property by deed-in-lieu/lease-in-lieu of foreclosure when property does not meet § 1005.769 in accordance with procedures in Section 184 Program Guidance.

(b) *Required documentation.* A written agreement must be executed by the Borrower and Servicer which contains all of the conditions under which the deed-in-lieu/lease-in-lieu of foreclosure will be accepted.

(c) *Conveyance to Servicer.* Upon execution of the deed-in-lieu/lease-in-lieu of foreclosure document(s), the Servicer must file for record no later than two business days from receipt.

(d) *Conveyance to HUD, where applicable.* After evidence of recordation is available, the Servicer shall convey the property to HUD in accordance with § 1005.771.

(e) *Reporting for Credit Purposes.* The Servicer must comply with all applicable Tribal, Federal, State, and local reporting requirements, including but not limited to reporting to credit reporting agencies.

§ 1005.757 Incentive payments.

As an alternative to foreclosure, or eviction where applicable, as prescribed by Section 184 Program Guidance, HUD may authorize, an incentive payment to:

(a) Borrowers that complete certain loss mitigation options or for their agreement to vacate the property after foreclosure, under the terms established by the Secretary;

(b) Holders or Servicers for their completion of certain loss mitigation options; and

(c) Tribes or TDHEs for their assistance in loss mitigation, sale, or transfer of the Trust Land property.

Assignment of the Loan to HUD; Foreclosure and Conveyance

§ 1005.759 Property on Trust Land—Tribal First Right of Refusal; foreclosure or assignment.

(a) Tribal First Right of Refusal is written notice to the Tribe of the options to assume the Section 184 Guaranteed Loan or purchase the Note based on the current unpaid principal balance or appraised value for any property on Trust Land or other reasonable options as prescribed by Section 184 Program Guidance.

(b) The Servicer shall provide Tribal First Right of Refusal no later than 14 days, or any extended timeframe prescribed by Section 184 Program Guidance, after the earlier of:

(1) Any lease provision addressing Tribal First Right of Refusal;

(2) 120 days after default, unless the Borrower is in active loss mitigation;

(3) Failure of loss mitigation after 180 days from default;

(4) The failure of loss mitigation after an extension of the loss mitigation period under § 1005.739(f).

(5) The date the property was determined vacant or abandoned in accordance § 1005.737 or the earliest date the Servicer should have known the property was vacant or abandoned.

(b) The Tribe shall have either the time frame provided in the lease or, if not defined in the lease, 60 days, or any extended timeframe prescribed by Section 184 Program Guidance, to accept or decline the offer of Tribal First Right of Refusal.

(c) If the Tribe declines or does not respond to the Tribal First Right of Refusal within 60 days, or any extended timeframe prescribed by Section 184 Guidance, the Servicer must either complete First Legal Action or assignment to HUD, within the timeframes prescribed in §§ 1005.763 and 1005.765.

(d) Any costs associated with failure to initiate Tribal First Right of Refusal may be deemed ineligible for claim payment.

§ 1005.761 Fee simple properties—foreclosure or assignment with HUD approval.

(a) Unless a Borrower has completed a pre-foreclosure sale or a deed-in-lieu of foreclosure in accordance with §§ 1005.753 and 1005.755, the Servicer must complete First Legal Action on the Section 184 Guaranteed Loan pursuant to § 1005.763.

(b) Under limited circumstances, HUD may approve an assignment of a Section 184 Guaranteed Loan to HUD for fee simple land properties.

§ 1005.763 First Legal Action deadline and automatic extensions.

(a) *Deadline for First Legal Action.* The Servicer must complete First Legal Action, within 180 days of default, unless a later date is authorized under this part.

(b) *Automatic extensions to the First Legal Action deadline.* HUD permits automatic extensions to the First Legal Action deadline for the following reasons and HUD approval is not required.

(1) If Federal law or the laws of the Tribe or State, in which the Section 184 Guaranteed Loan property is located, do not permit First Legal Action within the deadline designated above, then the Servicer must complete First Legal Action within 30 days after the expiration of the time during which First Legal Action is prohibited; or

(2) If the Borrower is in compliance with an approved loss mitigation plan at 180 days of default and the Borrower subsequently fails loss mitigation, First Legal Action must be completed within 30 days of the loss mitigation failure or the Borrower's request to terminate the loss mitigation plan, whichever is sooner.

(3) If the Borrower does not continue with their current loss mitigation option or enter into an alternative loss mitigation option during the 45-day period under § 1005.739(f), the First Legal Action must be completed within 30 days or

(4) If a Tribal First Right of Refusal was offered under § 1005.759, and the Servicer decides to pursue foreclosure in Tribal court, instead of assigning the Loan to HUD, First Legal Action must be completed within 30 days of completing the Tribal First Right of Refusal.

(c) *Other extensions.* Other necessary and reasonable extensions may be allowed, as prescribed by Section 184 Program Guidance.

(d) *Notice to HUD.* The Servicer must provide notice to HUD, in a form as may be prescribed in Section 184 Program Guidance, within 15 days of completing First Legal Action.

(e) *Submission of claim.* The Servicer must submit a claim to HUD within 45 days from the date the foreclosure was complete in accordance with § 1005.809(a) or (c).

§ 1005.765 Assignment of the Section 184 Guaranteed Loan.

(a) *Fee simple land properties.* (1) The assignment of Section 184 Guaranteed Loans involving fee simple land properties requires prior HUD approval. The Servicer must submit a request for an assignment within 135 days of default, or any extended timeframe prescribed by Section 184 Program Guidance, unless the Servicer has determined the property is vacant pursuant to § 1005.737.

(2) The Servicer shall have five business days from HUD approval, or any extended timeframe prescribed by Section 184 Program Guidance, to submit the executed assignment for recordation with the appropriate jurisdiction.

(b) *Properties on Trust Land.* HUD may accept assignment of the Section 184 Guaranteed Loan if HUD determines that the assignment is in the best interest of the United States. In cases where HUD accepts the assignment, upon completing the Tribal First Right of Refusal in accordance with § 1005.759, the Servicer shall have five business days, or any extended timeframe prescribed by Section 184 Program Guidance, to submit the executed assignment for recordation with the BIA, as applicable, or other HUD approved document, as prescribed by Section 184 Program Guidance, that evidences the assignment.

(c) *Notice to HUD.* The Servicer must provide notice to HUD, in a form as may be prescribed in Section 184 Program Guidance, within 15 days of submitting the assignment for recordation.

(d) *Submission of Claim.* The Servicer shall have 45 days to submit the assignment and evidence of recordation as part of a Claim in accordance with 1005.809(b). The Servicer shall submit to HUD evidence of the filing and of a Claim in a manner so prescribed by Section 184 Program Guidance.

(e) *Acceptance by HUD.* HUD will accept assignment of the Section 184 Guaranteed Loan in accordance with 1005.773.

§ 1005.767 Inspection and preservation of properties.

(a) If at any time the Servicer knows or should have known the property is vacant or abandoned, the Servicer shall comply with the inspection requirements under § 1005.737.

(b) The Servicer shall take appropriate action to protect and preserve the property until its conveyance to HUD, if such action does not constitute an illegal trespass or is not otherwise prohibited by Tribal, State, or Federal law. Taking ''appropriate action'' includes First Legal Action or assignment within the time required by §§ 1005.763 and 1005.765, as applicable.

§ 1005.769 Property condition.

(a) *Condition at time of transfer.* (1) When the property is transferred, or a Section 184 Guaranteed Loan is assigned to HUD in accordance with § 1005.765, the property must be undamaged by fire, earthquake, flood, tornado, and Servicer neglect, except as set forth in this subpart.

(2) A vacant property must be in broom-swept condition, meaning the property is, at a minimum, reasonably free of dust and dirt, and free of hazardous materials or conditions, personal belongings, and interior and exterior debris.

(3) A vacant property is secured and, if applicable, winterized.

(b) *Damage to property.* The Servicer shall not be liable for documented damage to the property by waste, deterioration, or neglect committed by the Borrower, or heirs, successors, or assigns.

(c) *Servicer responsibility.* The Servicer shall be responsible for:

(1) Damage by fire, flood, earthquake, or tornado;

(2) Damage to or destruction of property which is vacant or abandoned when such damage or destruction is due to the Servicer's failure to take reasonable action to inspect, protect, and preserve such property as required by § 1005.737; and

(3) Any damage, whatsoever, that the property has sustained while in the possession of the Servicer, when the property has been conveyed to HUD without notice or approval by HUD as required by § 1005.765.

§ 1005.771 Conveyance of property to HUD at or after foreclosure; time of conveyance.

(a) At or after foreclosure, the Servicer shall convey the property to HUD by one of the following:

(1) *Direct conveyance to HUD.* The Servicer shall cause for the deed to be transferred directly to HUD. The Servicer shall be responsible for determining that such conveyance will comply with all provisions of this part, including conveying Good and Marketable Title and producing satisfactory title evidence to HUD.

(2) *Conveyance by the Holder to HUD.* The Holder shall acquire Good and Marketable Title and transfer the property to HUD within 30 days of the later of:

(i) Execution of the foreclosure deed;

(ii) Acquiring possession of the property;

(iii) Expiration of the redemption period;

(iv) Such further time as may be necessary to complete the title examination and perfect the title; or

(v) Such further time as HUD may approve in writing.

(b) On the date the deed is filed for record, the Servicer shall notify HUD,

on a form prescribed by HUD, advising HUD of the filing of such conveyance and shall assign all rights without recourse or warranty any or all claims which the Servicer has acquired in connection with the loan transaction, and as a result of the foreclosure proceedings or other means by which the Servicer acquired or conveyed such property, except such claims as may have been released with the approval of HUD. The Servicer must file for record the deed no later than two business days after execution. The Servicer must document evidence of the submission in the file.

§ 1005.773 HUD acceptance of assignment or conveyance.

(a) *Effective date of assignment.* HUD accepts the assignment of a Section 184 Guaranteed Loan when:

(1) The Servicer has assigned the Section 184 Guaranteed Loan to HUD;

(2) The Servicer has provided HUD evidence of the recordation; and

(3) HUD pays a claim for the unpaid principal balance under § 1005.807(a).

(b) *Effective date of conveyance.* HUD accepts conveyance of the property when:

(1) The Servicer has deeded the property to HUD;

(2) The Servicer has provided HUD evidence of the recordation; and

(3) HUD pays a claim for the unpaid principal balance under § 1005.807(a).

(c) *Servicer ongoing obligation.* Notwithstanding the assignment of the Section 184 Guarantee Loan or the filing of the deed or other legal instrument conveying the property interest to the HUD, the Servicer remains responsible for ensuring compliance with this part, including any loss or damage to the property, and such responsibility is retained by the Servicer until the claim has been paid by HUD.

Subpart H—Claims

Claims Application, Submission Categories and Types

§ 1005.801 Purpose.

This subpart sets forth requirements that are applicable to a Servicer's submission of an application for a Claim for a Section 184 Guaranteed Loan benefits to HUD. The Servicer's submission of the Claim shall be in compliance with this subpart and must follow the process details as set forth in Section 184 Program Guidance. This subpart also sets forth requirements for processing and payment of the Claim.

§ 1005.803 Claim case binder; HUD authority to review records.

(a) A Servicer must maintain a claim case binder for each claim submitted for payment in accordance with § 1005.219(d)(2). The claim case binder must contain documentation supporting all information submitted in the claim.

(b) HUD may review a claim case binder and the associated endorsement case binder at any time. A Servicer's denial of HUD access to any files may be grounds for sanctions in accordance with §§ 1005.905 and 1005.907.

(c) Within three business days of a request by HUD, the Servicer must make available for review, or forward to HUD, copies of identified claim case binders.

§ 1005.805 Effect of noncompliance.

(a) When a claim case binder is submitted to HUD for consideration, HUD may conduct a post-endorsement review in accordance with § 1005.527. If HUD determines that the Section 184 Guaranteed Loan does not satisfy the requirements of subpart D, HUD will take one or more of the following actions:

(1) Reject the claim submission when the Holder is the Originating Direct Guarantee Lender.

(2) Pay the claim to the current Holder and demand reimbursement of the claim from the Originating Direct Guarantee Lender.

(3) Reconvey the property or reassign the deed of trust or mortgage in accordance with § 1005.849.

(4) Pursue sanctions against the Originating Direct Guarantee Lender or Sponsored Entity pursuant to §§ 1005.905 and 1005.907.

(b) When reviewing a claim case binder, if HUD determines:

(1) The Servicer failed to service the Section 184 Guaranteed Loan in accordance with subpart G of this part;

(2) The Servicer committed fraud or a material misrepresentation; or

(3) The Servicer had known or should have known of fraud or a material misrepresentation in violation of this part.

(4) HUD may take one or more of the following actions.

(i) Place a hold on processing the claim for reimbursement of eligible reasonable expenses under § 1005.807(b) and provide the Servicer the opportunity to remedy the deficiency.

(ii) Reject the claim for reimbursement of eligible reasonable expenses under § 1005.807(b) partially or in its entirety.

(iii) Reconvey the property or reassign the deed of trust or mortgage in accordance with § 1005.849, where applicable, and require the Holder to refund the claim payment of the unpaid principal balance under § 1005.807(a) and expenses under § 1005.807(b). The Holder may resubmit the claim when the deficiencies identified by HUD are cured.

(iv) Pursue administrative offset for any unpaid amounts owed to HUD pursuant to 24 CFR part 17.

(vi) Pursue sanctions against the Servicer or Holder pursuant to §§ 1005.905 and 1005.907.

(vii) Pursue other remedies as determined by HUD.

(c) If a property is reconveyed or the deed of trust or mortgage is reassigned to the Holder, the Holder may not be reimbursed for any expenses incurred after conveyance or reassignment.

(d) If a claim is resubmitted after reconveyance or reassignment and HUD determines a decrease in the value of the property at the time of the resubmission, HUD may reduce the claim payment accordingly.

§ 1005.807 Claim submission categories.

There are three claim submission categories:

(a) Payment of the unpaid principal balance;

(b) Reimbursement of eligible reasonable expenses, including interest, from the Date of Default to the earlier of the deadlines provided in § 1005.839(a) through (e). Allowable reasonable exceptions will be provided by Section 184 Program Guidance; and

(c) Supplemental claim for eligible reasonable expenses incurred prior to the earlier of the deadlines provided in § 1005.839(a)(1) through (5), for expenses omitted from the Servicer's prior claim or for a calculation error made by either Servicer or HUD.

§ 1005.809 Claim types.

HUD recognizes five different claim types. The Servicer must submit a claim based upon the type of property disposition. The Servicer shall submit claims within timeframes established below or any extended timeframe prescribed by Section 184 Program Guidance. The Claim types are:

(a) *Conveyance.* When the property is deeded to HUD through foreclosure:

(1) The Servicer must submit a claim under § 1005.807(a) to HUD no later than 2 business days from the date the deed to HUD is executed.

(2)(i) *Fee simple land.* The claim must include the final title policy evidencing HUD's ownership through foreclosure or transfer of the ownership of the property through deed-in-lieu to HUD, in accordance with § 1005.817.

(ii) *Trust Land.* The claim must include a certified Title Status Report evidencing HUD's property interest through foreclosure.

(3) In cases where the Servicer is unable to comply with paragraph

(a)(2)(ii) of this section, the Servicer shall submit the claim pending the certified Title Status Report in accordance with the time frame specified in paragraph (a)(1) of this section.

(4) Servicers must submit claims under § 1005.807(b) no later than 15 days following the submission of a claim under § 1005.807(a).

(b) *Assignment of the loan.* When the Holder assigns the Section 184 Guaranteed Loan to HUD:

(1) The Servicer must submit a claim under § 1005.807(a) and (b) no later than 45 days from the date of the assignment of the Section 184 Guaranteed Loan to HUD is executed.

(2)(i) *Trust Land.* The claim must include the recorded assignment and a certified Title Status Report evidencing the assignment of the mortgage to HUD.

(ii) *Fee simple land.* The claim must include the final title policy providing coverage through the transfer of the mortgage to HUD.

(3) In cases where the Servicer is unable to comply with paragraph (b)(2)(i) of this section, the Servicer shall submit the claim pending the certified Title Status Report in accordance with the time frame specified in paragraph (b)(1) of this section.

(4) At the time of assignment of the Section 184 Guaranteed Loan, the Servicer shall certify to HUD that:

(i) *Priority of Section 184 Guaranteed Loan.* The Section 184 Guaranteed Loan has priority over all judgments, mechanics' and materialmen's liens, or any other liens, regardless of when such liens attached, unless approved by HUD;

(ii) *Amount due.* The amount reported to HUD in accordance with § 1005.707(d) prior to assignment is verified to be due and owing under the Section 184 Guaranteed Loan;

(iii) *Offsets or counterclaims and authority to assign.* There are no offsets or counterclaims thereto and the Holder has the authority to assign; and

(iv) The assignment of the Section 184 Guaranteed Loan to HUD meets the requirements of § 1005.765.

(c) *Post-foreclosure claims without conveyance of title.* When a third-party purchases the property at foreclosure, the Servicer must submit a claim under § 1005.807(a) and (b) to HUD no later than 30 days from the date the property is conveyed to the third-party. If the Holder purchases the property at foreclosure and subsequently sells the property, the Servicer may submit a claim under this section.

(d) *Pre-foreclosure sale, deed-in-lieu or lease-in-lieu.* When a property is sold or conveyed prior to foreclosure in accordance with § 1005.753 or § 1005.755, the Servicer must submit a claim under § 1005.807(a) and (b) to HUD no later than 30 days from the date the sale or conveyance is executed.

(e) *Supplemental claim.* The Servicer shall be limited to one supplemental claim for each Claim under submission categories in paragraphs (a) through (d) of this section.

(1) The supplemental claim shall be limited to:

(i) Reasonable eligible expenses incurred up to the date of conveyance of the property or assignment of the Section 184 Guaranteed Loan, when invoices are received after the payment of the claim under § 1005.807(b); or

(ii) Calculation error(s) made by either the Servicer or HUD.

(2) Supplemental claims must be submitted within six months of the claim submission under § 1005.807(b). Supplemental claims received after six months of the claim submission will not be reviewed or paid by HUD.

(3) Any supplemental claim paid by HUD shall be considered final satisfaction of the Loan Guarantee Certificate.

Submission of Claims

§ 1005.811 Claims supporting documentation.

The Servicer shall submit supporting documentation to the satisfaction of HUD for each Claim. Such documentation will be provided for in Section 184 Program Guidance.

§ 1005.813 Up-front and Annual Loan Guarantee Fee reconciliation.

(a) The Servicer must include in the claims case binder a reconciliation evidencing the payment of the Up-front and Annual Loan Guarantee Fees to HUD.

(b) Where the Servicer fails to comply with paragraph (a) of this section or the reconciliation shows unpaid amounts owed to HUD, and the unpaid amounts, along with late fees, have not been satisfied by the Servicer, HUD shall reject the claim.

(c) The Servicer may resubmit the claim after providing the reconciliation required under paragraph (a) of this section or after the Annual Loan Guarantee Fee amounts, along with late fees, owed to HUD are paid by the Servicer.

(d) Allowance to resubmit in accordance with paragraph (c) of this section shall not be construed to extend any deadlines to file claims specified in this subpart.

§ 1005.815 Conditions for withdrawal of claim.

With HUD's consent, a Holder may withdraw a claim. When HUD consent is granted, the Holder shall agree, where applicable, in writing that it will:

(a) Accept a reconveyance of the property under a conveyance which warrants against the acts of HUD and all claiming by, through or under HUD;

(b) Promptly file for record the reconveyance from HUD;

(c) Accept without continuation, the title evidence which the Servicer furnished to HUD; and

(d) Reimburse HUD for the expenditures and amounts set forth in § 1005.851.

Property Title Transfers and Title Waivers

§ 1005.817 Conveyance of Good and Marketable Title.

(a) *Satisfactory conveyance of title and transfer of possession.* The Servicer shall tender to HUD a satisfactory conveyance of title and transfer of possession of the property. The deed or other instrument of conveyance shall convey Good and Marketable Title to the property, which shall be accompanied by title evidence satisfactory to HUD.

(b) *Conveyance of property without Good and Marketable Title.* (1) If the title to the property conveyed by the Holder to HUD does not have Good and Marketable Title, the Holder must correct any title defect within 60 days after receiving notice from HUD, or within such further time as HUD may approve in writing.

(2) If the defect is not corrected within 60 days, or such further time as HUD approves in writing, the Holder must reimburse HUD's costs of holding the property. Such holding costs accrue on a daily basis and include interest on the amount of the loan guarantee benefits paid to the Holder at an interest rate set in conformity with the Treasury Fiscal Requirements Manual from the date of such notice to the date the defect is corrected or until HUD reconveys the property to the Holder, as described in paragraph (b)(3) of this section. The daily holding costs to be charged to the Holder shall also include the costs specified in § 1005.851.

(3) If the title defect is not corrected within a reasonable time, as determined by HUD, HUD will, after notice, reconvey the property to the Holder and the Holder must reimburse HUD in accordance with §§ 1005.849 and 1005.851.

§ 1005.819 Types of satisfactory title evidence.

The following types of title evidence shall be satisfactory to HUD:

(a) *Fee or owner's title policy.* A fee or owner's policy of title insurance, a guaranty or guarantee of title, or a certificate of title, issued by a title company, duly authorized by law and qualified by experience to issue such instruments. If an owner's policy of title insurance is furnished, it shall show title in HUD's name and inure to the benefit of the Department. The policy must be drawn in favor of the Holder and HUD, ''and their successors and assigns, as their interests may appear'', with the consent of the title company endorsed thereon.

(b) *Policy of title insurance.* A Holder's policy of title insurance supplemented by an abstract and an attorney's certificate of title covering the period subsequent to the date of the loan, the terms of the policy shall be such that the liability of the title company will continue in favor of HUD after title is conveyed to HUD. The policy must be drawn in favor of the Servicer and HUD, ''and their successors and assigns, as their interests may appear'', with the consent of the title company endorsed thereon;

(c) *Abstract and legal opinion.* An abstract of title prepared by an abstract company or individual engaged in the business of preparing abstracts of title and accompanied by the legal opinion as to the quality of such title signed by an attorney at law experienced in examination of titles. If title evidence consists of an abstract and an attorney's certificate of title, the search shall extend for at least forty years prior to the date of the Certificate to a well-recognized source of good title;

(d) *Torrens or similar certificate.* A Torrens or similar title certificate;

(e) *Title standard of U.S., Tribal, or State government.* Evidence of title conforming to the standards of a supervising branch of the Government of the United States or of any Tribe, State or Territory thereof; or

(f) *Title Status Report.* Certified Title Status Report issued by the BIA or other comparable document approved by HUD in accordance with Section 184 Program Guidance, shall not be more than sixty (60) days from the date of the § 1005.807(a) claim submission. Extensions may be granted under certain reasonable circumstances, as prescribed by Section 184 Program Guidance.

§ 1005.821 Coverage of title evidence.

(a) Evidence of title or Title Status Report shall include the recordation of the conveyance or assignment to HUD. The evidence of title, the Title Status Report or direct verification from the Tribe or TDHE, shall further show that, according to the public or Tribal records, there are no outstanding prior liens, including any past-due and unpaid ground rents, general taxes or special assessments, if applicable, on the date of conveyance or assignment.

(b) If the title evidence and Title Status Report are acceptable generally in the community in which the property is situated, such title evidence and Title Status Report shall be satisfactory to HUD and shall be considered Good and Marketable Title. In cases of disagreement, HUD will make the final determination in its sole discretion.

§ 1005.823 Waived title objections for properties on fee simple land.

Reasonable title objections for fee simple land properties shall be waived by HUD. Reasonable title objections will be prescribed in Section 184 Program Guidance.

§ 1005.825 Waived title objections for properties on Trust Land.

HUD shall not object to title restrictions placed on the tract of Trust Land by the Tribe or the BIA so long as those restrictions do not adversely impact the property or marketability.

Condition of the Property

§ 1005.827 Damage or neglect.

(a) If the property has been damaged by fire, flood, earthquake, or tornado, or if the property has suffered damage because of the Servicer 's failure to take action as required by § 1005.767 or for any other reason, the Servicer must submit a claim to the hazard insurance policy, as applicable and the damage must be repaired before conveyance of the property or assignment of the Section 184 Guaranteed Loan to HUD.

(b) If the property has been damaged as described in paragraph (a) of this section and the damage is not covered by a hazard insurance policy, the Servicer must provide notice of such damage to HUD. The property may not be conveyed or assigned until directed to do so by HUD. Upon receipt of such notice, HUD will either:

(1) Allow the Holder to convey the damaged property;

(2) Require the Holder to repair the damage before conveyance, and HUD will reimburse the Holder for reasonable payments, not in excess of HUD's estimate of the cost of repair, less any hazard insurance recovery; or

(3) Require the Holder to repair the damage before conveyance, at the Holder's own expense.

(c) In the event the damaged property is conveyed to HUD without prior notice or approval as provided in paragraph (a) or (b) of this section, HUD may, after notice, reconvey the property and demand reimbursement to HUD for the expenses in accordance with §§ 1005.849 and 1005.851.

§ 1005.829 Certificate of property condition.

(a) As part of the claim submission, the Servicer shall either:

(1) Certify that as of the date of the deed or assignment of the loan to HUD the property was:

(i) Undamaged by fire, flood, earthquake, or tornado;

(ii) Undamaged due to failure of the Servicer to act as required by § 1005.767; and,

(iii) Undamaged while the property was in the possession of the Borrower; or,

(2) Include a copy of HUD's authorization to convey the property in damaged condition.

(b) In the absence of evidence to the contrary, the Servicer's certificate or description of the damage shall be accepted by HUD as establishing the condition of the property, as of the date of the deed or assignment of the Section 184 Guaranteed Loan.

§ 1005.831 Cancellation of hazard insurance.

The Holder shall cancel any hazard insurance policy as of the date of the deed to HUD, subject to the following conditions:

(a) The amount of premium refund due to the Servicer resulting from such cancellation must be deducted from the total amount claimed.

(b) If the Holder's calculation of the premium refund is less than the actual premium refund, the amount of the difference between the actual refund and the calculated refund shall be remitted to HUD, accompanied by the insurance company's or agent's statement.

(c) If the Holder's calculation of the premium refund is more than the actual refund, the Servicer must include in a supplemental Claim submission in accordance with § 1005.809(c), accompanied by the insurance company's or agent's statement, the amount of the difference as an eligible cost in accordance with § 1005.843(c).

Payment of Guarantee Benefits

§ 1005.833 Method of payment.

If the claim is acceptable to HUD, payment of the guarantee benefits shall be made by electronic transfer of funds to the Holder or other such allowable payment method.

§ 1005.835 Claim payment not conclusive evidence of claim meeting all HUD requirements.

Payment of any claim by HUD is not conclusive evidence of compliance with the subparts D or G of this part. HUD reserves the right to conduct post-claim payment review of claims. Where non-compliance with any requirements of this part is identified, HUD will take appropriate action against the Holder, Originating Direct Guarantee Lender and/or Servicer, including but not limited to HUD's remedies under § 1005.805 and sanctions under §§ 1005.905 and 1005.907.

§ 1005.837 Payment of claim: unpaid principal balance.

HUD will pay a claim under § 1005.807(a) in the amount of the unpaid principal balance less all receipts for the sale or transfer of the property, if applicable, in accordance with the requirements of this subpart.

§ 1005.839 Payment of claim: interest on unpaid principal balance.

HUD shall pay interest on the unpaid principal balance from the date of default to the earlier of the following:

(a) The execution of deed-in-lieu/lease-in-lieu of foreclosure;

(b) The execution of the conveyance to either Holder, HUD or a third-party;

(c) The execution of the assignment of the Section 184 Guaranteed Loan to HUD;

(d) The expiration of the reasonable diligence timeframe; or

(e) Other event as prescribed by Section 184 Program Guidance.

§ 1005.841 Payment of claim: reimbursement of eligible and reasonable costs.

The claim will be paid in accordance with § 1005.807(b) and will include eligible and reasonable costs, as prescribed by Section 184 Program Guidance.

§ 1005.843 Reductions to the claim submission amount.

A Holder shall reduce the claim when the following amounts are received or held by the Holder:

(a) All amounts received by the Holder to the account of the borrower after default.

(b) All amounts received by the Holder from any source relating to the property on account of rent, reimbursement or other payments.

(c) All cash retained by the Holder including amounts held or deposited in the account of the Borrower or to which it is entitled under the loan transaction that have not been applied in reduction of the principal loan indebtedness.

§ 1005.845 Rights and liabilities under Indian Housing Loan Guarantee Fund.

(a) No Borrower, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer shall have any vested right in the Indian Housing Loan Guarantee Fund.

(b) No Borrower, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer shall be subject to any liability arising under the Indian Housing Loan Guarantee Fund.

(c) The Indian Housing Loan Guarantee Fund will be credited and debited in accordance with 12 U.S.C. 1715z–13a(i)(2).

§ 1005.847 Final payment.

(a) HUD's payment of a claim(s) shall be deemed as final payment to the Holder, notwithstanding the Holder's ability to present additional claim(s) in accordance with § 1005.807 as applicable. The Holder shall have no further rights against the Borrower or HUD when there is a final payment. This paragraph does not preclude HUD from seeking reimbursement of costs and return of amounts from the Holder or Originating Direct Guarantee Lender pursuant to §§ 1005.849 and 1005.851.

(b) In cases where HUD reconveys the property to the Holder and HUD is reimbursed for all expenses and Holder returns all amounts pursuant to §§ 1005.849 and 1005.851, provisions under paragraph (a) of this section shall not apply. However, the resubmission of the Claim, if any, shall be subject to § 1005.849(b) and any additional processes as prescribed by Section 184 Program Guidance.

§ 1005.849 Reconveyance and reassignment.

(a) HUD may reconvey the property or reassign the deed of trust or mortgage to the Holder due to:

(1) Noncompliance with this part or any requirements as prescribed by Section 184 Program Guidance; or

(2) An authorized withdrawal of a claim in accordance with § 1005.815.

(b) HUD may take appropriate action against the Holder associated with the reconveyance or reassignment authorized in paragraph (a) of this section, including but not limited to, seeking reimbursement of all claim costs paid by HUD and carrying costs incurred by HUD in accordance with § 1005.851.

(c) Notwithstanding any other provision in this subpart, in cases where HUD has conveyed the property or reassigned the deed of trust or mortgage back to the Holder in accordance with § 1005.851, and where the Servicer resubmits the claim, HUD will not reimburse the Holder any expenses incurred after the date of the HUD conveyance or assignment.

(d) Additional reasonable and necessary restrictions may be imposed, as prescribed by Section 184 Program Guidance.

§ 1005.851 Reimbursement of expenses to HUD.

Where reconveyance or reassignment is sought by HUD pursuant to § 1005.849 or when HUD determines noncompliance, the Holder or the Originating Direct Guarantee Lender shall reimburse HUD for:

(a) All Claim costs paid by HUD.

(b) HUD's cost of holding the property, including but not limited to expenses based on the estimated taxes, maintenance and operating expenses of the property, and administrative expenses. Adjustments shall be made by HUD for any income received from the property.

(c) The reimbursement shall include interest on the amount of the claim payment returned by the Holder or the originating Direct Guarantee Lender from the date the claim was paid to the date HUD receives the reimbursement from Holder or the originating Direct Guarantee Lender. The interest rate set shall be in conformity with the Treasury Fiscal Requirements Manual.

Subpart I—Program Performance, Reporting, Sanctions, and Appeals

§ 1005.901 Performance reviews.

HUD may conduct periodic performance reviews of Direct Guarantee Lenders, Non-Direct Guarantee Lenders, Holders, and Servicers. These may include analytical reviews, customer surveys and on-site or remote monitoring reviews. These reviews may include, but are not limited to, an evaluation of compliance with this part. HUD will provide written notice of its assessment and any proposed corrective action, if applicable.

§ 1005.903 Reporting and certifications.

(a) The Direct Guarantee Lender, Non-Direct Guarantee Lender or Servicer shall provide timely and accurate reports and certifications to HUD, which may include but is not limited to reports in connection with performance reviews under § 1005.901, any special request for information from HUD, and any reasonable reports prescribed by Section 184 Program Guidance, within reasonable time frames prescribed by HUD.

(b) The Direct Guarantee Lender, Non-Direct Guarantee Lender or Servicer's failure to provide timely and accurate

reports and certifications to HUD may subject the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer to sanctions and civil money penalties pursuant to §§ 1005.905 and 1005.907.

§ 1005.905 Notice of sanctions.

(a) Prior to the notice of sanctions or civil money penalties, HUD shall inform the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer of the specific non-compliance with this part and, where applicable, afford the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer a reasonable time, as prescribed in Section 184 Program Guidance, to return to compliance.

(b) If it is determined that the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder or Servicer fails to return to compliance within the allowed time, HUD shall provide written notice of the sanctions and civil money penalties to be imposed and the basis for the action.

§ 1005.907 Sanctions and civil money penalties.

(a) Where the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder or Servicer fails to comply with this part, including failure to maintain adequate accounting records, failure to adequately service loans, or failure to exercise proper credit or underwriting judgment, or becomes ineligible to participate pursuant to § 1005.225, or has engaged in practices otherwise detrimental to the interest of a Borrower or the United States, including but not limited to, failure to provide timely reporting, or failure to follow underwriting requirements set forth in this part, or failure to comply with Section 184 Program Guidance when it specifically provides times, processes, and procedures for complying with the requirements of this part, HUD may take any combination of the following actions:

(1) Either temporarily or permanently terminate a Director Guarantee Lender or Non-Direct Guarantee Lender's status. If such action is taken and the terminated Direct Guarantee Lender wishes to maintain servicing rights to the Section 184 Guaranteed Loans, the terminated Direct Guarantee Lender must seek HUD approval as prescribed in Section 184 Program Guidance.

(2) Bar the Direct Guarantee Lender or Holder from acquiring additional Section 184 Guaranteed Loans.

(3) Require that the Direct Guarantee Lender assume not less than 10 percent of any loss on further Section 184 Guaranteed Loans made by the Direct Guarantee Lender.

(4) Require that the Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer comply with a corrective action plan or amend the Direct Guarantee Lender, Non-Direct Guarantee Lender or Holder's quality control plan, subject to HUD approval, to remedy the non-compliance with this part and any process prescribed by Section 184 Program Guidance. The plan shall also address methods to prevent the reoccurrence of any practices that are detrimental to the interest of the Borrower or HUD. The corrective action plan or amended quality control plan shall afford the Direct Guarantee Lender, Non-Direct Guarantee Lender, or Holder reasonable time to return to compliance.

(b) HUD is authorized pursuant to 12 U.S.C. 1715z–13a(g)(2) to impose civil money penalties upon Direct Guarantee Lenders, Non-Direct Guarantee Lender, or Holders as set forth in 24 CFR part 30. The violations for which a civil money penalty may be imposed are listed in subpart B of 24 CFR part 30.

§ 1005.909 Appeals process.

(a) Lenders denied participation in the Section 184 Program pursuant to subpart B of this part, or a Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer subject to sanctions pursuant to § 1005.907, may appeal to HUD's Office of Loan Guarantee within 15 days, or other timeframe as prescribed in Section 184 Program Guidance. After consideration of the Lender, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder or Servicer's appeal, HUD shall advise the Lender, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder or Servicer in writing whether the denial is rescinded, modified or affirmed. The Lender, Direct Guarantee Lender, Non-Direct Guarantee Lender, Holder, or Servicer may then appeal such decision to the Deputy Assistant Secretary for Office of Native American Programs, or his or her designee. A decision by the Deputy Assistant Secretary or designee shall constitute final agency action.

(b) Hearings to challenge the imposition of civil money penalties shall be conducted according to the applicable rules of 24 CFR part 30.

Adrianne Todman,

Deputy Secretary.

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Federal Register

Vol. 89, No. 55

Wednesday, March 20, 2024

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FEDERAL REGISTER PAGES AND DATE, MARCH

15011–15430 1
15431–15724 4
15725–15948 5
15949–16442 6
16443–16682 7
16683–17264 8
17265–17692 11
17693–18338 12
18339–18528 13
18529–18748 14
18749–19224 15
19225–19496 18
19497–19726 19
19727–20092 20

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

3474 15671

Proposed Rules:

Ch. XVI 16701

3 CFR

Proclamations:

10703 15933
10704 15935
10705 15937
10706 15939
10707 15949
10708 15953
10709 18339
10710 18529
10711 19727

Executive Orders:

12957 (continued by Notice of March 12, 2024) 18527
13288 (revoked by EO 14118) 15945
13391 (revoked by EO 14118) 15945
13469 (revoked by EO 14118) 15945
13522 (superseded by EO 14119) 17265
13812 (revoked by EO 14119) 17265
13873 (Amended by EO 14117) 15421
14034 (Amended by EO 14117) 15421
14117 15421
14118 15945
14119 17265

Administrative Orders:

Notices:
Notice of March 4, 2024 15947
Notice of March 5, 2024 16443
Notice of March 12, 2024 18527
Orders:
Order of March 11, 2024 18531

5 CFR

1631 19225
1650 18533

6 CFR

19 15671
126 17693

7 CFR

16 15671
982 15955
1710 17271
1717 17271
1721 17271
1726 17271
1730 17271
3560 19225
3565 19497

Proposed Rules:

205 17322
966 16471

9 CFR

201 16092
317 19470
381 19470
412 19470

10 CFR

70 19499
430 ..... 18164, 18836
436 19500

Proposed Rules:

37 16701
430 ..... 17338, 18244, 19026
431 18555

11 CFR

1 19729
111 19729

12 CFR

X 17706
34 17710
225 17710
234 18749
323 17710
722 17710
741 17710
1026 19128
1228 17711
1238 19731

13 CFR

107 18341
121 18341
127 16445
130 17716

14 CFR

21 17230
25 ..... 17276, 18341, 18767
39 ..... 15431, 15725, 15728, 15733, 17717, 17719, 17723, 17725, 18348, 18350, 18534, 18769, 18771, 18774, 18776, 19228, 19231, 19234, 19501, 19505
71 ..... 15011, 15014, 15015, 15434, 15435, 15736, 15738, 16446, 16447, 16448, 16449, 17281, 18778, 19507, 19508, 19509, 19510
73 15016
97 ..... 15437, 15439, 19236,

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws/current.html*.

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S. 206/P.L. 118–43
Eradicating Narcotic Drugs and Formulating Effective New Tools to Address National Yearly Losses of life Act (Mar. 18, 2024)

S. 1858/P.L. 118–44
Disaster Assistance Deadlines Alignment Act (Mar. 18, 2024)

Last List March 13, 2024

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